

FIRST REGULAR SESSION

SENATE BILL NO. 317

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOFFER.

Read 1st time February 22, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1590S.011

AN ACT

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

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

Section A. Sections 409.1-102 and 409.2-201, RSMo, are repealed and two
2 new sections enacted in lieu thereof, to be known as sections 409.1-102 and 409.2-
3 201, to read as follows:

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. **The term does not include an individual who**
10 **represents an issuer in effecting transactions in a security exempted**
11 **from registration under subdivision (10) of section 409.2-201, provided**
12 **such individual prior to the transactions files with the commissioner**
13 **information on:**

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

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

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

19 (2) "Commissioner" means the commissioner of securities appointed by the

20 secretary of state.

21 (3) "Bank" means:

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

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

24 (C) Any other banking institution, whether incorporated or not, doing
25 business under the laws of a state or of the United States, a substantial portion
26 of the business of which consists of receiving deposits or exercising fiduciary
27 powers similar to those permitted to be exercised by national banks under the
28 authority of the Comptroller of the Currency pursuant to Section 1 of Public Law
29 87-722 (12 U.S.C. Section 92a), and which is supervised and examined by a state
30 or federal agency having supervision over banks, and which is not operated for
31 the purpose of evading this act; and

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

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

37 (A) An agent;

38 (B) An issuer;

39 (C) A bank, a trust company organized or chartered under the laws of this
40 state, or a savings institution, if its activities as a broker-dealer are limited to
41 those specified in subsections 3(a)(4)(B)(i) to (vi), (viii) to (x), and (xi) if limited
42 to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange
43 Act of 1934 (15 U.S.C. Sections 78c(a)(4) and (5)) or a bank that satisfies the
44 conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of
45 1934 (15 U.S.C. Section 78c(a)(4));

46 (D) An international banking institution; or

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

48 (5) "Depository institution" means:

49 (A) A bank; or

50 (B) A savings institution, trust company, credit union, or similar
51 institution that is organized or chartered under the laws of a state or of the
52 United States, authorized to receive deposits, and supervised and examined by
53 an official or agency of a state or the United States if its deposits or share
54 accounts are insured to the maximum amount authorized by statute by the
55 Federal Deposit Insurance Corporation, the National Credit Union Share

56 Insurance Fund, or a successor authorized by federal law. The term does not
57 include:

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

60 (ii) A Morris Plan bank; or

61 (iii) An industrial loan company.

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

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

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

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

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

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

75 (A) A depository institution, a trust company organized or chartered under
76 the laws of this state, or an international banking institution;

77 (B) An insurance company;

78 (C) A separate account of an insurance company;

79 (D) An investment company as defined in the Investment Company Act
80 of 1940;

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

82 (F) An employee pension, profit-sharing, or benefit plan if the plan has
83 total assets in excess of ten million dollars or its investment decisions are made
84 by a named fiduciary, as defined in the Employee Retirement Income Security Act
85 of 1974, that is a broker-dealer registered under the Securities Exchange Act of
86 1934, an investment adviser registered or exempt from registration under the
87 Investment Advisers Act of 1940, an investment adviser registered under this act,
88 a depository institution, or an insurance company;

89 (G) A plan established and maintained by a state, a political subdivision
90 of a state, or an agency or instrumentality of a state or a political subdivision of
91 a state for the benefit of its employees, if the plan has total assets in excess of ten

92 million dollars or its investment decisions are made by a duly designated public
93 official or by a named fiduciary, as defined in the Employee Retirement Income
94 Security Act of 1974, that is a broker-dealer registered under the Securities
95 Exchange Act of 1934, an investment adviser registered or exempt from
96 registration under the Investment Advisers Act of 1940, an investment adviser
97 registered under this act, a depository institution, or an insurance company;

98 (H) A trust, if it has total assets in excess of ten million dollars, its
99 trustee is a depository institution, and its participants are exclusively plans of
100 the types identified in subparagraph (F) or (G), regardless of the size of their
101 assets, except a trust that includes as participants self-directed individual
102 retirement accounts or similar self-directed plans;

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

108 (J) A small business investment company licensed by the Small Business
109 Administration under Section 301(c) of the Small Business Investment Act of
110 1958 (15 U.S.C. Section 681(c)) with total assets in excess of ten million dollars;

111 (K) A private business development company as defined in Section
112 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22))
113 with total assets in excess of ten million dollars;

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

115 (M) A "qualified institutional buyer" as defined in Rule 144A(a)(1), other
116 than Rule 144A(a)(1)(H), adopted under the Securities Act of 1933 (17 C.F.R.
117 230.144A);

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

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

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

125 (12) "Insurance company" means a company organized as an insurance
126 company whose primary business is writing insurance or reinsuring risks
127 underwritten by insurance companies and which is subject to supervision by the

128 insurance commissioner or a similar official or agency of a state.

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

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

134 (15) "Investment adviser" means a person that, for compensation, engages
135 in the business of advising others, either directly or through publications or
136 writings, as to the value of securities or the advisability of investing in,
137 purchasing, or selling securities or that, for compensation and as a part of a
138 regular business, issues or promulgates analyses or reports concerning
139 securities. The term includes a financial planner or other person that, as an
140 integral component of other financially related services, provides investment
141 advice to others for compensation as part of a business or that holds itself out as
142 providing investment advice to others for compensation. The term does not
143 include:

144 (A) An investment adviser representative;

145 (B) A lawyer, accountant, engineer, or teacher whose performance of
146 investment advice is solely incidental to the practice of the person's profession;

147 (C) A broker-dealer or its agents whose performance of investment advice
148 is solely incidental to the conduct of business as a broker-dealer and that does not
149 receive special compensation for the investment advice;

150 (D) A publisher of a bona fide newspaper, news magazine, or business or
151 financial publication of general and regular circulation;

152 (E) A federal covered investment adviser;

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

155 (G) Any other person that is excluded by the Investment Advisers Act of
156 1940 from the definition of investment adviser; or

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

159 (16) "Investment adviser representative" means an individual employed
160 by or associated with an investment adviser or federal covered investment adviser
161 and who makes any recommendations or otherwise gives investment advice
162 regarding securities, manages accounts or portfolios of clients, determines which
163 recommendation or advice regarding securities should be given, provides

164 investment advice or holds herself or himself out as providing investment advice,
165 receives compensation to solicit, offer, or negotiate for the sale of or for selling
166 investment advice, or supervises employees who perform any of the
167 foregoing. The term does not include an individual who:

168 (A) Performs only clerical or ministerial acts;

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

172 (C) Is employed by or associated with a federal covered investment
173 adviser, unless the individual has a "place of business" in this state as that term
174 is defined by rule adopted under Section 203A of the Investment Advisers Act of
175 1940 (15 U.S.C. Section 80b-3a) and is:

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

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

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

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

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

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

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

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

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

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

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

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

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

217 (22) "Predecessor act" means sections 409.101, 409.102 and 409.201 to
218 409.421, as repealed by this act.

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

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

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

233 (26) "Sale" includes every contract of sale, contract to sell, or disposition
234 of, a security or interest in a security for value, and "offer to sell" includes every
235 attempt or offer to dispose of, or solicitation of an offer to purchase, a security or

236 interest in a security for value. Both terms include:

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

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

241 (C) A sale or offer of a warrant or right to purchase or subscribe to
242 another security of the same or another issuer and a sale or offer of a security
243 that gives the holder a present or future right or privilege to convert the security
244 into another security of the same or another issuer, including an offer of the other
245 security.

246 (27) "Securities and Exchange Commission" means the United States
247 Securities and Exchange Commission.

248 (28) "Security" means a note; stock; treasury stock; security future; bond;
249 debenture; evidence of indebtedness; certificate of interest or participation in a
250 profit-sharing agreement; collateral trust certificate; preorganization certificate
251 or subscription; transferable share; investment contract; voting trust certificate;
252 certificate of deposit for a security; fractional undivided interest in oil, gas, or
253 other mineral rights; put, call, straddle, option, or privilege on a security,
254 certificate of deposit, or group or index of securities, including an interest therein
255 or based on the value thereof; put, call, straddle, option, or privilege entered into
256 on a national securities exchange relating to foreign currency; or, in general, an
257 interest or instrument commonly known as a "security"; or a certificate of interest
258 or participation in, temporary or interim certificate for, receipt for, guarantee of,
259 or warrant or right to subscribe to or purchase, any of the foregoing. The term:

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

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

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

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

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

275 (29) "Self-regulatory organization" means a national securities exchange
276 registered under the Securities Exchange Act of 1934, a national securities
277 association of broker-dealers registered under the Securities Exchange Act of
278 1934, a clearing agency registered under the Securities Exchange Act of 1934, or
279 the Municipal Securities Rulemaking Board established under the Securities
280 Exchange Act of 1934.

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

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

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

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

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

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

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

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

17 (A) An international banking institution;

18 (B) A banking institution organized under the laws of the United States;
19 a member bank of the Federal Reserve System; or a depository institution a
20 substantial portion of the business of which consists or will consist of receiving

21 deposits or share accounts that are insured to the maximum amount authorized
22 by statute by the Federal Deposit Insurance Corporation, the National Credit
23 Union Share Insurance Fund, or a successor authorized by federal law or
24 exercising fiduciary powers that are similar to those permitted for national banks
25 under the authority of the Comptroller of Currency pursuant to Section 1 of
26 Public Law 87-722 (12 U.S.C. Section 92a); or

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

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

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

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

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

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

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

57 (7) A security issued by a person organized and operated exclusively for
58 religious, educational, benevolent, fraternal, charitable, social, athletic, or
59 reformatory purposes, or as a chamber of commerce, and not for pecuniary profit,
60 no part of the net earnings of which inures to the benefit of a private stockholder
61 or other person, or a security of a company that is excluded from the definition
62 of an investment company under Section 3(c)(10)(B) of the Investment Company
63 Act of 1940 (15 U.S.C. Section 80a-3(c)(10)(B)); except that with respect to the
64 offer or sale of a note, bond, debenture, or other evidence of indebtedness issued
65 by such a person, a rule may be adopted under this act limiting the availability
66 of this exemption by classifying securities, persons, and transactions, imposing
67 different requirements for different classes, specifying with respect to paragraph
68 (B) the scope of the exemption and the grounds for denial or suspension, and
69 requiring an issuer:

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

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

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

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

86 (9) An equipment trust certificate with respect to equipment leased or
87 conditionally sold to a person, if any security issued by the person would be
88 exempt under this section or would be a federal covered security under Section
89 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)); and

90 **(10) Any security issued by an agricultural cooperative**
91 **corporation organized under the laws of this state and operated as an**
92 **agricultural cooperative association if the commissioner is notified in**

93 writing thirty days, or such shorter period of time as the commissioner
94 may by rule or order specify, before any such security is sold or offered
95 for sale other than in transactions otherwise exempted under this
96 section, which notification shall contain the form of prospectus or other
97 sales literature intended to be used in connection with the offering of
98 such security together with financial statements. The agricultural
99 cooperative corporation in this section means any cooperative
100 corporation in which farmers act together in processing, preparing for
101 market, handling, or marketing the farm products of person so engaged,
102 and also means any cooperative corporation in which farmers act
103 together in purchasing, testing, grading, processing, distributing, or
104 furnishing farm supplies or farm business services; provided, however,
105 that such cooperative corporations are operated for the mutual benefit
106 of the members thereof as such producers or purchasers and conform
107 to one or both of the following requirements:

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

111 (B) The association does not pay dividends on stock or
112 membership capital in excess of eight percent per year, and in any case
113 to the following: cooperative corporation does not deal in farm
114 products, farm supplies, and farm business services with or for
115 nonmembers in an amount greater in value than the total amount of
116 such business transacted by it with or for members. Further, all
117 business transacted by any such agricultural cooperative association
118 for or on behalf of the United States or any agency or instrumentality
119 thereof shall be disregarded in determining the volume of member and
120 nonmember business transacted by such agricultural cooperative
121 corporation.

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