

FIRST REGULAR SESSION

HOUSE BILL NO. 847

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES GUERNSEY (Sponsor),
LOEHNER AND KLIPPENSTEIN (Co-sponsors).

1909L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 409.1-102 and 409.2-201, RSMo, and to enact in lieu thereof two new sections relating to agricultural cooperative corporations.

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

Section A. Sections 409.1-102 and 409.2-201, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 409.1-102 and 409.2-201, to read as follows: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. **The term does not include an individual who represents an issuer in effecting transactions in a security exempted from registration under subdivision (10) of section 409.2-201, provided such individual prior to the transactions files with the commissioner information on:**

(A) **His or her relationship to the issuer and its affiliates;**

(B) **His or her proposed methods of soliciting the transactions including sales literature to be used; and**

(C) **Commissions and other remuneration he or she is to receive for effecting the transactions.**

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

19 (3) "Bank" means:

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

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

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

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

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

33 (A) An agent;

34 (B) An issuer;

35 (C) A bank, a trust company organized or chartered under the laws of this state, or a
36 savings institution, if its activities as a broker-dealer are limited to those specified in subsections
37 3(a)(4)(B)(i) to (vi), (viii) to (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and
38 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C. Sections 78c(a)(4) and (5)) or a
39 bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange
40 Act of 1934 (15 U.S.C. Section 78c(a)(4));

41 (D) An international banking institution; or

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

43 (5) "Depository institution" means:

44 (A) A bank; or

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

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

53 (ii) A Morris Plan bank; or

54 (iii) An industrial loan company.

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

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

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

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

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

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

66 (A) A depository institution, a trust company organized or chartered under the laws of
67 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 of 1940;

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

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

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

86 (H) A trust, if it has total assets in excess of ten million dollars, its trustee is a depository
87 institution, and its participants are exclusively plans of the types identified in subparagraph (F)

88 or (G), regardless of the size of their assets, except a trust that includes as participants
89 self-directed individual retirement accounts or similar self-directed plans;

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

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

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

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

101 (M) A "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule
102 144A(a)(1)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A);

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

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

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

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

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

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

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

- 124 (A) An investment adviser representative;
- 125 (B) A lawyer, accountant, engineer, or teacher whose performance of investment advice
126 is solely incidental to the practice of the person's profession;
- 127 (C) A broker-dealer or its agents whose performance of investment advice is solely
128 incidental to the conduct of business as a broker-dealer and that does not receive special
129 compensation for the investment advice;
- 130 (D) A publisher of a bona fide newspaper, news magazine, or business or financial
131 publication of general and regular circulation;
- 132 (E) A federal covered investment adviser;
- 133 (F) A bank, a trust company organized or chartered under the laws of this state, or a
134 savings institution;
- 135 (G) Any other person that is excluded by the Investment Advisers Act of 1940 from the
136 definition of investment adviser; or
- 137 (H) Any other person excluded by rule adopted or order issued under this act.
- 138 (16) "Investment adviser representative" means an individual employed by or associated
139 with an investment adviser or federal covered investment adviser and who makes any
140 recommendations or otherwise gives investment advice regarding securities, manages accounts
141 or portfolios of clients, determines which recommendation or advice regarding securities should
142 be given, provides investment advice or holds herself or himself out as providing investment
143 advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling
144 investment advice, or supervises employees who perform any of the foregoing. The term does
145 not include an individual who:
- 146 (A) Performs only clerical or ministerial acts;
- 147 (B) Is an agent whose performance of investment advice is solely incidental to the
148 individual acting as an agent and who does not receive special compensation for investment
149 advisory services;
- 150 (C) Is employed by or associated with a federal covered investment adviser, unless the
151 individual has a "place of business" in this state as that term is defined by rule adopted under
152 Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a) and is:
- 153 (i) An "investment adviser representative" as that term is defined by rule adopted under
154 Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a); or
- 155 (ii) Not a "supervised person" as that term is defined in Section 202(a)(25) of the
156 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); or
- 157 (D) Is excluded by rule adopted or order issued under this act.
- 158 (17) "Issuer" means a person that issues or proposes to issue a security, subject to the
159 following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

215 (27) "Securities and Exchange Commission" means the United States Securities and
216 Exchange Commission.

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

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

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

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

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

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

242 (29) "Self-regulatory organization" means a national securities exchange registered under
243 the Securities Exchange Act of 1934, a national securities association of broker-dealers
244 registered under the Securities Exchange Act of 1934, a clearing agency registered under the
245 Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established
246 under the Securities Exchange Act of 1934.

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

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

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

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

2 409.2-201. The following securities are exempt from the requirements of sections
3 409.3-301 to 409.3-306 and 409.5-504:

4 (1) A security, including a revenue obligation or a separate security as defined in Rule
5 131 (17 C.F.R. 230.131) adopted under the Securities Act of 1933, issued, insured, or guaranteed
6 by the United States; by a state; by a political subdivision of a state; by a public authority,
7 agency, or instrumentality of one or more states; by a political subdivision of one or more states;
8 or by a person controlled or supervised by and acting as an instrumentality of the United States
9 under authority granted by the Congress; or a certificate of deposit for any of the foregoing;

10 (2) A security issued, insured, or guaranteed by a foreign government with which the
11 United States maintains diplomatic relations, or any of its political subdivisions, if the security
12 is recognized as a valid obligation by the issuer, insurer, or guarantor;

13 (3) A security issued by and representing or that will represent an interest in or a direct
14 obligation of, or be guaranteed by:

(A) An international banking institution;

15 (B) A banking institution organized under the laws of the United States; a member bank
16 of the Federal Reserve System; or a depository institution a substantial portion of the business
17 of which consists or will consist of receiving deposits or share accounts that are insured to the
18 maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the
19 National Credit Union Share Insurance Fund, or a successor authorized by federal law or
20 exercising fiduciary powers that are similar to those permitted for national banks under the
21 authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C.
22 Section 92a); or

23 (C) Any other depository institution, or any trust company organized or chartered under
24 the laws of this state, unless by rule or order the commissioner proceeds under section 409.2-204;

25 (4) A security issued by and representing an interest in, or a debt of, or insured or
26 guaranteed by, an insurance company authorized to do business in this state;

27 (5) A security issued or guaranteed by a railroad, other common carrier, public utility,
28 or public utility holding company that is:

29 (A) Regulated in respect to its rates and charges by the United States or a state;

30 (B) Regulated in respect to the issuance or guarantee of the security by the United States,
31 a state, Canada, or a Canadian province or territory; or

32 (C) A public utility holding company registered under the Public Utility Holding
33 Company Act of 1935 or a subsidiary of such a registered holding company within the meaning
34 of that act;

35 (6) A federal covered security specified in Section 18(b)(1) of the Securities Act of 1933
36 (15 U.S.C. Section 77r(b)(1)) or by rule adopted under that provision or a security listed or
37 approved for listing on another securities market specified by rule under this act; a put or a call
38 option contract; a warrant; a subscription right on or with respect to such securities; or an option
39 or similar derivative security on a security or an index of securities or foreign currencies issued
40 by a clearing agency registered under the Securities Exchange Act of 1934 and listed or
41 designated for trading on a national securities exchange, a facility of a national securities
42 exchange, or a facility of a national securities association registered under the Securities
43 Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer,
44 sale, or exercise of an option or other security that was exempt when the option or other security
45 was written or issued; or an option or a derivative security designated by the Securities and
46 Exchange Commission under Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C.
47 Section 78i(b));

48 (7) A security issued by a person organized and operated exclusively for religious,
49 educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a
50 chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures

51 to the benefit of a private stockholder or other person, or a security of a company that is excluded
52 from the definition of an investment company under Section 3(c)(10)(B) of the Investment
53 Company Act of 1940 (15 U.S.C. Section 80a-3(c)(10)(B)); except that with respect to the offer
54 or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a
55 rule may be adopted under this act limiting the availability of this exemption by classifying
56 securities, persons, and transactions, imposing different requirements for different classes,
57 specifying with respect to paragraph (B) the scope of the exemption and the grounds for denial
58 or suspension, and requiring an issuer:

59 (A) To file a notice specifying the material terms of the proposed offer or sale and copies
60 of any proposed sales and advertising literature to be used and provide that the exemption
61 becomes effective if the commissioner does not disallow the exemption within the period
62 established by the rule;

63 (B) To file a request for exemption authorization for which a rule under this act may
64 specify the scope of the exemption, the requirement of an offering statement, the filing of sales
65 and advertising literature, the filing of consent to service of process complying with section
66 409.6-611, and grounds for denial or suspension of the exemption; or

67 (C) To register under section 409.3-304;

68 (8) A member's or owner's interest in, or a retention certificate or like security given in
69 lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit
70 membership cooperative under the cooperative laws of a state, but not a member's or owner's
71 interest, retention certificate, or like security sold to persons other than bona fide members of the
72 cooperative; [and]

73 (9) An equipment trust certificate with respect to equipment leased or conditionally sold
74 to a person, if any security issued by the person would be exempt under this section or would be
75 a federal covered security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C.
76 Section 77r(b)(1)); **and**

77 **(10) Any security issued by an agricultural cooperative corporation organized**
78 **under the laws of this state and operated as an agricultural cooperative association if the**
79 **commissioner is notified in writing thirty days, or such shorter period of time as the**
80 **commissioner may by rule or order specify, before any such security is sold or offered for**
81 **sale other than in transactions otherwise exempted under this section, which notification**
82 **shall contain the form of prospectus or other sales literature intended to be used in**
83 **connection with the offering of such security together with financial statements. The**
84 **agricultural cooperative corporation in this section means any cooperative corporation in**
85 **which farmers act together in processing, preparing for market, handling, or marketing**
86 **the farm products of persons so engaged, and also means any cooperative corporation in**

87 **which farmers act together in purchasing, testing, grading, processing, distributing, or**
88 **furnishing farm supplies or farm business services; provided, however, that such**
89 **cooperative corporations are operated for the mutual benefit of the members thereof as**
90 **such producers or purchasers and conform to one or both of the following requirements:**

91 **(A) No member of the cooperative corporation is allowed more than one vote**
92 **because of the amount of stock or membership capital he or she may own therein; or**

93 **(B) The association does not pay dividends on stock or membership capital in**
94 **excess of eight percent per year, and in any case to the following: cooperative corporation**
95 **does not deal in farm products, farm supplies, and farm business services with or for**
96 **nonmembers in an amount greater in value than the total amount of such business**
97 **transacted by it with or for members. Further, all business transacted by any such**
98 **agricultural cooperative association for or on behalf of the United States or any agency or**
99 **instrumentality thereof shall be disregarded in determining the volume of member and**
100 **nonmember business transacted by such agricultural cooperative corporation.**

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