

FIRST REGULAR SESSION

HOUSE BILL NO. 528

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES DONNELLY (Sponsor), LIPKE, BRINGER, OXFORD, GRILL, STORCH, BAKER (25), AULL, SATER, ROORDA, ZIMMERMAN, WHORTON, LAMPE, WILDBERGER, CORCORAN, ZWEIFEL, VILLA, BURNETT, YOUNG, YAEGER, MOORE, ROBINSON, NASHEED, VOGT, WITTE, CURLS, HODGES, SWINGER AND PAGE (Co-sponsors).

Read 1st time January 23, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0790L.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 criminal securities fraud, 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Section A. Sections 409.5-508 and 409.6-604, RSMo, are repealed and two new sections
2 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 a criminal violation of this act when such**
2 **person** willfully violates this act, or a rule adopted or order issued under this act, except Section
3 409.5-504 or the notice filing requirements of section 409.3-302 or 409.4-405, or that willfully
4 violates section 409.5-505 knowing the statement made to be false or misleading in a material
5 respect[, upon conviction, shall be fined not more than one million dollars or imprisoned not
6 more than ten years, or both].

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

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.

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

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

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

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

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

 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, RSMo, and procedural rules promulgated by the commissioner. The final order may
27 make 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 thousand dollars for a single violation or up to ten
30 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**
33 **the rate of eight percent per year from the date of the violation causing the loss or disgorge**
34 **any profits arising from the violation;**

35 (3) **In addition to any civil penalty otherwise provided by law, impose an additional**
36 **civil penalty not to exceed five 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**
39 **section, the following terms mean:**

40 (A) **"Disabled person", a person with a physical or mental impairment that**
41 **substantially limits one or more of the major life activities of such individual, a record of**
42 **such impairment, 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.

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