

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 354

100TH GENERAL ASSEMBLY

0595H.03P

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 409.605, 409.610, 409.615, 409.620, 409.625, 409.630, 409.4-412, 409.5-501, and 409.6-604, RSMo, and to enact in lieu thereof nine new sections relating to the financial protection of vulnerable populations, with penalty provisions.

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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A. Sections 409.605, 409.610, 409.615, 409.620, 409.625, 409.630, 409.4-412, 2 409.5-501, and 409.6-604, RSMo, are repealed and nine new sections enacted in lieu thereof, to 3 be known as sections 409.605, 409.610, 409.615, 409.620, 409.625, 409.630, 409.4-412, 409.5- 4 501, and 409.6-604, to read as follows:

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

- 2 (1) "Agencies", the department of health and senior services and the commissioner of  
3 securities;
- 4 (2) "Agent", shall have the same meaning as in section 409.1-102;
- 5 (3) "Broker-dealer", shall have the same meaning as in section 409.1-102;
- 6 (4) "Financial exploitation", the wrongful or unauthorized taking, withholding,  
7 appropriation, or use of money, real property, or personal property of a qualified adult;
- 8 (5) "Immediate family member", a spouse, child, parent, or sibling of a qualified adult;
- 9 (6) **"Investment adviser", shall have the same meaning as under section 409.1-102;**
- 10 (7) **"Investment adviser representative", shall have the same meaning as under**  
11 **section 409.1-102;**
- 12 (8) "Qualified adult":
  - 13 (a) A person sixty years of age or older; or
  - 14 (b) A person who:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 15 a. Has a disability as defined in section 192.2005; and  
 16 b. Is between the ages of eighteen and fifty-nine;  
 17 ~~[(7)] (9) "Qualified individual"[]~~ ;  
 18 **(a) A broker-dealer;**  
 19 **(b) An investment adviser; or**  
 20 **(c) A person associated with a broker-dealer or investment adviser** who serves in a  
 21 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  
 2 qualified adult has occurred, has been attempted, or is being attempted, the qualified individual  
 3 may notify the agencies. Subsequent to notifying the agencies, an agent, **investment adviser**  
 4 **representative**, or qualified individual may notify an immediate family member, legal guardian,  
 5 conservator, co-trustee, successor trustee, or agent under a power of attorney of the qualified  
 6 adult **or other individual reasonably associated with the qualified adult** of such belief. **The**  
 7 **agencies may provide information regarding a qualified adult to the reporting qualified**  
 8 **individual or investment adviser representative upon request.**

409.615. 1. A qualified individual may refuse a request for disbursement **or transaction**  
 2 from the account of a qualified adult, or an account on which a qualified adult is a beneficiary  
 3 or beneficial owner, if:

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

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

7 ~~——(a)]~~ , within two business days:

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

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

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

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

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

20 or

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

23 3. **Notwithstanding subsection 2 of this section to the contrary, following the refusal**  
24 **by a qualified individual of an initial request for disbursement or transaction from the**  
25 **account of a qualified adult:**

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

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

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

33

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

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

409.625. A broker-dealer ~~[may]~~ **or investment adviser shall, upon request**, provide  
2 access to or copies of records that are relevant to the suspected financial exploitation of a  
3 qualified adult to the agencies or law enforcement. The records may include historical records  
4 or records relating to the most recent disbursement as well as disbursements that comprise the  
5 suspected financial exploitation of a qualified adult. All records made available to the agencies  
6 under this section shall not be considered a public record as defined under chapter 610.

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

409.4-412. (a) If the commissioner finds that the order is in the public interest and  
2 subsection (d) authorizes the action, an order issued under this act may deny an application, or  
3 may condition or limit registration: (1) of an applicant to be a broker-dealer, agent, investment

4 adviser, or investment adviser representative, and (2) if the applicant is a broker-dealer or  
5 investment adviser, of any partner, officer, director, person having a similar status or performing  
6 similar functions, or person directly or indirectly controlling the broker-dealer or investment  
7 adviser.

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

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

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

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

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

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

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

36 (3) Has been convicted of a felony or within the previous ten years has been convicted  
37 of a misdemeanor involving a security, a commodity future or option contract, or an aspect of  
38 a business involving securities, commodities, investments, franchises, insurance, banking, or  
39 finance;

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

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

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

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

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

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

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

58 (F) A depository institution regulator suspending or barring a person from the depository  
59 institution business;

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

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

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

75 (9) Has failed to reasonably supervise an agent, investment adviser representative, or  
76 other individual, if the agent, investment adviser representative, or other individual was subject  
77 to the person's supervision and committed a violation of this act or the predecessor act or a rule  
78 adopted or order issued under this act or the predecessor act within the previous ten years;

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

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

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

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

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

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

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

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

107 (e) A rule adopted or order issued under this act may require that an examination,  
108 including an examination developed or approved by an organization of securities regulators, be  
109 successfully completed by a class of individuals or all individuals. An order issued under this  
110 act may waive, in whole or in part, an examination as to an individual and a rule adopted under

111 this act may waive, in whole or in part, an examination as to a class of individuals if the  
112 commissioner determines that the examination is not necessary or appropriate in the public  
113 interest and for the protection of investors.

114 (f) The commissioner may suspend or deny an application summarily; restrict, condition,  
115 limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before  
116 final determination of an administrative proceeding. Upon the issuance of an order, the  
117 commissioner shall promptly notify each person subject to the order that the order has been  
118 issued, the reasons for the action, and that within fifteen days after the receipt of a request in a  
119 record from the person the matter will be scheduled for a hearing. If a hearing is not requested  
120 and none is ordered by the commissioner within thirty days after the date of service of the order,  
121 the order becomes final by operation of law. If a hearing is requested or ordered, the  
122 commissioner, after notice of and opportunity for hearing to each person subject to the order,  
123 may modify or vacate the order or extend the order until final determination.

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

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

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

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

138 (j) Any applicant denied an agent, broker-dealer, investment adviser or investment  
139 adviser representative registration by order of the commissioner pursuant to subsection (a) may  
140 file a petition with the administrative hearing commission alleging that the commissioner has  
141 denied the registration. The administrative hearing commission shall conduct hearings and make  
142 findings of fact and conclusions of law. The commissioner shall have the burden of proving a  
143 ground for denial pursuant to this act.

144 (k) If a proceeding is instituted to revoke or suspend a registration of any agent,  
145 broker-dealer, investment adviser, or investment adviser representative pursuant to subsection  
146 (b), the commissioner shall refer the matter to the administrative hearing commission. The

147 administrative hearing commission shall conduct hearings and make findings of fact and  
148 conclusions of law in such cases. The commissioner shall have the burden of proving a ground  
149 for suspension or revocation pursuant to this act. The administrative hearing commission shall  
150 submit its findings of fact and conclusions of law to the commissioner for final disposition.

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

409.5-501. 1. It is unlawful for a person, in connection with the offer, sale, or purchase  
2 of a security, directly or indirectly:

3 (1) To employ a device, scheme, or artifice to defraud;

4 (2) To make an untrue statement of a material fact or to omit to state a material fact  
5 necessary in order to make the statement made, in the light of the circumstances under which it  
6 is made, not misleading; or

7 (3) To engage in an act, practice, or course of business that operates or would operate  
8 as a fraud or deceit upon another person.

9 **2. If this section is violated, the commissioner shall file an action under section**  
10 **409.6-603 or issue an order under section 409.6-604 within five years of acquiring actual**  
11 **knowledge of the material facts of the violation.**

409.6-604. (a) If the commissioner determines that a person has engaged, is engaging,  
2 or is about to engage in an act, practice, or course of business constituting a violation of this act  
3 or a rule adopted or order issued under this act or that a person has materially aided, is materially  
4 aiding, or is about to materially aid an act, practice, or course of business constituting a violation  
5 of this act or a rule adopted or order issued under this act, the commissioner may:

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

9 (2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a  
10 broker-dealer under section 409.4-401(b)(1)(D) or (F) or an investment adviser under section  
11 409.4-403(b)(1)(C); or

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

13 (b) An order under subsection (a) is effective on the date of issuance. Upon issuance of  
14 the order, the commissioner shall promptly serve each person subject to the order with a copy  
15 of the order and a notice that the order has been entered. The order must include a statement  
16 whether the commissioner will seek a civil penalty or costs of the investigation, a statement of

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

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

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

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

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

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

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

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

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

47 (f) If a petition for judicial review of a final order is not filed in accordance with section  
48 409.6-609, the commissioner may file a certified copy of the final order with the clerk of a court  
49 of competent jurisdiction. The order so filed has the same effect as a judgment of the court and  
50 may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

51 (g) If a person does not comply with an order under this section, the commissioner may  
52 petition a court of competent jurisdiction to enforce the order. The court may not require the

53 commissioner to post a bond in an action or proceeding under this section. If the court finds,  
54 after service and opportunity for hearing, that the person was not in compliance with the order,  
55 the court may adjudge the person in civil contempt of the order. The court may impose a further  
56 civil penalty against the person for contempt in an amount not less than five thousand dollars but  
57 not greater than one hundred thousand dollars for each violation and may grant any other relief  
58 the court determines is just and proper in the circumstances.

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

61 (i) **Except as otherwise provided under sections 409.107 to 409.7-703, the**  
62 **commissioner shall file an action under section 409.6-603 or issue an order under section**  
63 **409.6-604 within twenty years of the violation.**

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