

FIRST REGULAR SESSION

SENATE BILL NO. 201

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time January 27, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1220S.011

AN ACT

To repeal sections 105.915 and 105.927, RSMo, and to enact in lieu thereof two new sections relating to the state employee deferred compensation program.

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

Section A. Sections 105.915 and 105.927, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 105.915 and 105.927, to
3 read as follows:

105.915. 1. The board of trustees of the Missouri state employees'
2 retirement system shall administer the deferred compensation fund for the
3 employees of the state of Missouri that was previously administered by the
4 deferred compensation commission, as established in section 105.910, prior to
5 August 28, 2007. The board shall be vested with the same powers that it has
6 under chapter 104 to enable it and its officers, employees, and agents to
7 administer the fund under sections 105.900 to 105.927. Two of the commissioners
8 serving on the deferred compensation commission immediately prior to the
9 transfer made to the board under section 105.910 shall serve as ex officio
10 members of the board solely to participate in the duties of administering the
11 deferred compensation fund. One such commissioner serving as an ex officio
12 board member shall be a member of the house of representatives selected by the
13 speaker of the house of representatives, and such commissioner's service on the
14 board shall cease on December 31, 2009. The other commissioner serving as an
15 ex officio board member shall be the chairman of the deferred compensation
16 commission immediately prior to the transfer made to the board under section
17 105.910, and such commissioner's service on the board shall cease December 31,
18 2008.

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

19 2. **Except as provided in this subsection**, participation in such plan
20 shall be by a specific written agreement between state employees and the state,
21 which shall provide for the deferral of such amounts of compensation as requested
22 by the employee subject to any limitations imposed under federal
23 law. Participating employees must authorize that such deferrals be made from
24 their wages for the purpose of participation in such program. **An election to**
25 **defer compensation shall be made before the beginning of the month in**
26 **which the compensation is paid. Contributions shall be made for**
27 **payroll periods occurring on or after the first day of the month after**
28 **the election is made. Each employee eligible to participate in the plan**
29 **hired on or after July 1, 2012 shall be enrolled in the plan**
30 **automatically and his or her employer shall, in accordance with the**
31 **plan document, withhold and contribute to the plan an amount equal**
32 **to one percent of eligible compensation received on and after the date**
33 **of hire, unless the employee elects not to participate in the plan within**
34 **the first thirty days of employment, and in that event, any amounts**
35 **contributed and earnings thereon will be refunded by the plan to the**
36 **employee pursuant to the procedure contained in the plan**
37 **documents. Employees who are employed by a state college or**
38 **university shall not be automatically enrolled but may elect to**
39 **participate in the plan and make contributions in accordance with the**
40 **terms of the plan. Employees who are enrolled automatically may elect**
41 **to change the contribution rate in accordance with the terms of the**
42 **plan. Employees who elect not to participate in the plan may at a later**
43 **date elect to participate in the plan and make contributions in**
44 **accordance with the terms of the plan.** All assets and income of such fund
45 shall be held in trust by the board for the exclusive benefit of participants and
46 their beneficiaries. Assets of such trust, **and the trust established pursuant**
47 **to section 105.927**, may be pooled solely for investment management purposes
48 with assets of the trust established under section 104.320.

49 3. Notwithstanding any other provision of sections 105.900 to 105.927,
50 funds held for the state by the board in accordance with written deferred
51 compensation agreements between the state and participating employees may be
52 invested in such investments as are deemed appropriate by the board. All
53 administrative costs of the program described in this section, including staffing
54 and overhead expenses, may be paid out of assets of the fund, which may reduce

55 the amount due participants in the fund. Such investments shall not be
56 construed to be a prohibited use of the general assets of the state.

57 4. Investments offered under the deferred compensation fund for the
58 employees of the state of Missouri shall be made available at the discretion of the
59 board.

60 5. The board and employees of the Missouri state employees' retirement
61 system shall be immune from suit and shall not be subject to any claim or
62 liability associated with any administrative actions or decisions made by the
63 commission with regard to the deferred compensation program prior to the
64 transfer made to the board under section 105.910.

65 6. The board and employees of the system shall not be liable for the
66 investment decisions made or not made by participating employees as long as the
67 board acts with the same skill, prudence, and diligence in the selection and
68 monitoring of providers of investment products, education, advice, or any default
69 investment option, under the circumstances then prevailing that a prudent person
70 acting in a similar capacity and familiar with those matters would use in the
71 conduct of a similar enterprise with similar aims.

72 7. The system shall be immune from suit and shall not be subject to any
73 claim or liability associated with the administration of the deferred compensation
74 fund by the board and employees of the system.

75 8. **Beginning on or after September 1, 2011, if a participant under**
76 **the deferred compensation plan or the plan established under section**
77 **105.927 is married on the date of his or her death, the participant's**
78 **surviving spouse shall be automatically designated as the primary**
79 **beneficiary under both plans, unless the surviving spouse consented in**
80 **writing, witnessed by a notary public, to allow the participant to**
81 **designate a nonspouse beneficiary. As used in this subsection,**
82 **"surviving spouse" means the spouse as defined pursuant to section**
83 **104.012 to whom the participant is lawfully married on the date of**
84 **death of the participant, provided that a former spouse shall be treated**
85 **as the surviving spouse of the participant to the extent provided under**
86 **a judgment, decree, or order that relates to child support, alimony**
87 **payments, or marital property rights made under Missouri domestic**
88 **relations law that creates or recognizes the existence of such former**
89 **spouse's right to receive all or a portion expressed as a stated dollar**
90 **amount or specific percentage stated in integers of the benefits payable**

91 **from such plan upon the death of the participant. This subsection shall**
92 **not apply to beneficiary designations made prior to September 1, 2011.**

93 **9. The board may adopt and amend plan documents to change**
94 **the terms and conditions of the deferred compensation plan and the**
95 **plan established under section 105.927 that are consistent with federal**
96 **law.**

105.927. [1.] The treasurer of the state of Missouri shall credit an
2 amount not to exceed seventy-five dollars per month, to a plan established
3 pursuant to the provisions of the Internal Revenue Code Section 401(a) for each
4 [qualified] participant in the state's deferred compensation program; provided
5 that funds to be credited to each [qualified] participant's account shall not exceed
6 the amount appropriated by the general assembly for each [qualified]
7 participant. **Such funds may be credited to each participant directly by**
8 **a state agency if that agency's payroll is not issued through the**
9 **treasurer of the state of Missouri.** Funds so credited shall be held,
10 administered and invested as provided in sections 105.900 to 105.925 and the
11 plan document adopted for the administration of such contributions.

12 [2. For purposes of this section, "qualified participant" means an employee
13 of the state of Missouri who is making continuous deferrals of at least twenty-five
14 dollars per month to the deferred compensation program and has been an
15 employee of the state of Missouri for at least twelve consecutive months
16 immediately preceding the commencement of any amount credited pursuant to
17 this section. The amount credited on behalf of a qualified participant pursuant
18 to this section shall not exceed the amount that the qualified participant
19 contributes to his or her deferred compensation plan.]

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