

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 654

AN ACT

To repeal sections 409.605, 409.610, 409.615, 409.620, 409.625, 409.630, 409.3-302, 409.4-412, and 409.6-604, RSMo, and to enact in lieu thereof nine new sections relating to the regulation of securities.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 409.605, 409.610, 409.615, 409.620, 409.625, 409.630, 409.3-302, 409.4-412, and 409.6-604, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 409.605, 409.610, 409.615, 409.620, 409.625, 409.630, 409.3-302, 409.4-412, and 409.6-604, to read as follows:

409.605. As used in sections 409.600 to 409.630, the following terms shall mean:

- (1) "Agencies", the department of health and senior services and the commissioner of securities;
- (2) "Agent", shall have the same meaning as in section 409.1-102;
- (3) "Broker-dealer", shall have the same meaning as in section 409.1-102;
- (4) "Financial exploitation", the wrongful or unauthorized taking, withholding, appropriation, or use of money, real property, or personal property of a qualified adult;
- (5) "Immediate family member", a spouse, child, parent, or sibling of a qualified adult;

(6) "Investment adviser", shall have the same meaning as under section 409.1-102;

(7) "Investment adviser representative", shall have the same meaning as under section 409.1-102;

(8) "Qualified adult":

(a) A person sixty years of age or older; or

(b) A person who:

a. Has a disability as defined in section 192.2005; and

b. Is between the ages of eighteen and fifty-nine;

[(7)] (9) "Qualified individual"[, ]:

(a) A broker-dealer;

(b) An investment adviser; or

(c) A person associated with a broker-dealer or investment adviser who serves in a supervisory, compliance, or legal capacity as part of his or her job.

409.610. If a qualified individual reasonably believes that financial exploitation of a qualified adult has occurred, has been attempted, or is being attempted, the qualified individual may notify the agencies. Subsequent to notifying the agencies, an agent, investment adviser representative, or qualified individual may notify an immediate family member, legal guardian, conservator, co-trustee, successor trustee, or agent under a power of attorney of the qualified adult or other individual reasonably associated with the qualified adult of such belief. The agencies may provide information regarding a qualified adult to the reporting qualified individual or investment adviser representative upon request.

409.615. 1. A qualified individual may refuse a request

for disbursement or transaction from the account of a qualified adult, or an account on which a qualified adult is a beneficiary or beneficial owner, if:

(1) The qualified individual reasonably believes that the requested disbursement or transaction will result in financial exploitation of the qualified adult; and

(2) The [broker-dealer or] qualified individual[:

(a)], within two business days:

(a) Makes a reasonable effort to notify all parties authorized to transact business on the account orally or in writing, unless such parties are reasonably believed to have engaged in suspected or attempted financial exploitation of the qualified adult; [and]

(b) [Within three business days] Notifies the agencies; and

(c) Sends written notice to the qualified adult. Such notice shall include the name and contact information for the qualified individual who refused the disbursement or transaction and for the Investor Protection Hotline administered by the securities division of the secretary of state.

2. Any refusal of a disbursement or transaction as authorized by this section shall expire upon the sooner of:

(1) The time when the [broker-dealer or] qualified individual reasonably believes that the disbursement or transaction will not result in financial exploitation of the qualified adult; or

(2) Ten business days after the initial refusal of disbursement or transaction by the qualified individual.

3. Notwithstanding subsection 2 of this section to the

contrary, following the refusal by a qualified individual of an initial request for disbursement or transaction from the account of a qualified adult:

(1) A court of competent jurisdiction may enter an order extending the refusal of a disbursement or transaction or any other protective relief;

(2) The commissioner of securities may enter an order extending the refusal of a disbursement or transaction for the time necessary to protect the qualified adult; or

(3) The director of the department of health and senior services, after notifying the commissioner of securities, may enter an order to extend the refusal of a disbursement or transaction for the time necessary to protect the qualified adult.

Subsequent to the issuance of an order under subdivision (2) or (3) of this subsection, the agency that issued the order shall conduct a review of the circumstances every thirty days to determine if the order extension should remain in effect.

409.620. Notwithstanding any other provision of law to the contrary, [a broker-dealer] an investment adviser representative, agent, or qualified individual who, in good faith and exercising reasonable care, complies with section 409.610 or 409.615 shall be immune from any civil liability under those sections.

409.625. A broker-dealer [may] or investment adviser shall, upon request, provide access to or copies of records that are relevant to the suspected financial exploitation of a qualified adult to the agencies or law enforcement. The records may

include historical records or records relating to the most recent disbursement as well as disbursements that comprise the suspected financial exploitation of a qualified adult. All records made available to the agencies under this section shall not be considered a public record as defined under chapter 610.

409.630. No later than September 1, ~~[2016]~~ 2021, the commissioner of securities shall develop and make available a website that includes training resources to assist broker-dealers [and], investment advisers, agents, and investment adviser representatives in the prevention and detection of financial exploitation of qualified adults. Such resources shall include, at a minimum, indicators of financial exploitation of qualified adults and potential steps broker-dealers [and], investment advisers, agents, and investment adviser representatives may take to prevent suspected financial exploitation of qualified adults as authorized by law.

409.3-302. (a) With respect to a federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(2)), that is not otherwise exempt under sections 409.2-201 to 409.2-203, a rule adopted or order issued under this act may require the filing of any or all of the following records:

(1) Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 and a consent to service of process complying with section 409.6-611 signed by the issuer and the payment of a fee of one hundred dollars;

(2) After the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and

(3) To the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this state, if the sales data are not included in records filed with the Securities and Exchange Commission and payment of a fee of one-twentieth of one percent of the amount of securities sold in this state during that previous fiscal year. In no case shall this fee exceed three thousand dollars.

(b) A notice filing under subsection (a) is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule or order under this act to be filed and by paying a renewal fee of one hundred dollars. A previously filed consent to service of process complying with section 409.6-611 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) With respect to a security that is a federal covered security under Sections 18(b)(3) or 18(b)(4) of the Securities Act of 1933, 15 U.S.C. Sections 77r(b)(3) or 77r(b)(4), a rule under this act may require a notice filing by or on behalf of an

issuer to include a copy of a Form 1-A (all parts), as well as all other forms and appendices as required and promulgated by the Securities and Exchange Commission, and a consent to service or process complying with section 409.6-611 signed by the issuer not later than fifteen days after the first sale of the federal covered security in this state and the payment of a fee of one hundred dollars; and the payment of a fee of fifty dollars for any late filing.

(d) With respect to a security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933(15 U.S.C. Section 77r(b)(4)(D)), a rule under this act may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with section 409.6-611 signed by the issuer not later than fifteen days after the first sale of the federal covered security in this state and the payment of a fee of one hundred dollars; and the payment of a fee of fifty dollars for any late filing.

[(d)] (e) Except with respect to a federal security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)), if the commissioner finds that there is a failure to comply with a notice or fee requirement of this section, the commissioner may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the commissioner.

409.4-412. (a) If the commissioner finds that the order is

in the public interest and subsection (d) authorizes the action, an order issued under this act may deny an application, or may condition or limit registration: (1) of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and (2) if the applicant is a broker-dealer or investment adviser, of any partner, officer, director, person having a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser.

(b) If the commissioner finds that the order is in the public interest and subsection (d) authorizes the action an order issued under this act may revoke, suspend, condition, or limit the registration of a registrant and if the registrant is a broker-dealer or investment adviser, any partner, officer, or director, any person having a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser. However, the commissioner:

(1) May not institute a revocation or suspension proceeding under this subsection based on an order issued by another state that is reported to the commissioner or designee later than one year after the date of the order on which it is based; and

(2) Under subsection (d) (5) (A) and (B), may not issue an order on the basis of an order under the state securities act of another state unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this state.

(c) If the commissioner finds that the order is in the



public interest and subsection (d) (1) to (6), (8), (9), (10), or (12) and (13) authorizes the action, an order under this act may censure, impose a bar, or impose a civil penalty in an amount not to exceed [a maximum of five] twenty-five thousand dollars for [a single] each violation [or fifty thousand dollars for several violations] on a registrant and, if the registrant is a broker-dealer or investment adviser, on any partner, officer, or director, any person having similar functions or any person directly or indirectly controlling the broker-dealer or investment adviser.

(d) A person may be disciplined under subsections (a) to (c) if the person:

(1) Has filed an application for registration in this state under this act or the predecessor act within the previous ten years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) Willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous ten years;

(3) Has been convicted of a felony or within the previous ten years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments,

franchises, insurance, banking, or finance;

(4) Is enjoined or restrained by a court of competent jurisdiction in an action instituted by the commissioner under this act or the predecessor act, a state, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(5) Is the subject of an order, issued after notice and opportunity for hearing by:

(A) The securities, depository institution, insurance, or other financial services regulator of a state or by the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;

(B) The securities regulator of a state or by the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;

(C) The Securities and Exchange Commission or by a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;

(D) A court adjudicating a United States Postal Service fraud order;

(E) The insurance regulator of a state denying, suspending, or revoking the registration of an insurance agent; or

(F) A depository institution regulator suspending or

barring a person from the depository institution business;

(6) Is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission; the Federal Trade Commission; a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;

(7) Is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the commissioner may not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant;

(8) Refuses to allow or otherwise impedes the commissioner from conducting an audit or inspection under section 409.4-411(d) or refuses access to a registrant's office to conduct an audit or inspection under section 409.4-411(d);

(9) Has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this act or the predecessor act or a rule adopted or order issued

under this act or the predecessor act within the previous ten years;

(10) Has not paid the proper filing fee within thirty days after having been notified by the commissioner of a deficiency, but the commissioner shall vacate an order under this paragraph when the deficiency is corrected;

(11) After notice and opportunity for a hearing, has been found within the previous ten years:

(A) By a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(B) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or

(C) To have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

(12) Is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;

(13) Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten years; or

(14) Is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by subsection (e). The commissioner may require an applicant for registration under section 409.4-402 or 409.4-404 who has not been registered in a state within the two years preceding the filing of an application in this state to successfully complete an examination.

(e) A rule adopted or order issued under this act may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this act may waive, in whole or in part, an examination as to an individual and a rule adopted under this act may waive, in whole or in part, an examination as to a class of individuals if the commissioner determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) The commissioner may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the commissioner shall promptly notify each person subject to the order that the order has been issued, the

reasons for the action, and that within fifteen days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the commissioner within thirty days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) An order issued may not be issued under this section, except under subsection (f), without:

- (1) Appropriate notice to the applicant or registrant;
- (2) Opportunity for hearing; and
- (3) Findings of fact and conclusions of law in a record.

(h) A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the commissioner under subsections (a) to (c) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(i) The commissioner may not institute a proceeding under subsection (a), (b), or (c) based solely on material facts actually known by the commissioner unless an investigation or the proceeding is instituted within one year after the commissioner actually acquires knowledge of the material facts.

(j) Any applicant denied an agent, broker-dealer, investment adviser or investment adviser representative

registration by order of the commissioner pursuant to subsection (a) may file a petition with the administrative hearing commission alleging that the commissioner has denied the registration. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law. The commissioner shall have the burden of proving a ground for denial pursuant to this act.

(k) If a proceeding is instituted to revoke or suspend a registration of any agent, broker-dealer, investment adviser, or investment adviser representative pursuant to subsection (b), the commissioner shall refer the matter to the administrative hearing commission. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in such cases. The commissioner shall have the burden of proving a ground for suspension or revocation pursuant to this act. The administrative hearing commission shall submit its findings of fact and conclusions of law to the commissioner for final disposition.

(l) Hearing procedures before the commissioner or the administrative hearing commission and judicial review of the decisions and orders of the commissioner and of the administrative hearing commission, and all other procedural matters pursuant to this act shall be governed by the provisions of chapter 536. Hearings before the administrative hearing commission shall also be governed by the provisions of chapter 621.

409.6-604. (a) If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act,

practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, the commissioner may:

(1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act;

(2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under section 409.4-401(b) (1) (D) or (F) or an investment adviser under section 409.4-403(b) (1) (C); or

(3) Issue an order under section 409.2-204.

(b) An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the commissioner will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within fifteen days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the commissioner within thirty days after the date of service of the order, the order becomes final as to that person by operation of law. If a hearing is requested or ordered, the commissioner,



after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) If a hearing is requested or ordered pursuant to subsection (b), a hearing before the commissioner must be provided. A final order may not be issued unless the commissioner makes findings of fact and conclusions of law in a record in accordance with the provisions of chapter 536 and procedural rules promulgated by the commissioner. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) In a final order under subsection (c), the commissioner may:

(1) Impose a civil penalty up to [one] twenty-five thousand dollars for [a single] each violation [or up to ten thousand dollars for more than one violation];

(2) Order a person subject to the order to pay restitution for any loss, including the amount of any actual damages that may have been caused by the conduct and interest at the rate of eight percent per year from the date of the violation causing the loss or disgorge any profits arising from the violation;

(3) In addition to any civil penalty otherwise provided by law, impose an additional civil penalty not to exceed [five] fifteen thousand dollars for each such violation if the commissioner finds that a person subject to the order has violated any provision of this act and that such violation was committed against an elderly or disabled person. For purposes of this section, the following terms mean:

(A) "Disabled person", a person with a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such impairment, or being regarded as having such an impairment;

(B) "Elderly person", a person sixty years of age or older.

(e) In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of this act or a rule adopted or order issued under this act. These funds may be paid into the investor education and protection fund.

(f) If a petition for judicial review of a final order is not filed in accordance with section 409.6-609, the commissioner may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(g) If a person does not comply with an order under this section, the commissioner may petition a court of competent jurisdiction to enforce the order. The court may not require the commissioner to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than five thousand dollars but not greater than one hundred thousand dollars for each violation and may grant any other relief the court determines is just and proper in the circumstances.

(h) The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.

(i) Subject to the provisions of sections 409.107 to 409.7-703, the commissioner shall file an action under section 409.6-603 or issue an order under section 409.6-604 within five years of the date on which the commissioner receives actual knowledge of the material facts of an alleged violation but in no event more than fifteen years from the date of the alleged violation.