

FIRST REGULAR SESSION

HOUSE BILL NO. 971

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BRINGER.

2012L.02I

D. ADAM CRUMBLISS, Chief Clerk

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Section A. Sections 376.309 and 409.1-102, RSMo, are repealed and two new sections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,
17 the company may, with respect to any separate account or any portion thereof, provide for the

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 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 might otherwise approve, invested in accordance with the laws of this state governing
37 the general investment account of any company. As used herein, the expression "general
38 investment account" shall mean all of the funds, assets and investments of the company which
39 are not allocated in a separate account. The provisions of section 376.170 relating to deposits
40 for registered policies shall not be applicable to funds and investments allocated to separate
41 accounts. No investment in the separate account or in the general investment account of a life
42 insurance company shall be transferred by sale, exchange, substitution or otherwise from one
43 account to another unless, in case of a transfer into a separate account, the transfer is made solely
44 to establish the account or to support the operation of the contracts with respect to the separate
45 account to which the transfer is made or unless the transfer, whether into or from a separate
46 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 and is for assets of equivalent value. Such transfer shall be deemed approved to the extent the
49 assets of a separate account so transferred have been paid to or are being held by the company
50 in connection with a pension, retirement or profit-sharing plan subject to the provisions of the
51 Internal Revenue Code, as amended, and the Employee Retirement Income Security Act of 1974,
52 as amended. The director may withdraw such deemed approval by providing written notice to
53 the company that its financial condition or past practices require such withdrawal. The director

54 may approve other transfers among such accounts if the director concludes that such transfers
55 would be equitable.

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

63 6. The director shall have the sole and exclusive **state** authority to regulate the issuance
64 and authority to regulate the sale of contracts under which amounts are to be allocated to one or
65 more separate accounts as provided herein, and to issue such reasonable rules, regulations and
66 licensing requirements as the director shall deem necessary to carry out the purposes and
67 provisions of this section; and the companies that issue such contracts shall not be subject to
68 registration with the commissioner of securities. The director may, subject to the provisions of
69 section 374.185, RSMo, consult and cooperate with the commissioner of securities in
70 investigations arising from the offer and sale of contracts regulated under this section and may
71 request assistance from the commissioner of securities in any proceeding arising from the offer
72 and sale of any such contracts.

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

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

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

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

87 8. An authorized life insurance company, whether domestic, foreign or alien, which
88 issues contracts under which amounts are to be allocated to one or more separate accounts as
89 provided herein, and which is a subsidiary of or affiliated through common management or

90 ownership with another life insurance company authorized to do business in this state, may be
91 deemed to have met the provisions of subsection 7 of this section if either it or the parent or
92 affiliated company meets the requirements thereof.

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

99 10. Except as otherwise provided in this section, all pertinent provisions of the insurance
100 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);

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

109 (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.

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

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

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

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

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

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

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

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

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

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

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

(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.

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