

FIRST REGULAR SESSION

# HOUSE BILL NO. 846

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE PAGE.

Read 1<sup>st</sup> time March 29, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2140L.011

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### 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.

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Section A. Sections 376.309 and 409.1-102, RSMo, are repealed and two new sections  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

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

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

16 3. To the extent it deems necessary to comply with any applicable federal or state act,

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

27 4. The amounts allocated to any separate account and the accumulations thereon may be  
28 invested and reinvested without regard to any requirements or limitations prescribed by the laws  
29 of this state governing the investments of life insurance companies, and the investments in such  
30 separate account or accounts shall not be taken into account in applying the investment  
31 limitations, including but not limited to quantitative restrictions, otherwise applicable to the  
32 investments of the company, except that to the extent that the company's reserve liability with  
33 regard to benefits guaranteed as to principal amount and duration, and funds guaranteed as to  
34 principal amount or stated rate of interest, is maintained in any separate account, a portion of the  
35 assets of such separate account at least equal to such reserve liability shall be, except as the  
36 director of insurance might otherwise approve, invested in accordance with the laws of this state  
37 governing the general investment account of any company. As used herein, the expression  
38 "general investment account" shall mean all of the funds, assets and investments of the company  
39 which are not allocated in a separate account. The provisions of section 376.170 relating to  
40 deposits for registered policies shall not be applicable to funds and investments allocated to  
41 separate accounts. No investment in the separate account or in the general investment account  
42 of a life insurance company shall be transferred by sale, exchange, substitution or otherwise from  
43 one account to another unless, in case of a transfer into a separate account, the transfer is made  
44 solely to establish the account or to support the operation of the contracts with respect to the  
45 separate account to which the transfer is made or unless the transfer, whether into or from a  
46 separate account, is made by a transfer of cash, or by a transfer of other assets having a readily  
47 determinable market value, provided that such transfer of other assets is approved by the director  
48 of insurance and is for assets of equivalent value. Such transfer shall be deemed approved to the  
49 extent the assets of a separate account so transferred have been paid to or are being held by the  
50 company in connection with a pension, retirement or profit-sharing plan subject to the provisions  
51 of the Internal Revenue Code, as amended, and the Employee Retirement Income Security Act  
52 of 1974, as amended. The director of insurance may withdraw such deemed approval by

53 providing written notice to the company that its financial condition or past practices require such  
54 withdrawal. The director of insurance may approve other transfers among such accounts if the  
55 director concludes that such transfers would be equitable.

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

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

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

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

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

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

85         8. An authorized life insurance company, whether domestic, foreign or alien, which  
86 issues contracts under which amounts are to be allocated to one or more separate accounts as  
87 provided herein, and which is a subsidiary of or affiliated through common management or  
88 ownership with another life insurance company authorized to do business in this state, may be

89 deemed to have met the provisions of subsection 7 of this section if either it or the parent or  
90 affiliated company meets the requirements thereof.

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

97 10. Except as otherwise provided in this section, all pertinent provisions of the insurance  
98 laws of this state shall apply to separate accounts and contracts 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 represents a  
3 broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an  
4 issuer in effecting or attempting to effect purchases or sales of the issuer's securities. But a  
5 partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status  
6 or performing similar functions is an agent only if the individual otherwise comes within the  
7 term. The term does not include an individual excluded by rule adopted or order issued under  
8 this act.

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

11 (3) "Bank" means:

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

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

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

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

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

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

130 (16) "Investment adviser representative" means an individual employed by or associated  
131 with an investment adviser or federal covered investment adviser and who makes any  
132 recommendations or otherwise gives investment advice regarding securities, manages accounts  
133 or portfolios of clients, determines which recommendation or advice regarding securities should  
134 be given, provides investment advice or holds herself or himself out as providing investment

135 advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling  
136 investment advice, or supervises employees who perform any of the foregoing. The term does  
137 not include an individual who:

138 (A) Performs only clerical or ministerial acts;

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

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

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

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

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

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

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

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

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

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

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

170 (20) "Person" means an individual; corporation; business trust; estate; trust; partnership;

171 limited liability company; association; joint venture; government; governmental subdivision,  
172 agency, or instrumentality; public corporation; or any other legal or commercial entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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