

SECOND REGULAR SESSION

SENATE BILL NO. 907

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Read 1st time January 19, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4386S.011

AN ACT

To repeal sections 376.309 and 409.1-102, RSMo, and to enact in lieu thereof two new sections relating to securities regulation.

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

Section A. Sections 376.309 and 409.1-102, RSMo, are repealed and two
2 new sections enacted in lieu thereof, to be known as sections 376.309 and 409.1-
3 102, to read as follows:

376.309. 1. As used in this section, "separate account" means an account
2 established by an insurance company, into which any amounts paid to or held by
3 such company under applicable contracts are credited and the assets of which,
4 subject to the provisions of this section, may be invested in such investments as
5 shall be authorized by a resolution adopted by such company's board of
6 directors. The income, if any, and gains and losses, realized or unrealized, on
7 such account shall be credited to or charged against the amounts allocated to
8 such account without regard to other income, gains or losses of the company. If
9 and to the extent so provided under the applicable contracts, that portion of the
10 assets of any such separate account equal to the reserves and other contract
11 liabilities with respect to such account shall not be chargeable with liabilities
12 arising out of any other business the company may conduct.

13 2. Any domestic life insurance company may, after adoption of a
14 resolution by its board of directors, establish one or more separate accounts, and
15 may allocate to such account or accounts any amounts paid to or held by it which
16 are to be applied under the terms of an individual or group contract to provide
17 benefits payable in fixed or in variable dollar amounts or in both.

18 3. To the extent it deems necessary to comply with any applicable federal

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

19 or state act, the company may, with respect to any separate account or any
20 portion thereof, provide for the benefit of persons having beneficial interests
21 therein special voting and other rights and special procedures for the conduct of
22 the business and affairs of such separate account or portion thereof, including,
23 without limitation, special rights and procedures relating to investment policy,
24 investment advisory services, selection of public accountants, and selection of a
25 committee, the members of which need not be otherwise affiliated with the
26 company, to manage the business and affairs of such separate account or portion
27 thereof; and the corporate charter of such company shall be deemed amended to
28 authorize the company to do so. The provisions of this section shall not affect
29 existing laws pertaining to the voting rights of such company's policyholders.

30 4. The amounts allocated to any separate account and the accumulations
31 thereon may be invested and reinvested without regard to any requirements or
32 limitations prescribed by the laws of this state governing the investments of life
33 insurance companies, and the investments in such separate account or accounts
34 shall not be taken into account in applying the investment limitations, including
35 but not limited to quantitative restrictions, otherwise applicable to the
36 investments of the company, except that to the extent that the company's reserve
37 liability with regard to benefits guaranteed as to principal amount and duration,
38 and funds guaranteed as to principal amount or stated rate of interest, is
39 maintained in any separate account, a portion of the assets of such separate
40 account at least equal to such reserve liability shall be, except as the director of
41 insurance might otherwise approve, invested in accordance with the laws of this
42 state governing the general investment account of any company. As used herein,
43 the expression "general investment account" shall mean all of the funds, assets
44 and investments of the company which are not allocated in a separate
45 account. The provisions of section 376.170 relating to deposits for registered
46 policies shall not be applicable to funds and investments allocated to separate
47 accounts. No investment in the separate account or in the general investment
48 account of a life insurance company shall be transferred by sale, exchange,
49 substitution or otherwise from one account to another unless, in case of a transfer
50 into a separate account, the transfer is made solely to establish the account or to
51 support the operation of the contracts with respect to the separate account to
52 which the transfer is made or unless the transfer, whether into or from a separate
53 account, is made by a transfer of cash, or by a transfer of other assets having a
54 readily determinable market value, provided that such transfer of other assets is

55 approved by the director of insurance and is for assets of equivalent value. Such
56 transfer shall be deemed approved to the extent the assets of a separate account
57 so transferred have been paid to or are being held by the company in connection
58 with a pension, retirement or profit-sharing plan subject to the provisions of the
59 Internal Revenue Code, as amended, and the Employee Retirement Income
60 Security Act of 1974, as amended. The director of insurance may withdraw such
61 deemed approval by providing written notice to the company that its financial
62 condition or past practices require such withdrawal. The director of insurance
63 may approve other transfers among such accounts if the director concludes that
64 such transfers would be equitable.

65 5. Unless otherwise approved by the director of insurance, assets allocated
66 to a separate account shall be valued at their market value on the date of
67 valuation, or if there is no readily available market, then as provided under the
68 terms of the contract or the rules or other written agreement applicable to such
69 separate account; provided, that the portion of the assets of such separate account
70 at least equal to the company's reserve liability with regard to the guaranteed
71 benefits and funds referred to in subsection 4 of this section, if any, shall be
72 valued in accordance with the rules otherwise applicable to the company's assets.

73 6. The director of insurance shall have the sole and exclusive **state**
74 authority to regulate the issuance [and sale] of contracts under which amounts
75 are to be allocated to one or more separate accounts as provided herein, and to
76 issue such reasonable rules, regulations and licensing requirements as he shall
77 deem necessary to carry out the purposes and provisions of this section; and [such
78 contracts,] the companies [which] **that** issue [them and the agents or other
79 persons who sell them] **such contracts** shall not be subject to [sections 409.101
80 to 409.419, RSMo, or amendments thereto, nor to the jurisdiction of]
81 **registration with** the commissioner of securities.

82 7. No domestic life insurance company, and no other life insurance
83 company admitted to transact business in this state, shall be authorized to
84 deliver within this state any contract under which amounts are to be allocated to
85 one or more separate accounts as provided herein until said company has
86 satisfied the director of insurance that its condition or methods of operation in
87 connection with the issuance of such contracts will not render its operation
88 hazardous to the public or its policyholders in this state. In determining the
89 qualifications of a company requesting authority to deliver such contracts within
90 this state, the director of insurance shall consider, among other things:

91 (1) The history and financial condition of the company;

92 (2) The character, responsibility and general fitness of the officers and
93 directors of the company; and

94 (3) In the case of a company other than a domestic company, whether the
95 statutes and regulations of the jurisdiction of its incorporation provide a degree
96 of protection to policyholders and the public which is substantially equal to that
97 provided by this section and the rules and regulations issued thereunder.

98 8. An authorized life insurance company, whether domestic, foreign or
99 alien, which issues contracts under which amounts are to be allocated to one or
100 more separate accounts as provided herein, and which is a subsidiary of or
101 affiliated through common management or ownership with another life insurance
102 company authorized to do business in this state, may be deemed to have met the
103 provisions of subsection 7 of this section if either it or the parent or affiliated
104 company meets the requirements thereof.

105 9. If the contract provides for payment of benefits in variable amounts, it
106 shall contain a statement of the essential features of the procedure to be followed
107 by the company in determining the dollar amount of such variable benefits. Any
108 such contract, including a group contract, and any certificate issued thereunder,
109 shall state that such dollar amount may decrease or increase and shall contain
110 on its first page a statement that the benefits thereunder are on a variable basis.

111 10. Except as otherwise provided in this section, all pertinent provisions
112 of the insurance laws of this state shall apply to separate accounts and contracts
113 relating thereto.

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

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

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

12 (3) "Bank" means:

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

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

15 (C) Any other banking institution, whether incorporated or not, doing
16 business under the laws of a state or of the United States, a substantial portion
17 of the business of which consists of receiving deposits or exercising fiduciary
18 powers similar to those permitted to be exercised by national banks under the
19 authority of the Comptroller of the Currency pursuant to Section 1 of Public Law
20 87-722 (12 U.S.C. Section 92a), and which is supervised and examined by a state
21 or federal agency having supervision over banks, and which is not operated for
22 the purpose of evading this act; and

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

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

28 (A) An agent;

29 (B) An issuer;

30 (C) A bank, a trust company organized or chartered under the laws of this
31 state, or a savings institution, if its activities as a broker-dealer are limited to
32 those specified in subsections 3(a)(4)(B)(i) to (vi), (viii) to (x), and (xi) if limited
33 to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange
34 Act of 1934 (15 U.S.C. Sections 78c(a)(4) and (5)) or a bank that satisfies the
35 conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of
36 1934 (15 U.S.C. Section 78c(a)(4));

37 (D) An international banking institution; or

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

39 (5) "Depository institution" means:

40 (A) A bank; or

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

49 (i) An insurance company or other organization primarily engaged in the

50 business of insurance;

51 (ii) A Morris Plan bank; or

52 (iii) An industrial loan company.

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

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

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

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

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

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

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

68 (B) An insurance company;

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

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

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

73 (F) An employee pension, profit-sharing, or benefit plan if the plan has
74 total assets in excess of ten million dollars or its investment decisions are made
75 by a named fiduciary, as defined in the Employee Retirement Income Security Act
76 of 1974, that is a broker-dealer registered under the Securities Exchange Act of
77 1934, an investment adviser registered or exempt from registration under the
78 Investment Advisers Act of 1940, an investment adviser registered under this act,
79 a depository institution, or an insurance company;

80 (G) A plan established and maintained by a state, a political subdivision
81 of a state, or an agency or instrumentality of a state or a political subdivision of
82 a state for the benefit of its employees, if the plan has total assets in excess of ten
83 million dollars or its investment decisions are made by a duly designated public
84 official or by a named fiduciary, as defined in the Employee Retirement Income
85 Security Act of 1974, that is a broker-dealer registered under the Securities

86 Exchange Act of 1934, an investment adviser registered or exempt from
87 registration under the Investment Advisers Act of 1940, an investment adviser
88 registered under this act, a depository institution, or an insurance company;

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

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

99 (J) A small business investment company licensed by the Small Business
100 Administration under Section 301(c) of the Small Business Investment Act of
101 1958 (15 U.S.C. Section 681(c)) with total assets in excess of ten million dollars;

102 (K) A private business development company as defined in Section
103 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22))
104 with total assets in excess of ten million dollars;

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

106 (M) A "qualified institutional buyer" as defined in Rule 144A(a)(1), other
107 than Rule 144A(a)(1)(H), adopted under the Securities Act of 1933 (17 C.F.R.
108 230.144A);

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

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

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

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

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

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

125 (15) "Investment adviser" means a person that, for compensation, engages
126 in the business of advising others, either directly or through publications or
127 writings, as to the value of securities or the advisability of investing in,
128 purchasing, or selling securities or that, for compensation and as a part of a
129 regular business, issues or promulgates analyses or reports concerning
130 securities. The term includes a financial planner or other person that, as an
131 integral component of other financially related services, provides investment
132 advice to others for compensation as part of a business or that holds itself out as
133 providing investment advice to others for compensation. The term does not
134 include:

135 (A) An investment adviser representative;

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

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

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

143 (E) A federal covered investment adviser;

144 (F) A bank, a trust company organized or chartered under the laws of this
145 state, or a savings institution;

146 (G) Any other person that is excluded by the Investment Advisers Act of
147 1940 from the definition of investment adviser; or

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

150 (16) "Investment adviser representative" means an individual employed
151 by or associated with an investment adviser or federal covered investment adviser
152 and who makes any recommendations or otherwise gives investment advice
153 regarding securities, manages accounts or portfolios of clients, determines which
154 recommendation or advice regarding securities should be given, provides
155 investment advice or holds herself or himself out as providing investment advice,
156 receives compensation to solicit, offer, or negotiate for the sale of or for selling
157 investment advice, or supervises employees who perform any of the

158 foregoing. The term does not include an individual who:

159 (A) Performs only clerical or ministerial acts;

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

163 (C) Is employed by or associated with a federal covered investment
164 adviser, unless the individual has a "place of business" in this state as that term
165 is defined by rule adopted under Section 203A of the Investment Advisers Act of
166 1940 (15 U.S.C. Section 80b-3a) and is:

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

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

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

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

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

180 (B) The issuer of an equipment trust certificate or similar security serving
181 the same purpose is the person by which the property is or will be used or to
182 which the property or equipment is or will be leased or conditionally sold or that
183 is otherwise contractually responsible for assuring payment of the certificate.

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

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

191 (19) "Offer to purchase" includes an attempt or offer to obtain, or
192 solicitation of an offer to sell, a security or interest in a security for value. The
193 term does not include a tender offer that is subject to Section 14(d) of the

194 Securities Exchange Act of 1934 (15 U.S.C. 78n(d)).

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

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

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

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

208 (22) "Predecessor act" means sections 409.101, 409.102 and 409.201 to
209 409.421, as repealed by this act.

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

216 (24) "Principal place of business" of a broker-dealer or an investment
217 adviser means the executive office of the broker-dealer or investment adviser from
218 which the officers, partners, or managers of the broker-dealer or investment
219 adviser direct, control, and coordinate the activities of the broker-dealer or
220 investment adviser.

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

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

228 (A) A security given or delivered with, or as a bonus on account of, a
229 purchase of securities or any other thing constituting part of the subject of the

230 purchase and having been offered and sold for value;

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

232 (C) A sale or offer of a warrant or right to purchase or subscribe to
233 another security of the same or another issuer and a sale or offer of a security
234 that gives the holder a present or future right or privilege to convert the security
235 into another security of the same or another issuer, including an offer of the other
236 security.

237 (27) "Securities and Exchange Commission" means the United States
238 Securities and Exchange Commission.

239 (28) "Security" means a note; stock; treasury stock; security future; bond;
240 debenture; evidence of indebtedness; certificate of interest or participation in a
241 profit-sharing agreement; collateral trust certificate; preorganization certificate
242 or subscription; transferable share; investment contract; voting trust certificate;
243 certificate of deposit for a security; fractional undivided interest in oil, gas, or
244 other mineral rights; put, call, straddle, option, or privilege on a security,
245 certificate of deposit, or group or index of securities, including an interest therein
246 or based on the value thereof; put, call, straddle, option, or privilege entered into
247 on a national securities exchange relating to foreign currency; or, in general, an
248 interest or instrument commonly known as a "security"; or a certificate of interest
249 or participation in, temporary or interim certificate for, receipt for, guarantee of,
250 or warrant or right to subscribe to or purchase, any of the foregoing. The term:

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

252 (B) Does not include an insurance or endowment policy or annuity
253 contract under which an insurance company promises to pay **a fixed sum of**
254 money either in a lump sum or periodically for life or other specified period;

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

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

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

266 (29) "Self-regulatory organization" means a national securities exchange
267 registered under the Securities Exchange Act of 1934, a national securities
268 association of broker-dealers registered under the Securities Exchange Act of
269 1934, a clearing agency registered under the Securities Exchange Act of 1934, or
270 the Municipal Securities Rulemaking Board established under the Securities
271 Exchange Act of 1934.

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

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

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

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

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