

SECOND REGULAR SESSION

# HOUSE BILL NO. 2327

## 95TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE LIPKE.

5141L.01I

D. ADAM CRUMBLISS, Chief Clerk

---

### AN ACT

To repeal sections 409.6-601 and 409.6-607, RSMo, and to enact in lieu thereof two new sections relating to the Missouri securities act.

---

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Section A. Sections 409.6-601 and 409.6-607, RSMo, are repealed and two new sections  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

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

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

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

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

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.

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

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

31 **(g) The "Whistleblower Program" is created to receive and evaluate information**  
32 **received from individuals disclosing potential violations of this act while, as appropriate,**  
33 **maintaining the confidentiality or anonymity of those individuals. Any acts under this**  
34 **subsection shall be governed by the following:**

35 **(1) The commissioner may, under this subsection and section 409.6-605(a), adopt**  
36 **and amend rules necessary or appropriate to implement this program;**

37 **(2) The commissioner may pay a monetary award to individuals participating in**  
38 **the whistleblower program who provide information that contributes to the successful**  
39 **resolution of an administrative or civil enforcement action. Payment of an award under**  
40 **this paragraph shall be in the sole discretion of the commissioner. An award paid under**  
41 **this paragraph is governed by the following:**

42 **(A) The determination of the amount of an award shall be in the sole discretion of**  
43 **the commissioner. The commissioner may pay an award or awards not exceeding an**  
44 **amount equal to thirty percent, in total, of the monetary sanctions imposed in the action**  
45 **or related actions to one or more whistleblowers who voluntarily provided information to**  
46 **the commissioner that led to the successful enforcement of the action. Any amount payable**  
47 **under this subparagraph shall be paid from the investor education and protection fund**  
48 **described in subsection (f) of this section;**

49 **(B) No award under this paragraph shall be made to any whistleblower:**

50 **(i) Who is a member, officer, or employee of any regulatory agency;**

51 **(ii) Who is convicted of a criminal violation related to the action for which a**  
52 **whistleblower could otherwise receive an award; or**

53           (iii) Who fails to submit information in a manner acceptable and useful to the  
54 commissioner;

55           (3) The commissioner shall generally inform the public of the whistleblower  
56 program and make available a toll-free telephone number to receive disclosures from  
57 whistleblowers. Every broker-dealer, investment advisor, issuer, firm, or any other person  
58 who employs an individual who is engaged in the business of effecting transactions in  
59 securities or advising others as to the value of securities is required to post and keep posted  
60 on its premises, in conspicuous places where employees are employed, a notice regarding  
61 the whistleblower program. The posting shall include the toll-free number described in  
62 this paragraph and the whistleblower program's web address. The same information shall  
63 also be provided to all new employees during routine new employee orientation. The  
64 posting can be verified at any time during routine or for cause audits or inspections by a  
65 representative of the commissioner;

66           (4) No broker-dealer, investment advisor, issuer, firm, or other person who employs  
67 an individual who is engaged in the business of effecting transactions in securities or  
68 advising others as to the value of securities shall discharge, demote, suspend, threaten,  
69 harass, or in any other manner discriminate against a whistleblower in the terms and  
70 conditions of employment because of any lawful act done by the whistleblower in providing  
71 information to the commissioner in accordance with this subsection or in assisting in any  
72 investigation or judicial or administrative action based upon or related to such  
73 information. A whistleblower who alleges discharge or other discrimination in violation  
74 of this paragraph may bring an action under this paragraph in the appropriate circuit  
75 court. A whistleblower prevailing in any action brought under this paragraph shall be  
76 entitled to all relief necessary to make such whistleblower whole, including reinstatement  
77 with the same seniority status that the whistleblower would have had but for the  
78 discrimination; the amount of back pay, with interest; and compensation for any special  
79 damages sustained as a result of the discrimination, including litigation costs, expert  
80 witness fees, and reasonable attorneys' fees;

81           (5) The commissioner may establish incentives for individuals and companies to  
82 fully and truthfully cooperate and assist with investigations and enforcement actions. The  
83 granting of any incentives shall be in the sole discretion of the commissioner or a  
84 representative of the commissioner. Incentives may include:

85           (A) Assurances that any statements made by a whistleblower shall not be used  
86 against that person in subsequent proceedings, except that the commissioner may use the  
87 statements made as a source of leads to discover additional evidence and for impeachment

88 or rebuttal purposes if the person testifies or argues inconsistently in a subsequent  
89 proceeding;

90 (B) Immunity from enforcement actions;

91 (C) Reduced civil penalties; or

92 (D) A request submitted by the commissioner to a prosecutor that the  
93 whistleblower be provided incentives in any subsequent proceeding brought by such  
94 prosecutor;

95 (6) All information provided to the commissioner by a whistleblower shall be  
96 confidential and privileged as an evidentiary matter (and shall not be subject to civil  
97 discovery or other legal process) in any proceeding in any court or administrative agency  
98 and shall be exempt from disclosure, in the hands of an agency, unless and until required  
99 to be disclosed to a defendant or respondent in connection with a public proceeding  
100 instituted by the commissioner or any other agency or regulatory entity. Without the loss  
101 of its status as confidential and privileged in the hands of the commissioner, all information  
102 referred to in this paragraph may, in the discretion of the commissioner, when determined  
103 by the commissioner to be necessary to accomplish the purposes of this section and protect  
104 investors, be made available to the attorney general, an appropriate regulatory authority,  
105 a self-regulatory authority, and any other appropriate state or federal authority, each of  
106 which shall maintain such information as confidential and privileged in accordance with  
107 the requirements of this paragraph;

108 (7) For purposes of this subsection, the following terms shall mean:

109 (A) "Whistleblower", any person employed by a person in the business of effecting  
110 transactions in securities or the business of advising others as to the value of securities or  
111 the advisability of investing who discloses information regarding potential violations of this  
112 act under the whistleblower program. The term includes a broker-dealer agent, an  
113 investment advisor representative, an issuer agent, and any other person working for or  
114 employed by a broker-dealer, an investment advisor, an issuer, or any other person  
115 required to be registered under this act;

116 (B) "Monetary sanctions", any monies ordered or agreed to be paid, including, but  
117 not limited to, restitution, disgorgement, civil penalties, costs, and payments as a result of  
118 a successful enforcement action or settlement of a proceeding under sections 409.6-603(b),  
119 409.6-604(c), and 409.6-604(h).

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

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

7 (1) A record obtained by the commissioner in connection with an audit or inspection  
8 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 under sections  
10 409.3-301 and 409.3-303 to 409.3-305 or a record under section 409.4-411(d) that contains trade  
11 secrets or confidential information if the person filing the registration statement or report has  
12 asserted a claim of confidentiality or privilege that is authorized by law;

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

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

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

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

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

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

24 **(7) A record provided to the commissioner by a whistleblower, including**  
25 **disclosures made by a whistleblower and the identity of a whistleblower, under section**  
26 **409.6-601(g), unless the commissioner deems disclosure of the information in the public**  
27 **interest.**

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

✓