

SECOND REGULAR SESSION

HOUSE BILL NO. 1480

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WEBBER.

5389L.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 409.1-102, 409.2-202, 409.5-509, 409.6-601, and 409.6-607, RSMo, and to enact in lieu thereof five new sections relating to the regulation of securities.

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

Section A. Sections 409.1-102, 409.2-202, 409.5-509, 409.6-601, and 409.6-607, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 409.1-102, 409.2-202, 409.5-509, 409.6-601, and 409.6-607, to read as follows:

409.1-102. In this act, unless the context otherwise requires:

(1) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this act.

(2) "Commissioner" means the commissioner of securities appointed by the secretary of state.

(3) "Bank" means:

(A) A banking institution organized under the laws of the United States;

(B) A member bank of the Federal Reserve System;

(C) Any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by

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.

17 national banks under the authority of the Comptroller of the Currency pursuant to Section 1 of
18 Public Law 87-722 (12 U.S.C. Section 92a), and which is supervised and examined by a state
19 or federal agency having supervision over banks, and which is not operated for the purpose of
20 evading this act; and

21 (D) A receiver, conservator, or other liquidating agent of any institution or firm included
22 in subparagraph (A), (B), or (C).

23 (4) "Broker-dealer" means a person engaged in the business of effecting transactions in
24 securities for the account of others or for the person's own account. The term does not include:

25 (A) An agent;

26 (B) An issuer;

27 (C) A bank, a trust company organized or chartered under the laws of this state, or a
28 savings institution, if its activities as a broker-dealer are limited to those specified in subsections
29 3(a)(4)(B)(i) to (vi), (viii) to (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and
30 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C. Sections 78c(a)(4) and (5)) or a
31 bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange
32 Act of 1934 (15 U.S.C. Section 78c(a)(4));

33 (D) An international banking institution; or

34 (E) A person excluded by rule adopted or order issued under this act.

35 (5) "Depository institution" means:

36 (A) A bank; or

37 (B) A savings institution, trust company, credit union, or similar institution that is
38 organized or chartered under the laws of a state or of the United States, authorized to receive
39 deposits, and supervised and examined by an official or agency of a state or the United States if
40 its deposits or share accounts are insured to the maximum amount authorized by statute by the
41 Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a
42 successor authorized by federal law. The term does not include:

43 (i) An insurance company or other organization primarily engaged in the business of
44 insurance;

45 (ii) A Morris Plan bank; or

46 (iii) An industrial loan company.

47 (6) "Federal covered investment adviser" means a person registered under the Investment
48 Advisers Act of 1940.

49 (7) "Federal covered security" means a security that is, or upon completion of a
50 transaction will be, a covered security under Section 18(b) of the Securities Act of 1933 (15
51 U.S.C. Section 77r(b)) or rules or regulations adopted pursuant to that provision.

52 (8) "Filing" means the receipt under this act of a record by the commissioner or a
53 designee of the commissioner.

54 (9) "Fraud", "deceit", and "defraud" are not limited to common law deceit.

55 (10) "Guaranteed" means guaranteed as to payment of all principal and all interest.

56 (11) "Institutional investor" means any of the following, whether acting for itself or for
57 others in a fiduciary capacity:

58 (A) A depository institution, a trust company organized or chartered under the laws of
59 this state, or an international banking institution;

60 (B) An insurance company;

61 (C) A separate account of an insurance company;

62 (D) An investment company as defined in the Investment Company Act of 1940;

63 (E) A broker-dealer registered under the Securities Exchange Act of 1934;

64 (F) An employee pension, profit-sharing, or benefit plan if the plan has total assets in
65 excess of ten million dollars or its investment decisions are made by a named fiduciary, as
66 defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer
67 registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt
68 from registration under the Investment Advisers Act of 1940, an investment adviser registered
69 under this act, a depository institution, or an insurance company;

70 (G) A plan established and maintained by a state, a political subdivision of a state, or an
71 agency or instrumentality of a state or a political subdivision of a state for the benefit of its
72 employees, if the plan has total assets in excess of ten million dollars or its investment decisions
73 are made by a duly designated public official or by a named fiduciary, as defined in the
74 Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the
75 Securities Exchange Act of 1934, an investment adviser registered or exempt from registration
76 under the Investment Advisers Act of 1940, an investment adviser registered under this act, a
77 depository institution, or an insurance company;

78 (H) A trust, if it has total assets in excess of ten million dollars, its trustee is a depository
79 institution, and its participants are exclusively plans of the types identified in subparagraph (F)
80 or (G), regardless of the size of their assets, except a trust that includes as participants
81 self-directed individual retirement accounts or similar self-directed plans;

82 (I) An organization described in Section 501(c)(3) of the Internal Revenue Code (26
83 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited
84 liability company, or partnership, not formed for the specific purpose of acquiring the securities
85 offered, with total assets in excess of ten million dollars;

86 (J) A small business investment company licensed by the Small Business Administration
87 under Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. Section 681(c))
88 with total assets in excess of ten million dollars;

89 (K) A private business development company as defined in Section 202(a)(22) of the
90 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with total assets in excess of
91 ten million dollars;

92 (L) A federal covered investment adviser acting for its own account;

93 (M) A "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule
94 144A(a)(1)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A);

95 (N) A "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted under
96 the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6);

97 (O) Any other person, other than an individual, of institutional character with total assets
98 in excess of ten million dollars not organized for the specific purpose of evading this act; or

99 (P) Any other person specified by rule adopted or order issued under this act.

100 (12) "Insurance company" means a company organized as an insurance company whose
101 primary business is writing insurance or reinsuring risks underwritten by insurance companies
102 and which is subject to supervision by the insurance commissioner or a similar official or agency
103 of a state.

104 (13) "Insured" means insured as to payment of all principal and all interest.

105 (14) "International banking institution" means an international financial institution of
106 which the United States is a member and whose securities are exempt from registration under
107 the Securities Act of 1933.

108 (15) "Investment adviser" means a person that, for compensation, engages in the business
109 of advising others, either directly or through publications or writings, as to the value of securities
110 or the advisability of investing in, purchasing, or selling securities or that, for compensation and
111 as a part of a regular business, issues or promulgates analyses or reports concerning securities.
112 The term includes a financial planner or other person that, as an integral component of other
113 financially related services, provides investment advice to others for compensation as part of a
114 business or that holds itself out as providing investment advice to others for compensation. The
115 term does not include:

116 (A) An investment adviser representative;

117 (B) A lawyer, accountant, engineer, or teacher whose performance of investment advice
118 is solely incidental to the practice of the person's profession;

119 (C) A broker-dealer or its agents whose performance of investment advice is solely
120 incidental to the conduct of business as a broker-dealer and that does not receive special
121 compensation for the investment advice;

122 (D) A publisher of a bona fide newspaper, news magazine, or business or financial
123 publication of general and regular circulation;

124 (E) A federal covered investment adviser; (F) A bank, a trust company organized or
125 chartered under the laws of this state, or a savings institution;

126 (G) Any other person that is excluded by the Investment Advisers Act of 1940 from the
127 definition of investment adviser; or

128 (H) Any other person excluded by rule adopted or order issued under this act.

129 (16) "Investment adviser representative" means an individual employed by or associated
130 with an investment adviser or federal covered investment adviser and who makes any
131 recommendations or otherwise gives investment advice regarding securities, manages accounts
132 or portfolios of clients, determines which recommendation or advice regarding securities should
133 be given, provides investment advice or holds herself or himself out as providing investment
134 advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling
135 investment advice, or supervises employees who perform any of the foregoing. The term does
136 not include an individual who:

137 (A) Performs only clerical or ministerial acts;

138 (B) Is an agent whose performance of investment advice is solely incidental to the
139 individual acting as an agent and who does not receive special compensation for investment
140 advisory services;

141 (C) Is employed by or associated with a federal covered investment adviser, unless the
142 individual has a "place of business" in this state as that term is defined by rule adopted under
143 Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a) and is:

144 (i) An "investment adviser representative" as that term is defined by rule adopted under
145 Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a); or

146 (ii) Not a "supervised person" as that term is defined in Section 202(a)(25) of the
147 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); or

148 (D) Is excluded by rule adopted or order issued under this act.

149 (17) "Issuer" means a person that issues or proposes to issue a security, subject to the
150 following:

151 (A) The issuer of a voting trust certificate, collateral trust certificate, certificate of
152 deposit for a security, or share in an investment company without a board of directors or
153 individuals performing similar functions is the person performing the acts and assuming the
154 duties of depositor or manager pursuant to the trust or other agreement or instrument under
155 which the security is issued.

156 (B) The issuer of an equipment trust certificate or similar security serving the same
157 purpose is the person by which the property is or will be used or to which the property or

158 equipment is or will be leased or conditionally sold or that is otherwise contractually responsible
159 for assuring payment of the certificate.

160 (C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or
161 in payments out of production under a lease, right, or royalty is the owner of an interest in the
162 lease or in payments out of production under a lease, right, or royalty, whether whole or
163 fractional, that creates fractional interests for the purpose of sale.

164 (18) "Nonissuer transaction" or "nonissuer distribution" means a transaction or
165 distribution not directly or indirectly for the benefit of the issuer.

166 (19) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer
167 to sell, a security or interest in a security for value. The term does not include a tender offer that
168 is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)).

169 (20) "Person" means an individual; corporation; business trust; estate; trust; partnership;
170 limited liability company; association; joint venture; government; governmental subdivision,
171 agency, or instrumentality; public corporation; or any other legal or commercial entity.

172 (21) "Place of business" of a broker-dealer, an investment adviser, or a federal covered
173 investment adviser means:

174 (A) An office at which the broker-dealer, investment adviser, or federal covered
175 investment adviser regularly provides brokerage or investment advice or solicits, meets with, or
176 otherwise communicates with customers or clients; or

177 (B) Any other location that is held out to the general public as a location at which the
178 broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or
179 investment advice or solicits, meets with, or otherwise communicates with customers or clients.

180 (22) "Predecessor act" means sections 409.101, 409.102 and 409.201 to 409.421, as
181 repealed by this act.

182 (23) "Price amendment" means the amendment to a registration statement filed under
183 the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus
184 supplement filed under the Securities Act of 1933 that includes a statement of the offering price,
185 underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call
186 prices, and other matters dependent upon the offering price.

187 (24) "Principal place of business" of a broker-dealer or an investment adviser means the
188 executive office of the broker-dealer or investment adviser from which the officers, partners, or
189 managers of the broker-dealer or investment adviser direct, control, and coordinate the activities
190 of the broker-dealer or investment adviser.

191 (25) "Record", except in the phrases "of record", "official record", and "public record",
192 means information that is inscribed on a tangible medium or that is stored in an electronic or
193 other medium and is retrievable in perceivable form.

194 (26) "Sale" includes every contract of sale, contract to sell, or disposition of, a security
195 or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose
196 of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms
197 include:

198 (A) A security given or delivered with, or as a bonus on account of, a purchase of
199 securities or any other thing constituting part of the subject of the purchase and having been
200 offered and sold for value;

201 (B) A gift of assessable stock involving an offer and sale; and

202 (C) A sale or offer of a warrant or right to purchase or subscribe to another security of
203 the same or another issuer and a sale or offer of a security that gives the holder a present or future
204 right or privilege to convert the security into another security of the same or another issuer,
205 including an offer of the other security.

206 (27) "Securities and Exchange Commission" means the United States Securities and
207 Exchange Commission.

208 (28) "Security" means a note; stock; treasury stock; security future; bond; debenture;
209 evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement;
210 collateral trust certificate; preorganization certificate or subscription; transferable share;
211 investment contract; voting trust certificate; certificate of deposit for a security; fractional
212 undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on
213 a security, certificate of deposit, or group or index of securities, including an interest therein or
214 based on the value thereof; put, call, straddle, option, or privilege entered into on a national
215 securities exchange relating to foreign currency; or, in general, an interest or instrument
216 commonly known as a "security"; or a certificate of interest or participation in, temporary or
217 interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase,
218 any of the foregoing. The term:

219 (A) Includes both a certificated and an uncertificated security;

220 (B) Does not include an insurance or endowment policy or annuity contract under which
221 an insurance company promises to pay money either in a lump sum or periodically for life or
222 other specified period;

223 (C) Does not include an interest in a contributory or noncontributory pension or welfare
224 plan subject to the Employee Retirement Income Security Act of 1974;

225 (D) Includes as an "investment contract" an investment in a common enterprise with the
226 expectation of profits to be derived primarily from the efforts of a person other than the investor
227 and a "common enterprise" means an enterprise in which the fortunes of the investor are
228 interwoven with those of either the person offering the investment, a third party, or other
229 investors; and

230 (E) May include as an "investment contract", among other contracts, an interest in a
231 limited partnership and a limited liability company and an investment in a viatical settlement or
232 similar agreement.

233 (29) "Self-regulatory organization" means a national securities exchange registered under
234 the Securities Exchange Act of 1934, a national securities association of broker-dealers
235 registered under the Securities Exchange Act of 1934, a clearing agency registered under the
236 Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established
237 under the Securities Exchange Act of 1934.

238 (30) "Sign" means, with present intent to authenticate or adopt a record:

239 (A) To execute or adopt a tangible symbol; or

240 (B) To attach or logically associate with the record an electronic symbol, sound, or
241 process.

242 (31) "State" means a state of the United States, the District of Columbia, Puerto Rico,
243 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
244 of the United States.

245 **(32) "Whistleblower" means a person who, under the whistleblower program,**
246 **discloses information regarding a violation or potential violation of this act or a rule**
247 **adopted or order issued under this act and is employed by or associated with:**

248 **(A) A broker-dealer;**

249 **(B) An issuer; or**

250 **(C) A person that advises others for compensation, either directly or indirectly or**
251 **through publications or writings, as to the value of securities or the advisability of**
252 **investing, purchasing, or selling securities or that, for compensation and as part of a**
253 **regular business, issues or promulgates analyses or reports relating to securities.**

2 409.2-202. The following transactions are exempt from the requirements of sections
3 409.3-301 to 409.3-306 and 409.5-504:

4 (1) An isolated nonissuer transaction, whether effected by or through a broker-dealer or
5 not;

6 (2) A nonissuer transaction by or through a broker-dealer registered, or exempt from
7 registration under this act, and a resale transaction by a sponsor of a unit investment trust
8 registered under the Investment Company Act of 1940, in a security of a class that has been
9 outstanding in the hands of the public for at least ninety days, if, at the date of the transaction:

10 (A) The issuer of the security is engaged in business, the issuer is not in the
11 organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind
pool, or shell company that has no specific business plan or purpose or has indicated that its

12 primary business plan is to engage in a merger or combination of the business with, or an
13 acquisition of, an unidentified person;

14 (B) The security is sold at a price reasonably related to its current market price;

15 (C) The security does not constitute the whole or part of an unsold allotment to, or a
16 subscription or participation by, the broker-dealer as an underwriter of the security or a
17 redistribution; and

18 (D) A nationally recognized securities manual or its electronic equivalent designated by
19 rule adopted or order issued under this act or a record filed with the Securities and Exchange
20 Commission that is publicly available contains:

21 (i) A description of the business and operations of the issuer;

22 (ii) The names of the issuer's executive officers and the names of the issuer's directors,
23 if any;

24 (iii) An audited balance sheet of the issuer as of a date within eighteen months before
25 the date of the transaction or, in the case of a reorganization or merger when the parties to the
26 reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the
27 combined organization; and

28 (iv) An audited income statement for each of the issuer's two immediately previous fiscal
29 years or for the period of existence of the issuer, whichever is shorter, or, in the case of a
30 reorganization or merger when each party to the reorganization or merger had audited income
31 statements, a pro forma income statement; or

32 (E) The issuer of the security has a class of equity securities listed on a national securities
33 exchange registered under the Securities Exchange Act of 1934 or designated for trading on the
34 National Association of Securities Dealers Automated Quotation System, unless the issuer of the
35 security is a unit investment trust registered under the Investment Company Act of 1940; or the
36 issuer of the security, including its predecessors, has been engaged in continuous business for
37 at least three years; or the issuer of the security has total assets of at least two million dollars
38 based on an audited balance sheet as of a date within eighteen months before the date of the
39 transaction or, in the case of a reorganization or merger when the parties to the reorganization
40 or merger each had the audited balance sheet, a pro forma balance sheet for the combined
41 organization;

42 (3) A nonissuer transaction by or through a broker-dealer registered or exempt from
43 registration under this act in a security of a foreign issuer that is a margin security defined in
44 regulations or rules adopted by the Board of Governors of the Federal Reserve System;

45 (4) A nonissuer transaction by or through a broker-dealer registered or exempt from
46 registration under this act in an outstanding security if the guarantor of the security files reports

47 with the Securities and Exchange Commission under the reporting requirements of Section 13
48 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));

49 (5) A nonissuer transaction by or through a broker-dealer registered or exempt from
50 registration under this act in a security that:

51 (A) Is rated at the time of the transaction by a nationally recognized statistical rating
52 organization in one of its four highest rating categories; or

53 (B) Has a fixed maturity or a fixed interest or dividend, if:

54 (i) A default has not occurred during the current fiscal year or within the three previous
55 fiscal years or during the existence of the issuer and any predecessor if less than three fiscal
56 years, in the payment of principal, interest, or dividends on the security; and

57 (ii) The issuer is engaged in business, is not in the organizational stage or in bankruptcy
58 or receivership, and is not and has not been within the previous twelve months a blank check,
59 blind pool, or shell company that has no specific business plan or purpose or has indicated that
60 its primary business plan is to engage in a merger or combination of the business with, or an
61 acquisition of, an unidentified person;

62 (6) A nonissuer transaction by or through a broker-dealer registered or exempt from
63 registration under this act effecting an unsolicited order or offer to purchase;

64 (7) A nonissuer transaction executed by a bona fide pledgee without the purpose of
65 evading this act;

66 (8) A nonissuer transaction by a federal covered investment adviser with investments
67 under management in excess of one hundred million dollars acting in the exercise of
68 discretionary authority in a signed record for the account of others;

69 (9) A transaction in a security, whether or not the security or transaction is otherwise
70 exempt, in exchange for one or more bona fide outstanding securities, claims, or property
71 interests, or partly in such exchange and partly for cash, if the terms and conditions of the
72 issuance and exchange or the delivery and exchange and the fairness of the terms and conditions
73 have been approved by the commissioner after a hearing;

74 (10) A transaction between the issuer or other person on whose behalf the offering is
75 made and an underwriter, or among underwriters;

76 (11) A transaction in a note, bond, debenture, or other evidence of indebtedness secured
77 by a mortgage or other security agreement if:

78 (A) The note, bond, debenture, or other evidence of indebtedness is offered and sold with
79 the mortgage or other security agreement as a unit;

80 (B) A general solicitation or general advertisement of the transaction is not made; and

81 (C) A commission or other remuneration is not paid or given, directly or indirectly, to
82 a person not registered under this act as a broker-dealer or as an agent;

83 (12) A transaction by an executor, commissioner of an estate, sheriff, marshal, receiver,
84 trustee in bankruptcy, guardian, or conservator;

85 (13) A sale or offer to sell to:

86 (A) An institutional investor;

87 (B) A federal covered investment adviser; or

88 (C) Any other person exempted by rule adopted or order issued under this act;

89 (14) A sale or an offer to sell securities of an issuer, if part of a single issue in which:

90 (A) Not more than twenty-five purchasers are present in this state during any twelve
91 consecutive months, other than those designated in paragraph (13);

92 (B) A general solicitation or general advertising is not made in connection with the offer
93 to sell or sale of the securities;

94 (C) A commission or other remuneration is not paid or given, directly or indirectly, to
95 a person other than a broker-dealer registered under this act or an agent registered under this act
96 for soliciting a prospective purchaser in this state; [and]

97 (D) The issuer reasonably believes that all the purchasers in this state, other than those
98 designated in paragraph (13), are purchasing for investment; **and**

99 **(E) The issuer and the issuer's predecessors, affiliated issuers, directors, officers,**
100 **general partners, managing members, promoters, solicitors, or beneficial owners of ten**
101 **percent or more of any class of the issuer's equity securities are not subject to discipline**
102 **under section 409.4-412(d)(3), (4), (5), (6), (11), (12), or (13). This subsection (E) shall not**
103 **apply if:**

104 **(i) The commissioner issues an order, before the relevant sale, waiving**
105 **disqualification under subsection (E); or**

106 **(ii) The issuer did not know, and in the exercise of reasonable care could not have**
107 **known, of an event leading to disqualification under subsection (E);**

108 (15) A transaction under an offer to existing security holders of the issuer, including
109 persons that at the date of the transaction are holders of convertible securities, options, or
110 warrants, if a commission or other remuneration, other than a standby commission, is not paid
111 or given, directly or indirectly, for soliciting a security holder in this state;

112 (16) An offer to sell, but not a sale, of a security not exempt from registration under the
113 Securities Act of 1933 if:

114 (A) A registration or offering statement or similar record as required under the Securities
115 Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165
116 adopted under the Securities Act of 1933 (17 C.F.R. 230.165); and

117 (B) A stop order of which the offeror is aware has not been issued against the offeror by
118 the commissioner or the Securities and Exchange Commission, and an audit, inspection, or

119 proceeding that is public and that may culminate in a stop order is not known by the offeror to
120 be pending;

121 (17) An offer to sell, but not a sale, of a security exempt from registration under the
122 Securities Act of 1933 if:

123 (A) A registration statement has been filed under this act, but is not effective;

124 (B) A solicitation of interest is provided in a record to offerees in compliance with a rule
125 adopted by the commissioner under this act; and

126 (C) A stop order of which the offeror is aware has not been issued by the commissioner
127 under this act and an audit, inspection, or proceeding that may culminate in a stop order is not
128 known by the offeror to be pending;

129 (18) A transaction involving the distribution of the securities of an issuer to the security
130 holders of another person in connection with a merger, consolidation, exchange of securities, sale
131 of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other
132 person, or its parent or subsidiary, are parties;

133 (19) A rescission offer, sale, or purchase under section 409.5-510;

134 (20) An offer or sale of a security to a person not a resident of this state and not present
135 in this state if the offer or sale does not constitute a violation of the laws of the state or foreign
136 jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or
137 scheme to evade this act;

138 (21) Employees' stock purchase, savings, option, profit-sharing, pension, or similar
139 employees' benefit plan, including any securities, plan interests, and guarantees issued under a
140 compensatory benefit plan or compensation contract, contained in a record, established by the
141 issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the
142 issuer's parent for the participation of their employees including offers or sales of such securities
143 to:

144 (A) Directors; general partners; trustees, if the issuer is a business trust; officers;
145 consultants; and advisors;

146 (B) Family members who acquire such securities from those persons through gifts or
147 domestic relations orders;

148 (C) Former employees, directors, general partners, trustees, officers, consultants, and
149 advisors if those individuals were employed by or providing services to the issuer when the
150 securities were offered;

151 (D) Insurance agents who are exclusive insurance agents of the issuer, or the issuer's
152 subsidiaries or parents, or who derive more than fifty percent of their annual income from those
153 organizations; and

154 (E) Current employees;

155 (22) A transaction involving:

156 (A) A stock dividend or equivalent equity distribution, whether the corporation or other
157 business organization distributing the dividend or equivalent equity distribution is the issuer or
158 not, if nothing of value is given by stockholders or other equity holders for the dividend or
159 equivalent equity distribution other than the surrender of a right to a cash or property dividend
160 if each stockholder or other equity holder may elect to take the dividend or equivalent equity
161 distribution in cash, property, or stock;

162 (B) An act incident to a judicially approved reorganization in which a security is issued
163 in exchange for one or more outstanding securities, claims, or property interests, or partly in such
164 exchange and partly for cash; or

165 (C) The solicitation of tenders of securities by an offeror in a tender offer in compliance
166 with Rule 162 adopted under the Securities Act of 1933 (17 C.F.R. 230.162); or

167 (23) A nonissuer transaction in an outstanding security by or through a broker-dealer
168 registered or exempt from registration under this act, if the issuer is a reporting issuer in a foreign
169 jurisdiction designated by this paragraph or by rule adopted or order issued under this act; has
170 been subject to continuous reporting requirements in the foreign jurisdiction for not less than one
171 hundred eighty days before the transaction; and the security is listed on the foreign jurisdiction's
172 securities exchange that has been designated by this paragraph or by rule adopted or order issued
173 under this act, or is a security of the same issuer that is of senior or substantially equal rank to
174 the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For
175 purposes of this paragraph, Canada, together with its provinces and territories, is a designated
176 foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange.
177 After an administrative hearing in compliance with chapter 536, the commissioner, by rule
178 adopted or order issued under this act, may revoke the designation of a securities exchange under
179 this paragraph, if the commissioner finds that revocation is necessary or appropriate in the public
180 interest and for the protection of investors.

2 409.5-509. (a) **Except for subsections (g) and (k)(3)**, enforcement of civil liability
under this section is subject to the Securities Litigation Uniform Standards Act of 1998.

3 (b) A person is liable to the purchaser if the person sells a security in violation of section
4 409.3-301 or, by means of an untrue statement of a material fact or an omission to state a
5 material fact necessary in order to make the statement made, in light of the circumstances under
6 which it is made, not misleading, the purchaser not knowing the untruth or omission and the
7 seller not sustaining the burden of proof that the seller did not know and, in the exercise of
8 reasonable care, could not have known of the untruth or omission. An action under this
9 subsection is governed by the following:

10 (1) The purchaser may maintain an action to recover the consideration paid for the
11 security, less the amount of any income received on the security, and interest at the rate of eight
12 percent per year from the date of the purchase, costs, and reasonable attorneys' fees determined
13 by the court, upon the tender of the security, or for actual damages as provided in paragraph (3).

14 (2) The tender referred to in paragraph (1) may be made any time before entry of
15 judgment. Tender requires only notice in a record of ownership of the security and willingness
16 to exchange the security for the amount specified. A purchaser that no longer owns the security
17 may recover actual damages as provided in paragraph (3).

18 (3) Actual damages in an action arising under this subsection are the amount that would
19 be recoverable upon a tender less the value of the security when the purchaser disposed of it, and
20 interest at the rate of eight percent per year from the date of the purchase, costs, and reasonable
21 attorneys' fees determined by the court.

22 (c) A person is liable to the seller if the person buys a security by means of an untrue
23 statement of a material fact or omission to state a material fact necessary in order to make the
24 statement made, in light of the circumstances under which it is made, not misleading, the seller
25 not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that
26 the purchaser did not know, and in the exercise of reasonable care, could not have known of the
27 untruth or omission. An action under this subsection is governed by the following:

28 (1) The seller may maintain an action to recover the security, and any income received
29 on the security, costs, and reasonable attorneys' fees determined by the court, upon the tender of
30 the purchase price, or for actual damages as provided in paragraph (3).

31 (2) The tender referred to in paragraph (1) may be made any time before entry of
32 judgment. Tender requires only notice in a record of the present ability to pay the amount
33 tendered and willingness to take delivery of the security for the amount specified. If the
34 purchaser no longer owns the security, the seller may recover actual damages as provided in
35 paragraph (3).

36 (3) Actual damages in an action arising under this subsection is the difference between
37 the price at which the security was sold and the value the security would have had at the time of
38 the sale in the absence of the purchaser's conduct causing liability, and interest at the rate of eight
39 percent per year from the date of the sale of the security, costs, and reasonable attorneys' fees
40 determined by the court.

41 (d) A person acting as a broker-dealer or agent that sells or buys a security in violation
42 of section 409.4-401(a), 409.4-402(a), or 409.5-506 is liable to the customer. The customer, if
43 a purchaser, may maintain an action for recovery of actual damages as specified in subsections
44 (b)(1) to (3), or, if a seller, for a remedy as specified in subsections (c)(1) to (3).

45 (e) A person acting as an investment adviser or investment adviser representative that
46 provides investment advice for compensation in violation of section 409.4-403(a), 409.4-404(a),
47 or 409.5-506 is liable to the client. The client may maintain an action to recover the
48 consideration paid for the advice, interest at the rate of eight percent per year from the date of
49 payment, costs, and reasonable attorneys' fees determined by the court.

50 (f) A person that receives directly or indirectly any consideration for providing
51 investment advice to another person and that employs a device, scheme, or artifice to defraud the
52 other person or engages in an act, practice, or course of business that operates or would operate
53 as a fraud or deceit on the other person is liable to the other person. An action under this
54 subsection is governed by the following:

55 (1) The person defrauded may maintain an action to recover the consideration paid for
56 the advice and the amount of any actual damages caused by the fraudulent conduct, interest at
57 the rate of eight percent per year from the date of the fraudulent conduct, costs, and reasonable
58 attorneys' fees determined by the court, less the amount of any income received as a result of the
59 fraudulent conduct.

60 (2) This subsection does not apply to a broker-dealer or its agents if the investment
61 advice provided is solely incidental to transacting business as a broker-dealer and no special
62 compensation is received for the investment advice.

63 (g) **A person is liable to a whistleblower if that person employs the whistleblower**
64 **and discharges, demotes, suspends, threatens, harasses, denies promotion to, or in any**
65 **other manner discriminates against the whistleblower in the terms and conditions of**
66 **employment because the whistleblower participates in the whistleblower program. An**
67 **action under this subsection is governed by the following:**

68 (1) **The whistleblower may maintain an action for:**

69 (A) **Reinstatement to the whistleblower's position without loss of seniority;**

70 (B) **The amount of back pay;**

71 (C) **Punitive damages; and**

72 (D) **Costs and reasonable attorneys' fees determined by the court;**

73 (2) **A whistleblower may not obtain relief if the person employing the whistleblower**
74 **sustains the burden of proof that:**

75 (A) **The action is clearly frivolous or vexatious;**

76 (B) **The whistleblower planned, initiated, or participated in the violation of this act**
77 **or a rule adopted or order issued under this act revealed by the information provided to**
78 **the whistleblower program; or**

79 **(C) The whistleblower is criminally convicted for a violation of this act or a rule**
80 **adopted or order issued under this act revealed by the information provided to the**
81 **whistleblower program.**

82 **(h)** The following persons are liable jointly and severally with and to the same extent as
83 persons liable under subsections (b) to (f):

84 (1) A person that directly or indirectly controls a person liable under subsections (b) to
85 (f), unless the controlling person sustains the burden of proof that the person did not know, and
86 in the exercise of reasonable care could not have known, of the existence of conduct by reason
87 of which the liability is alleged to exist;

88 (2) An individual who is a managing partner, executive officer, or director of a person
89 liable under subsections (b) to (f), including an individual having a similar status or performing
90 similar functions, unless the individual sustains the burden of proof that the individual did not
91 know and, in the exercise of reasonable care could not have known, of the existence of conduct
92 by reason of which the liability is alleged to exist;

93 (3) An individual who is an employee of or associated with a person liable under
94 subsections (b) to (f) and who materially aids the conduct giving rise to the liability, unless the
95 individual sustains the burden of proof that the individual did not know and, in the exercise of
96 reasonable care could not have known, of the existence of conduct by reason of which the
97 liability is alleged to exist; and

98 (4) A person that is a broker-dealer, agent, investment adviser, or investment adviser
99 representative that materially aids the conduct giving rise to the liability under subsections (b)
100 to (f), unless the person sustains the burden of proof that the person did not know and, in the
101 exercise of reasonable care could not have known, of the existence of conduct by reason of which
102 liability is alleged to exist.

103 ~~[(h)]~~ **(i)** A person liable under this section has a right of contribution as in cases of
104 contract against any other person liable under this section for the same conduct.

105 ~~[(i)]~~ **(j)** A cause of action under this section survives the death of an individual who
106 might have been a plaintiff or defendant.

107 ~~[(j)]~~ **(k)** A person may not obtain relief:

108 (1) Under subsection (b) for violation of section 409.3-301, or under subsection (d) or
109 (e), unless the action is instituted within one year after the violation occurred; ~~[or]~~

110 (2) Under subsection (b), other than for violation of section 409.3-301, or under
111 subsection (c) or (f), unless the action is instituted within the earlier of two years after discovery
112 of the facts constituting the violation or five years after the violation; **or**

113 **(3) Under subsection (g), unless the action is instituted within one year after the**
114 **specific incident giving rise to the action.**

115 ~~[(k)]~~ **(l)** A person that has made, or has engaged in the performance of, a contract in
116 violation of this act or a rule adopted or order issued under this act, or that has acquired a
117 purported right under the contract with knowledge of conduct by reason of which its making or
118 performance was in violation of this act, may not base an action on the contract.

119 ~~[(l)]~~ **(m)** A condition, stipulation, or provision binding a person purchasing or selling a
120 security or receiving investment advice to waive compliance with this act or a rule adopted or
121 order issued under this act is void.

122 ~~[(m)]~~ **(n)** The rights and remedies provided by this act are in addition to any other rights
123 or remedies that may exist, but this act does not create a cause of action not specified in this
124 section or section 409.4-411(e).

 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.

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, any
29 funds remaining in the secretary of state's investor education and protection fund at the end of
30 any biennium shall not be transferred to the general revenue fund.

31 **(g) The "Whistleblower Program" is created to receive information or records**
32 **from whistleblowers and, in the discretion of the commissioner, to maintain the**
33 **confidentiality of whistleblowers. The commissioner may:**

34 **(1) Collaborate with the attorney general or the proper prosecuting attorney to**
35 **implement procedures to ensure the confidentiality of whistleblowers; or**

36 **(2) Implement initiatives to inform the public of the whistleblower program.**

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

25 **(c) Unless the commissioner finds that disclosure is necessary or appropriate in the**
26 **public interest or for the protection of investors and consistent with the purposes intended**

27 **by this act, information received through the whistleblower program is not subject to**
28 **discovery, subpoena, or other means of legal compulsion for release in any proceeding**
29 **under section 409.4-412, 409.5-509, 409.6-603, or 409.6-604 of this act.**

30 **(d)** If disclosure is for the purpose of a civil, administrative, or criminal investigation,
31 action, or proceeding or to a person specified in section 409.6-608(a), the commissioner may
32 disclose a record obtained:

33 **(1)** In connection with an audit or inspection under section 409.4-411(d) [or a record
34 obtained] ;

35 **(2)** In connection with an investigation under section 409.6-602; **or**

36 **(3) Through the whistleblower program.**

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