

SECOND REGULAR SESSION

SENATE BILL NO. 853

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATORS GREEN, GRAHAM, WILSON, WHEELER, BARNITZ,
COLEMAN, DAYS, CALLAHAN, DOUGHERTY AND BRAY.

Read 1st time January 11, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

3851S.02I

AN ACT

To repeal sections 409.5-508 and 409.6-604, RSMo, and to enact in lieu thereof two new sections relating to securities regulation, with penalty provisions.

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

Section A. Sections 409.5-508 and 409.6-604, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 409.5-508 and 409.6-604, to read as follows:

409.5-508. (a) A person **[that] commits the crime of criminal securities fraud when the person** willfully violates this act, or a rule adopted or order issued under this act, except Section 409.5-504 or the notice filing requirements of section 409.3-302 or 409.4-405, or **[that]** willfully violates section 409.5-505 knowing the statement made to be false or misleading in a material respect[, upon conviction, shall be fined not more than one million dollars or imprisoned not more than ten years, or both].

(b) A person convicted of criminal securities fraud shall be fined not more than one million dollars or imprisoned not more than ten years, or both, unless the violation was committed against an elderly or disabled person, in which case the person shall be fined not less than fifty thousand and imprisoned not less the five years. For the purposes of this section, the following terms shall mean:

(1) "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;

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

18 **(2) "Elderly person", a person sixty years of age or older.**

19 **(c)** An individual convicted of violating a rule or order under this act may
20 be fined, but may not be imprisoned, if the individual did not have knowledge of
21 the rule or order.

22 **[(b)] (d)** The attorney general or the proper prosecuting attorney with or
23 without a reference from the commissioner may institute criminal proceedings
24 under this act.

25 **[(c)] (e)** This act does not limit the power of this state to punish a person
26 for conduct that constitutes a crime under other laws of this state.

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

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

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

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

14 (b) An order under subsection (a) is effective on the date of
15 issuance. Upon issuance of the order, the commissioner shall promptly serve each
16 person subject to the order with a copy of the order and a notice that the order
17 has been entered. The order must include a statement whether the commissioner
18 will seek a civil penalty or costs of the investigation, a statement of the reasons
19 for the order, and notice that, within fifteen days after receipt of a request in a
20 record from the person, the matter will be scheduled for a hearing. If a person
21 subject to the order does not request a hearing and none is ordered by the
22 commissioner within thirty days after the date of service of the order, the order
23 becomes final as to that person by operation of law. If a hearing is requested or
24 ordered, the commissioner, after notice of and opportunity for hearing to each
25 person subject to the order, may modify or vacate the order or extend it until final
26 determination.

27 (c) If a hearing is requested or ordered pursuant to subsection (b), a

28 hearing before the commissioner must be provided. A final order may not be
29 issued unless the commissioner makes findings of fact and conclusions of law in
30 a record in accordance with the provisions of chapter 536, RSMo, and procedural
31 rules promulgated by the commissioner. The final order may make final, vacate,
32 or modify the order issued under subsection (a).

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

34 (1) Impose a civil penalty up to one thousand dollars for a single violation
35 or up to ten thousand dollars for more than one violation;

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

41 (3) **Impose, in addition to any civil penalty otherwise provided**
42 **by law, an additional civil penalty not to exceed five thousand dollars**
43 **for each such violation if the commissioner finds that a person subject**
44 **to the order has violated any provision of this act and that such**
45 **violation was committed against an elderly or disabled person. For the**
46 **purposes of this section, the following terms shall mean:**

47 (A) **"Disabled person", a person with a mental, physical, or**
48 **developmental disability that substantially impairs the person's ability**
49 **to provide adequately for the person's care or protection;**

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

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

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

60 (g) If a person does not comply with an order under this section, the
61 commissioner may petition a court of competent jurisdiction to enforce the
62 order. The court may not require the commissioner to post a bond in an action
63 or proceeding under this section. If the court finds, after service and opportunity

64 for hearing, that the person was not in compliance with the order, the court may
65 adjudge the person in civil contempt of the order. The court may impose a
66 further civil penalty against the person for contempt in an amount not less than
67 five thousand dollars but not greater than one hundred thousand dollars for each
68 violation and may grant any other relief the court determines is just and proper
69 in the circumstances.

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

Unofficial

Bill

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