

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NOS. 2908 & 2990**  
**103RD GENERAL ASSEMBLY**

6408H.03C

JOSEPH ENGLER, Chief Clerk

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**AN ACT**

To repeal sections 409.4-410, 409.6-601, and 409.6-604, RSMo, and to enact in lieu thereof three new sections relating to the Missouri securities act.

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

Section A. Sections 409.4-410, 409.6-601, and 409.6-604, RSMo, are repealed and  
2 three new sections enacted in lieu thereof, to be known as sections 409.4-410, 409.6-601, and  
3 409.6-604, to read as follows:

409.4-410. (a) A person shall pay a fee of two hundred dollars when initially filing  
2 an application for registration as a broker-dealer and a fee of one hundred dollars when filing  
3 a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the  
4 commissioner shall retain the entire fee.

5 (b) The fee for an individual is fifty dollars when filing an application for registration  
6 as an agent, a fee of fifty dollars when filing a renewal of registration as an agent, and a fee of  
7 fifty dollars when filing for a change of registration as an agent. If the filing results in a  
8 denial or withdrawal, the commissioner shall retain the entire fee.

9 (c) A person shall pay a fee of two hundred dollars when filing an application for  
10 registration as an investment adviser and a fee of one hundred dollars when filing a renewal of  
11 registration as an investment adviser. If the filing results in a denial or withdrawal, the  
12 commissioner shall retain the entire fee.

13 (d) The fee for an individual is fifty dollars when filing an application for registration  
14 as an investment adviser representative, a fee of fifty dollars when filing a renewal of  
15 registration as an investment adviser representative, and a fee of fifty dollars when filing a  
16 change of registration as an investment adviser representative. If the filing results in a denial  
17 or withdrawal, the commissioner shall retain the entire fee.

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) A federal covered investment adviser required to file a notice under section 409.4-  
19 405 shall pay an initial fee of two hundred dollars and an annual notice fee of one hundred  
20 dollars.

21 (f) A person required to pay a filing or notice fee under this section may transmit the  
22 fee through or to a designee as a rule or order provides under this act.

23 (g) An investment adviser representative who is registered as an agent under section  
24 409.4-402 and who represents a person that is both registered as a broker-dealer under section  
25 409.4-401 and registered as an investment adviser under section 409.4-403 or required as a  
26 federal covered investment adviser to make a notice filing under section 409.4-405 is not  
27 required to pay an initial or annual registration fee for registration as an investment adviser  
28 representative.

29 **(h) (1) The commissioner may, by rule, adjust the fees in this section to generate**  
30 **the moneys necessary to cover the expenses or costs associated with administering this**  
31 **chapter.**

32 **(2) For an adjustment to the fees by rule occurring after June 30, 2030, such**  
33 **adjustment shall be subject to the following:**

34 **(A) The commissioner shall file a final order of rulemaking for such rule with**  
35 **the joint committee on administrative rules under chapter 536 after October thirty-first**  
36 **but before December first of the calendar year before the calendar year in which the**  
37 **rule takes effect;**

38 **(B) If the general assembly deems such rule to be beyond the scope and authority**  
39 **provided in this subsection, the general assembly may reject the fee adjustment by**  
40 **adopting a concurrent resolution pursuant to Article IV, Section 8 disapproving such**  
41 **rule before the fifteenth day of March of the calendar year immediately following the**  
42 **filing of the final order of rulemaking for such rule; and**

43 **(C) If the general assembly:**

44 **(i) Adopts a concurrent resolution disapproving such rule, the rule shall not take**  
45 **effect, the commissioner shall not implement the fee adjustment, and the commissioner**  
46 **shall continue to use fees established in this section or in the most recent preceding rule**  
47 **promulgated under this subdivision; or**

48 **(ii) Does not adopt a concurrent resolution disapproving the rule, the rule shall**  
49 **take effect after the publication of such rule as provided in chapter 536.**

50 **(3) (A) A fee increase shall not be made more than one time in any four-year**  
51 **time period and in no case shall the total of all fee increases exceed the amount of**  
52 **twenty-five dollars in an eight-year time period.**

53 **(B) No fee increase shall be made under this subsection after December 31, 2045.**

54           **(4) In determining whether a fee increase is necessary, the commissioner shall**  
55 **consider the following factors:**

56           **(A) The cost of administering and enforcing this chapter, including personnel,**  
57 **equipment, and operational expenses;**

58           **(B) Inflation and changes in the cost of living, as measured by the Consumer**  
59 **Price Index or other appropriate indices;**

60           **(C) The adequacy of current fee levels to cover regulatory and oversight**  
61 **functions;**

62           **(D) The growth or decline in the number of registrations;**

63           **(E) Any legislative, legal, or technological changes or emerging risks that**  
64 **increase regulatory responsibilities or service levels;**

65           **(F) The need to maintain appropriate staffing levels and technical capacity;**

66           **(G) Revenue generated from other sources; and**

67           **(H) Public interest considerations including, but not limited to, the potential**  
68 **impact of a fee increase on individuals subject to the fees in this section.**

69           **(i) (1) The commissioner shall conduct a comprehensive financial review of the**  
70 **division's revenue and expenditures every four years, beginning in fiscal year 2030. The**  
71 **review shall include an analysis of all sources of funding and expenditures over the**  
72 **preceding four fiscal years, a summary of trends in revenues and expenditures of the**  
73 **preceding four fiscal years, and an identification of any budget surplus or deficit for**  
74 **each year under review. The findings of the review shall be published in a report and**  
75 **posted to the division's website within ninety days of completion.**

76           **(2) If the commissioner, in conducting the review, determines a budget surplus**  
77 **exists that is not reasonably necessary to meet the anticipated costs of operating the**  
78 **division, the commissioner shall, by order, decrease the fees in an amount that ensures**  
79 **that fee revenue more closely aligns with the operational needs of the division.**

80           **(3) Except as otherwise limited in subdivision (4) of this subsection, in addition**  
81 **to a required decrease of fees after a comprehensive financial review, the commissioner**  
82 **may decrease the fees by any amount at any time.**

83           **(4) In no event shall fees be decreased by an amount that would result in the fee**  
84 **being less than the amount established by the general assembly under subsections (a) to**  
85 **(e) of this section.**

          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  
5 all proceedings before the administrative hearing commission, and in the circuit court of any

6 county of the state or any city not within a county, or any court of another state in all civil  
7 enforcement actions brought under this act. The attorney general may appoint attorneys  
8 employed by the secretary of state as special assistant attorneys general to appear on behalf of  
9 and represent the 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  
12 other 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  
17 common 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  
21 commissioner may collaborate with public and nonprofit organizations with an interest in  
22 investor education. The commissioner may accept a grant or donation from a person that is  
23 not affiliated with the securities industry or from a nonprofit organization, regardless of  
24 whether the organization is affiliated with the securities industry, to develop and implement  
25 investor education initiatives. This subsection does not authorize the commissioner to require  
26 participation or monetary 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) **(1) There is hereby created in the state treasury the "Securities Division  
32 Fund", which shall consist of the following:**

33 **(A) One hundred percent of moneys collected that are attributable to a fee  
34 adjustment implemented by rule under section 409.4-410(h) or (i);**

35 **(B) Moneys collected that are attributable to a reasonable charge assessed by the  
36 commissioner for conducting an audit or inspection under section 409.4-411(d);**

37 **(C) (i) Before January 1, 2046, fifty percent of moneys collected that are  
38 attributable to the payment of fees required under section 409.4-410(b) and (d) when, on  
39 or after the effective date of this section, a person initially files an application for  
40 registration and when such person files:**

41 **i. A renewal of registration; or**

42 **ii. A change of registration; and**

43           (ii) Beginning on January 1, 2046, fifty percent of moneys collected that are  
44 attributable to the payment of all fees required under section 409.4-410(b) and (d); and

45           (D) Other moneys that are appropriated by the general assembly for the purpose  
46 of administering and enforcing the provisions of this chapter.

47           (2) The fund shall be a dedicated fund and moneys deposited in the state  
48 treasury to the credit of the securities division fund shall be used solely as follows:

49           (A) By the securities division for reimbursement of the reasonable costs of  
50 conducting an audit or inspection under 409.4-411(d);

51           (B) By the securities division for the reasonable costs of operating the division;

52           (C) By the commissioner of the securities division for the purposes identified in  
53 section 409.4-410(h); and

54           (D) For transfers to the investor education and protection fund created in this  
55 section.

56           (3) The state treasurer shall be custodian of the fund. In accordance with  
57 sections 30.170 and 30.180, the state treasurer may approve disbursements.

58           (4) If the balance of the securities division fund exceeds two hundred fifty  
59 thousand dollars at the end of a given calendar year, the amount in excess of two  
60 hundred fifty dollars shall be transferred to the investor education and protection fund  
61 created in this section.

62           (5) The state treasurer shall invest moneys in the fund in the same manner as  
63 other funds are invested. Any interest and moneys earned on such investments shall be  
64 credited to the fund.

65           (6) Notwithstanding the provisions of section 33.080 to the contrary, any moneys  
66 remaining in the fund at the end of the biennium shall not revert to the credit of the  
67 general revenue fund.

209.6-604. (a) If the commissioner determines that a person has engaged, is  
2 engaging, or is about to engage in an act, practice, or course of business constituting a  
3 violation of this act or a rule adopted or order issued under this act or that a person has  
4 materially aided, is materially aiding, or is about to materially aid an act, practice, or course of  
5 business constituting a violation of this act or a rule adopted or order issued under this act, the  
6 commissioner may:

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

10           (2) Issue an order denying, suspending, revoking, or conditioning the exemptions for  
11 a broker-dealer under section 409.4-401(b)(1)(D) or (F) or an investment adviser under  
12 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 issuance. Upon issuance  
15 of the order, the commissioner shall promptly serve each person subject to the order with a  
16 copy of the order and a notice that the order has been entered. The order must include a  
17 statement whether the commissioner will seek a civil penalty or costs of the investigation, a  
18 statement of the reasons for the order, and notice that, within fifteen days after receipt of a  
19 request in a record from the person, the matter will be scheduled for a hearing. If a person  
20 subject to the order does not request a hearing and none is ordered by the commissioner  
21 within thirty days after the date of service of the order, the order becomes final as to that  
22 person by operation of law. If a hearing is requested or ordered, the commissioner, after  
23 notice of and opportunity for hearing to each person subject to the order, may modify or  
24 vacate the order or extend it until final determination.

25 (c) If a hearing is requested or ordered pursuant to subsection (b), a hearing before the  
26 commissioner must be provided. A final order may not be issued unless the commissioner  
27 makes findings of fact and conclusions of law in a record in accordance with the provisions of  
28 chapter 536 and procedural rules promulgated by the commissioner. The final order may  
29 make final, vacate, or modify the order issued under subsection (a).

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

31 (1) Impose a civil penalty up to twenty-five thousand dollars for each violation;

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

36 (3) In addition to any civil penalty otherwise provided by law, impose an additional  
37 civil penalty not to exceed fifteen thousand dollars for each such violation if the  
38 commissioner finds that a person subject to the order has violated any provision of this act  
39 and that such violation was committed against an elderly or disabled person. For purposes of  
40 this section, the following terms mean:

41 (A) "Disabled person", a person with a physical or mental impairment that  
42 substantially limits one or more of the major life activities of such individual, a record of such  
43 impairment, or being regarded as having such an impairment;

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

45 (e) In a final order, the commissioner may charge the actual cost of an investigation or  
46 proceeding for a violation of this act or a rule adopted or order issued under this act. These  
47 funds may be paid into the ~~[investor education and protection]~~ **restitution recovery fund**  
48 **created in this section.**

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

54 (g) If a person does not comply with an order under this section, the commissioner  
55 may petition a court of competent jurisdiction to enforce the order. The court may not require  
56 the commissioner to post a bond in an action or proceeding under this section. If the court  
57 finds, after service and opportunity for hearing, that the person was not in compliance with  
58 the order, the court may adjudge the person in civil contempt of the order. The court may  
59 impose a further civil penalty against the person for contempt in an amount not less than five  
60 thousand dollars but not greater than one hundred thousand dollars for each violation and may  
61 grant any other relief the court determines is just and proper in the circumstances.

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

64 (i) **(1) Moneys collected from an order entered under this section shall be**  
65 **deposited in the state treasury to the credit of the restitution recovery fund created in**  
66 **this subsection.**

67 **(2) (A) There is hereby created in the state treasury the "Restitution Recovery**  
68 **Fund", which shall consist of the following:**

69 **(i) Moneys collected from an order entered under this section; and**

70 **(ii) Other moneys that are appropriated by the general assembly for the purpose**  
71 **of administering and enforcing the provisions of this chapter.**

72 **(B) The fund shall be a dedicated fund and shall be administered by the**  
73 **commissioner of the securities division for the sole purposes of awarding:**

74 **(i) Restitution ordered under this section; and**

75 **(ii) Restitution assistance to aggrieved investors who were awarded restitution in**  
76 **a final order issued under sections 409.1-101 to 409.7-703 but who did not receive**  
77 **payment in full of the amount awarded.**

78 **(C) The state treasurer shall be custodian of the fund. In accordance with**  
79 **sections 30.170 and 30.180, the state treasurer may approve disbursements.**

80 **(D) Notwithstanding the provisions of section 33.080 to the contrary, any moneys**  
81 **remaining in the fund at the end of the biennium shall not revert to the credit of the**  
82 **general revenue fund.**

83 **(E) The state treasurer shall invest moneys in the fund in the same manner as**  
84 **other funds are invested. Any interest and moneys earned on such investments shall be**  
85 **credited to the fund.**

86           **(3) The commissioner of the securities division shall promulgate rules to**  
87 **administer the restitution recovery fund and to establish the conditions upon which**  
88 **restitution assistance shall be awarded from the fund to an aggrieved investor described**  
89 **in subparagraph (ii) of paragraph (B) of subdivision (2) of this subsection. Rules**  
90 **establishing the conditions for such award of restitution assistance to an aggrieved**  
91 **investor shall include at least the following:**

92           **(A) The qualifications that establish an aggrieved investor's eligibility for**  
93 **restitution from the fund;**

94           **(B) A method for determining the number of aggrieved investors who are**  
95 **eligible for restitution from the fund;**

96           **(C) A method for calculating the total amount each eligible aggrieved investor is**  
97 **eligible to receive;**

98           **(D) A method for listing the name and mailing address of each eligible aggrieved**  
99 **investor;**

100           **(E) A calculation for determining whether the amount remaining in the**  
101 **restitution recovery fund after the award of all eligible restitution will be below fifty**  
102 **thousand dollars; and**

103           **(F) A method for prorating awards to eligible aggrieved investors to ensure that**  
104 **the balance of the restitution recovery fund is not below fifty thousand dollars after all**  
105 **eligible restitution is awarded to aggrieved investors.**

106           **(4) (A) After determining that the conditions for awarding restitution from the**  
107 **restitution recovery fund to aggrieved investors described in subparagraph (ii) of**  
108 **paragraph (B) of subdivision (2) of this subsection have been met as described in**  
109 **subdivision (3) of this subsection, the commissioner shall notify the state treasurer of**  
110 **such determination. Such notice shall contain the information described in subdivision**  
111 **(3) of this subsection and any other necessary information required by rules**  
112 **promulgated by the commissioner.**

113           **(B) Upon receiving such notification from the commissioner, the state treasurer**  
114 **shall approve the disbursement of such determined amount from the restitution recovery**  
115 **fund to each aggrieved investor identified in the notice.**

116           **(5) Restitution assistance awarded under subparagraph (ii) of paragraph (B) of**  
117 **subdivision (2) of this subsection may be awarded in an amount that is the lesser of:**

118           **(A) Twenty-five thousand dollars; or**

119           **(B) Twenty-five percent of unpaid restitution awarded in a final order described**  
120 **in subparagraph (ii) of paragraph (B) of subdivision (2) of this subsection.**

121           **(6) If payment of restitution assistance to aggrieved investors would result in a**  
122 **restitution recovery fund balance below fifty thousand dollars, the commissioner may**

123 **suspend restitution assistance until such time as the commissioner determines a**  
124 **sufficient balance has been restored to the fund.**

125 **(7) If the balance of the restitution recovery fund exceeds one million dollars at**  
126 **the end of a given calendar year, the amount in excess of one million dollars shall be**  
127 **transferred to the investor education and protection fund created in section 409.6-601.**

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