

SECOND REGULAR SESSION

# SENATE BILL NO. 760

95TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS GREEN AND KEAVENY.

Read 1st time January 13, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

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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Section A. Sections 376.309 and 409.1-102, RSMo, are repealed and two  
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  
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  
41 might otherwise approve, invested in accordance with the laws of this state  
42 governing the general investment account of any company. As used herein, the  
43 expression "general investment account" shall mean all of the funds, assets and  
44 investments of the company which are not allocated in a separate account. The  
45 provisions of section 376.170 relating to deposits for registered policies shall not  
46 be applicable to funds and investments allocated to separate accounts. No  
47 investment in the separate account or in the general investment account of a life  
48 insurance company shall be transferred by sale, exchange, substitution or  
49 otherwise from one account to another unless, in case of a transfer into a separate  
50 account, the transfer is made solely to establish the account or to support the  
51 operation of the contracts with respect to the separate account to which the  
52 transfer is made or unless the transfer, whether into or from a separate account,  
53 is made by a transfer of cash, or by a transfer of other assets having a readily  
54 determinable market value, provided that such transfer of other assets is  
55 approved by the director and is for assets of equivalent value. Such transfer shall

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

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

72 6. The director shall have the sole and exclusive authority to regulate the  
73 issuance and **the nonexclusive** authority to regulate the sale of contracts under  
74 which amounts are to be allocated to one or more separate accounts as provided  
75 herein, and to issue such reasonable rules, regulations and licensing  
76 requirements as the director shall deem necessary to carry out the purposes and  
77 provisions of this section; and the companies that issue such contracts shall not  
78 be subject to registration with the commissioner of securities. The director may,  
79 subject to the provisions of section 374.185, RSMo, consult and cooperate with the  
80 commissioner of securities in investigations arising from the offer and sale of  
81 contracts regulated under this section and may request assistance from the  
82 commissioner of securities in any proceeding arising from the offer and sale of  
83 any such contracts.

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

92 director shall consider, among other things:

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

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

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

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

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

113 10. Except as otherwise provided in this section, all pertinent provisions  
114 of the insurance laws of this state shall apply to separate accounts and contracts  
115 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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Bill

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