

SECOND REGULAR SESSION

SENATE BILL NO. 1032

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

Read 1st time March 1, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

5282S.011

AN ACT

To repeal sections 409.6-601 and 409.6-607, RSMo, and to enact in lieu thereof two new sections relating to whistleblower protection for reporting securities violations.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 409.6-601 and 409.6-607, RSMo, are repealed and two
2 new sections enacted in lieu thereof, to be known as sections 409.6-601 and 409.6-
3 607, to read as follows:

409.6-601. (a) This act shall be administered by the commissioner of
2 securities who shall be appointed by and act under the direction of the secretary
3 of state, and shall receive compensation as provided by law.

4 (b) The attorney general shall appear on behalf of and represent the
5 commissioner in all proceedings before the administrative hearing commission,
6 and in the circuit court of any county of the state or any city not within a county,
7 or any court of another state in all civil enforcement actions brought under this
8 act. The attorney general may appoint attorneys employed by the secretary of
9 state as special assistant attorneys general to appear on behalf of and represent
10 the commissioner.

11 (c) It is unlawful for the secretary of state, commissioner or an officer,
12 employee, or designee of the commissioner to use for personal benefit or the
13 benefit of others records or other information obtained by or filed with the
14 commissioner that are not public under section 409.6-607(b). This act does not
15 authorize the secretary of state, commissioner or an officer, employee, or designee
16 of the commissioner to disclose the record or information, except in accordance
17 with section 409.6-602, 409.6-607(c), or 409.6-608.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 (d) This act does not create or diminish a privilege or exemption that
19 exists at common law, by statute or rule, or otherwise.

20 (e) The commissioner may develop and implement investor education
21 initiatives to inform the public about investing in securities, with particular
22 emphasis on the prevention and detection of securities fraud. In developing and
23 implementing these initiatives, the commissioner may collaborate with public and
24 nonprofit organizations with an interest in investor education. The commissioner
25 may accept a grant or donation from a person that is not affiliated with the
26 securities industry or from a nonprofit organization, regardless of whether the
27 organization is affiliated with the securities industry, to develop and implement
28 investor education initiatives. This subsection does not authorize the
29 commissioner to require participation or monetary contributions of a registrant
30 in an investor education program.

31 (f) The "Investor Education and Protection Fund" is created to provide
32 funds for the purposes identified in subsection (e). Notwithstanding the
33 provisions of section 33.080, RSMo, any funds remaining in the secretary of
34 state's investor education and protection fund at the end of any biennium shall
35 not be transferred to the general revenue fund.

36 (g) **The "Whistleblower Program" is created to receive and**
37 **evaluate information received from individuals disclosing potential**
38 **violations of this act while, as appropriate, maintaining the**
39 **confidentiality and anonymity of those individuals.**

40 (1) **The commissioner may collaborate with the attorney general,**
41 **or a specifically designated assistant attorney general, to implement**
42 **procedures to ensure the confidentiality and anonymity of those**
43 **individuals participating in this program. The attorney general, or a**
44 **specifically designated assistant attorney general, may serve as a**
45 **intermediary for the sharing of information during any investigation**
46 **and enforcement action that results, directly or indirectly, from the**
47 **information provided by a whistleblower.**

48 (2) **The commissioner may pay a monetary award to individuals**
49 **who voluntarily provide information that contributes to the successful**
50 **resolution of an administrative or civil enforcement action under this**
51 **act. An award paid under this subsection shall be governed by the**
52 **following:**

53 (A) **The determination of the amount of an award shall be in the**

54 sole discretion of the commissioner. However, such award or awards
55 shall not exceed an amount equal to thirty percent, in total, of the
56 monetary sanctions imposed in the action or related actions to one or
57 more whistleblowers. Any amount payable under this subsection shall
58 be paid from the investor education and protection fund;

59 (B) No award under this subsection shall be made to any
60 whistleblower who is a member, officer, or employee of any regulatory
61 agency, who is convicted of a criminal violation related to the action
62 for which a whistleblower could otherwise receive an award, or who
63 fails to submit information in a form the commissioner requires;

64 (C) The commissioner shall reduce the total amount of an award
65 paid to a whistleblower who is found to have violated this act in a civil
66 or administrative action. The amount of an award shall be reduced by
67 at least twenty-five percent of the total award determination prior to
68 the reduction.

69 (3) The commissioner shall generally inform the public of the
70 whistleblower program and make available a toll-free telephone
71 number to receive disclosures from whistleblowers. Every broker-
72 dealer, investment adviser, issuer, firm, or any other person who
73 employs an individual who is engaged in the business of effecting
74 transactions in securities or advising others as to the value of
75 securities is required to post and keep posted on its premises, in
76 conspicuous places where employees are employed, a notice regarding
77 the whistleblower program. The posting and the text must be large
78 enough to be easily read and contain fully legible text. The posting
79 shall include the toll-free number described herein, the web address for
80 the secretary of state, and the citation for this section. The same
81 information shall also be provided to all new employees during routine
82 new employee orientation. The posting can be verified at any time
83 during routine or for cause audits or inspections by a representative
84 of the commissioner.

85 (4) The commissioner may establish incentives for individuals
86 and companies to fully and truthfully cooperate and assist with
87 investigations and enforcement actions. The granting of any incentives
88 shall be in the sole discretion of the commissioner, or a representative
89 of the commissioner. Incentives may include:

90 (A) Assurances that any statements made by a whistleblower

91 shall not be used against that person in subsequent proceedings, except
92 that the commissioner may use the statements made as a source of
93 leads to discover additional evidence and for impeachment or rebuttal
94 purposes if the person testifies or argues inconsistently in a subsequent
95 proceeding;

96 (B) Immunity from enforcement action;

97 (C) Reduced civil penalties; or

98 (D) A request submitted by the commissioner to a prosecutor
99 that the whistleblower be provided incentives in any subsequent
100 proceeding brought by that prosecutor.

101 (5) All information provided to the commissioner by a
102 whistleblower shall be confidential and privileged as an evidentiary
103 matter in any proceeding in any court or administrative agency, shall
104 not be subject to civil discovery or other legal process, and shall not be
105 disclosed unless and until required to be disclosed to a defendant or
106 respondent in connection with a public proceeding instituted by the
107 commissioner or any other agency or regulatory entity. However, when
108 determined by the commissioner to be necessary to accomplish the
109 purposes of the section and protect investors, such information may be
110 made available to the attorney general, an appropriate regulatory
111 authority, a self-regulatory authority, or any other appropriate state or
112 federal authority, each of which shall maintain such information as
113 confidential and privileged, in accordance with the requirements of
114 this subsection.

115 (6) No broker-dealer, investment adviser, issuer, firm, or other
116 person who employs an individual who is engaged in the business of
117 effecting transactions in securities or advising others as to the value
118 of securities may discharge, demote, suspend, threaten, harass, or in
119 any other manner discriminate against a whistleblower in the terms
120 and conditions of employment because of any lawful act done by the
121 whistleblower in providing information to the commissioner in
122 accordance with this program, or in assisting in any investigation or
123 judicial or administrative action based upon or related to such
124 information. A whistleblower who alleges discharge or other
125 discrimination in violation of this subsection may bring an action
126 under this subsection in the appropriate circuit court. A whistleblower
127 prevailing in any action brought under this subsection shall be entitled

128 to all relief necessary to make that whistleblower whole, including
129 reinstatement with the same seniority status that the whistleblower
130 would have had but for the discrimination, the amount of back pay with
131 interest, and compensation for any special damages sustained as a
132 result of the discrimination, including litigation costs, expert witness
133 fees, and reasonable attorneys' fees.

134 (7) The commissioner may, under this subsection and section
135 409.6-605(a), adopt and amend rules necessary or appropriate to
136 implement this program.

137 (8) For purposes of this subsection, the following terms shall
138 mean:

139 (A) "Whistleblower", any person, employed by a person in the
140 business of effecting transactions in securities, and the business of
141 advising others as to the value of securities or the advisability of
142 investing, who discloses information regarding potential violations of
143 this act pursuant to the whistleblower program. The term includes a
144 broker-dealer agent, an investment adviser representative, an issuer
145 agent, and any other person working for or employed by a broker-
146 dealer, an investment adviser, an issuer or any other person required
147 to be registered under this act;

148 (B) "Monetary sanctions", any monies ordered or agreed to be
149 paid, including but not limited to restitution, disgorgement, civil
150 penalties, costs, and payments as a result of a successful enforcement
151 action or settlement of a proceeding, under sections 409.6-603(b), 409.6-
152 604(c), and 409.6-604(h).

409.6-607. (a) Except as otherwise provided in subsection (b), records
2 obtained by the commissioner or filed under this act, including a record contained
3 in or filed with a registration statement, application, notice filing, or report, are
4 public records and are available for public examination.

5 (b) The following records are not public records and are not available for
6 public examination under subsection (a):

7 (1) A record obtained by the commissioner in connection with an audit or
8 inspection under section 409.4-411(d) or an investigation under section 409.6-602;

9 (2) A part of a record filed in connection with a registration statement
10 under sections 409.3-301 and 409.3-303 to 409.3-305 or a record under section
11 409.4-411(d) that contains trade secrets or confidential information if the person
12 filing the registration statement or report has asserted a claim of confidentiality

13 or privilege that is authorized by law;

14 (3) A record that is not required to be provided to the commissioner or
15 filed under this act and is provided to the commissioner only on the condition
16 that the record will not be subject to public examination or disclosure;

17 (4) A nonpublic record received from a person specified in section
18 409.6-608(a);

19 (5) Any Social Security number, residential address unless used as a
20 business address, and residential telephone number contained in a record that is
21 filed; [and]

22 (6) A record obtained by the commissioner through a designee of the
23 commissioner that a rule or order under this act determines has been:

24 (A) Expunged from the commissioner's records by the designee; or

25 (B) Determined to be nonpublic or nondisclosable by that designee if the
26 commissioner finds the determination to be in the public interest and for the
27 protection of investors; **and**

28 **(7) A record provided to the commissioner by a whistleblower,**
29 **including disclosures made by a whistleblower and the identity of a**
30 **whistleblower, under section 409.6-601(g), unless the commissioner**
31 **deems disclosure of the information in the public interest.**

32 (c) If disclosure is for the purpose of a civil, administrative, or criminal
33 investigation, action, or proceeding or to a person specified in section
34 409.6-608(a), the commissioner may disclose a record obtained in connection with
35 an audit or inspection under section 409.4-411(d) or a record obtained in
36 connection with an investigation under section 409.6-602.

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