

SECOND REGULAR SESSION

SENATE BILL NO. 1014

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SIFTON.

Read 1st time February 18, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3166S.04I

AN ACT

To repeal sections 375.012, 375.018, 376.675, 409.114, 409.1-102, and 409.6-602, RSMo, and to enact in lieu thereof seven new sections relating to the secretary of state.

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

Section A. Sections 375.012, 375.018, 376.675, 409.114, 409.1-102, and
2 409.6-602, RSMo, are repealed and seven new sections enacted in lieu thereof, to
3 be known as sections 28.215, 375.012, 375.018, 376.675, 409.114, 409.1-102, and
4 409.6-602, to read as follows:

**28.215. The secretary of state and the secretary of state's
2 authorized agents are authorized to subpoena books, papers,
3 correspondence, memoranda, contracts, agreements, and other records,
4 insofar as necessary to carry out any duties assigned to the secretary
5 of state under section 115.642. The subpoena power granted by this
6 section shall be exercised only at the specific written direction of the
7 secretary of state or the secretary of state's authorized agents. If any
8 person refuses to comply with a subpoena, the secretary of state shall
9 seek to enforce the subpoena before a court of competent jurisdiction
10 to require the production of books, papers, correspondence,
11 memoranda, contracts, agreements, and other records. Such court may
12 issue an order requiring such person to appear before the secretary of
13 state or authorized agents of the secretary of state to produce records
14 relating to the matter under investigation. Any failure to comply with
15 such order of the court may be punished by such court as contempt.**

375.012. 1. Sections 375.012 to 375.146 may be cited as the "Insurance

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

2 Producers Act".

3 2. As used in sections 375.012 to 375.158, the following words mean:

4 (1) "Business entity", a corporation, association, partnership, limited
5 liability company, limited liability partnership or other legal entity;

6 (2) "Director", the director of the department of commerce and insurance;

7 (3) "Home state", the District of Columbia and any state or territory of the
8 United States in which the insurance producer maintains his or her principal
9 place of residence or principal place of business and is licensed to act as an
10 insurance producer;

11 (4) "Insurance", any line of authority, including life, accident and health
12 or sickness, property, casualty, variable life [and variable annuity] products,
13 personal, credit and any other line of authority permitted by state law or
14 regulation;

15 (5) "Insurance company" or "insurer", any person, reciprocal exchange,
16 interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity
17 engaged in the business of insurance, including health services corporations,
18 health maintenance organizations, prepaid limited health care service plans,
19 dental, optometric and other similar health service plans, unless their exclusion
20 from this definition can be clearly ascertained from the context of the particular
21 statutory section under consideration. Insurer shall also include all companies
22 organized, incorporated or doing business pursuant to the provisions of chapters
23 375, 376, 377, 378, 379, 381 and 384. Trusteed pension plans and profit-sharing
24 plans qualified pursuant to the United States Internal Revenue Code as now or
25 hereafter amended shall not be considered to be insurance companies or insurers
26 within the definition of this section;

27 (6) "Insurance producer" or "producer", a person required to be licensed
28 pursuant to the laws of this state to sell, solicit or negotiate insurance;

29 (7) "License", a document issued by the director authorizing a person to
30 act as an insurance producer for the lines of authority specified in the
31 document. The license itself shall not create any authority, actual, apparent or
32 inherent, in the holder to represent or commit an insurance company;

33 (8) "Limited line credit insurance", credit life, credit disability, credit
34 property, credit unemployment, involuntary unemployment, mortgage life,
35 mortgage guaranty, mortgage disability, guaranteed automobile protection (GAP)
36 insurance, and any other form of insurance offered in connection with an
37 extension of credit that is limited to partially or wholly extinguishing that credit

38 obligation that the director determines should be designated a form of limited line
39 credit insurance;

40 (9) "Limited line credit insurance producer", a person who sells, solicits
41 or negotiates one or more forms of limited line credit insurance coverage through
42 a master, corporate, group or individual policy;

43 (10) "Limited lines insurance", insurance involved in credit transactions,
44 insurance contracts issued primarily for covering the risk of travel or any other
45 line of insurance that the director deems necessary to recognize for the purposes
46 of complying with subsection 5 of section 375.017;

47 (11) "Limited lines producer", a person authorized by the director to sell,
48 solicit or negotiate limited lines insurance;

49 (12) "Negotiate", the act of conferring directly with or offering advice
50 directly to a purchaser or prospective purchaser of a particular contract of
51 insurance concerning any of the substantive benefits, terms or conditions of the
52 contract, provided that the person engaged in that act either sells insurance or
53 obtains insurance from insurers for purchasers;

54 (13) "Person", an individual or any business entity;

55 (14) "Personal lines insurance", property and casualty insurance coverage
56 sold to individuals and families for primarily noncommercial purposes;

57 (15) "Sell", to exchange a contract of insurance by any means, for money
58 or its equivalent, on behalf of an insurance company;

59 (16) "Solicit", attempting to sell insurance or asking or urging a person to
60 apply for a particular kind of insurance from a particular company;

61 (17) "Terminate", the cancellation of the relationship between an
62 insurance producer and the insurer or the termination of the authority of the
63 producer to transact the business of insurance;

64 (18) "Uniform business entity application", the current version of the
65 National Association of Insurance Commissioners uniform business entity
66 application for resident and nonresident business entities seeking an insurance
67 producer license;

68 (19) "Uniform application", the current version of the National Association
69 of Insurance Commissioners uniform application for resident and nonresident
70 producer licensing.

71 3. All statutory references to insurance agent or insurance broker shall
72 mean insurance producer, as that term is defined pursuant to subsection 1 of this
73 section.

375.018. 1. Unless denied licensure pursuant to section 375.141, persons
2 who have met the requirements of sections 375.014, 375.015 and 375.016 shall be
3 issued an insurance producer license for a term of two years. An insurance
4 producer may qualify for a license in one or more of the following lines of
5 authority:

6 (1) Life insurance coverage on human lives including benefits of
7 endowment and annuities, and may include benefits in the event of death or
8 dismemberment by accident and benefits for disability income;

9 (2) Accident and health or sickness insurance coverage for sickness, bodily
10 injury or accidental death and may include benefits for disability income;

11 (3) Property insurance coverage for the direct or consequential loss or
12 damage to property of every kind;

13 (4) Casualty insurance coverage against legal liability, including that for
14 death, injury or disability or damage to real or personal property;

15 (5) Variable life [and variable annuity] products insurance coverage
16 provided under variable life insurance contracts [and variable annuities];

17 (6) Personal lines property and casualty insurance coverage sold to
18 individuals and families for primarily noncommercial purposes;

19 (7) Credit-limited line credit insurance;

20 (8) Any other line of insurance permitted under state laws or regulations.

21 2. Any insurance producer who is certified by the Federal Crop Insurance
22 Corporation on September 28, 1995, to write federal crop insurance shall not be
23 required to have a property license for the purpose of writing federal crop
24 insurance.

25 3. The biennial renewal fee for a producer's license is one hundred dollars
26 for each license. A producer's license shall be renewed biennially on the
27 anniversary date of issuance and continue in effect until refused, revoked or
28 suspended by the director in accordance with section 375.141.

29 4. An individual insurance producer who allows his or her license to
30 expire may, within twelve months from the due date of the renewal fee, reinstate
31 the same license without the necessity of passing a written examination. The
32 insurance producer seeking relicensing pursuant to this subsection shall provide
33 proof that the continuing education requirements have been met and shall pay
34 a penalty of twenty-five dollars per month that the license was expired in
35 addition to the requisite renewal fees that would have been paid had the license
36 been renewed in a timely manner. Nothing in this subsection shall require the

37 director to relicense any insurance producer determined to have violated the
38 provisions of section 375.141.

39 5. A business entity insurance producer that allows the license to expire
40 may, within twelve months of the due date of the renewal, reinstate the license
41 by paying the license fee that would have been paid had the license been renewed
42 in a timely manner plus a penalty of twenty-five dollars per month that the
43 license was expired.

44 6. The license shall contain the name, address, identification number of
45 the insurance producer, the date of issuance, the lines of authority, the expiration
46 date and any other information the director deems necessary.

47 7. Insurance producers shall inform the director by any means acceptable
48 to the director of a change of address within thirty days of the change. Failure
49 to timely inform the director of a change in legal name or address may result in
50 a forfeiture not to exceed the sum of ten dollars per month.

51 8. In order to assist the director in the performance of his or her duties,
52 the director may contract with nongovernmental entities, including the National
53 Association of Insurance Commissioners or any affiliates or subsidiaries that the
54 organization oversees or through any other method the director deems
55 appropriate, to perform any ministerial functions, including the collection of fees,
56 related to producer licensing that the director may deem appropriate.

57 9. Any bank or trust company in the sale or issuance of insurance
58 products or services shall be subject to the insurance laws of this state and rules
59 adopted by the department of commerce and insurance.

60 10. A licensed insurance producer who is unable to comply with license
61 renewal procedures due to military service or some other extenuating
62 circumstance, such as a long-term medical disability, may request a waiver of
63 those procedures. The producer may also request a waiver of any other fine or
64 sanction imposed for failure to comply with renewal procedures.

376.675. 1. No policy of life insurance or contract of annuity, **except**
2 **contracts of variable annuity**, shall be delivered or issued for delivery to any
3 person in this state unless the policy or contract shall have been filed with and
4 approved by the director of the department of commerce and insurance.

5 2. The director of the department of commerce and insurance shall have
6 authority to make reasonable rules and regulations concerning the procedure for
7 the filing and submission of policy or contract forms as are necessary, proper or
8 advisable. The director shall approve or disapprove a policy or contract form

9 within forty-five days after the filing and submission thereof. The failure of the
10 director of the department of commerce and insurance to take action approving
11 or disapproving a submitted policy or contract form within the stipulated time
12 shall be deemed an approval thereof until such time as the director of the
13 department of commerce and insurance shall notify the submitting company of
14 his disapproval thereof.

15 3. The director of the department of commerce and insurance shall
16 approve only those forms which are in compliance with the insurance laws of this
17 state and which contain such words, phraseology, conditions and provisions with
18 are specific, certain and unambiguous and reasonably adequate to meet needed
19 requirements for the protection of those insured. If any policy or contract form
20 is disapproved, the reasons therefor shall be based upon the requirements of the
21 laws of this state or of any regulation lawfully promulgated thereunder, and shall
22 be stated in writing and a notification thereof shall be sent to the submitting
23 company. The director shall accord a hearing upon a disapproval, if so
24 requested. The disapproval of any policy or contract form by the director shall
25 be subject to judicial review as provided in chapter 536.

26 4. The director of the department of commerce and insurance may, by
27 order or bulletin, exempt from the approval requirements of this section for so
28 long as he deems proper any insurance policy, document, or form or type thereof,
29 as specified in such order or bulletin, to which, in his opinion, this section may
30 not practicably be applied, or the approval of which is, in his opinion, not
31 desirable or necessary for the protection of the public.

32 **5. (1) No contract of variable annuity shall be delivered or**
33 **issued for delivery to any person in this state unless the contract shall**
34 **have been filed with and approved by the secretary of state.**

35 **(2) The secretary of state may make reasonable rules and**
36 **regulations concerning the procedure for the filing and submission of**
37 **variable annuity contract forms as are necessary, proper or**
38 **advisable. The secretary of state shall approve or disapprove a**
39 **contract form within forty-five days after the filing and submission**
40 **thereof. The failure of the secretary of state to take action approving**
41 **or disapproving a submitted contract form within the stipulated time**
42 **shall be deemed an approval thereof until such time as the secretary of**
43 **state shall notify the submitting company of his or her disapproval**
44 **thereof.**

45 **(3) The secretary of state shall approve only those contract forms**
46 **which contain such words, phraseology, conditions and provisions**
47 **which are specific, certain, and unambiguous and reasonably adequate**
48 **to meet needed requirements for the protection of the contracting**
49 **parties. If any contract form is disapproved, the reasons therefor shall**
50 **be based upon the requirements of the laws of this state or of any**
51 **regulation lawfully promulgated thereunder, and shall be stated in**
52 **writing and a notification thereof shall be sent to the submitting**
53 **company. The secretary of state shall accord a hearing upon a**
54 **disapproval, if so requested. The disapproval of any contract form by**
55 **the secretary of state shall be subject to the provisions of chapter 536.**

56 **(4) The secretary of state may, by order or bulletin, exempt from**
57 **the approval requirements of this section for so long as he deems**
58 **proper any document, form, or type thereof, as specified in such order**
59 **or bulletin, to which, in his or her opinion, this subsection may not**
60 **practicably be applied, or the approval of which is, in his or her**
61 **opinion, not desirable or necessary for the protection of the public.**

 409.114. Sections 409.108 to 409.114 shall be administered by the
2 **secretary of state and** commissioner of securities. The commissioner of
3 securities is hereby empowered to promulgate, alter, amend or revoke rules and
4 regulations pursuant to section 409.6-605 as necessary to carry out the purposes
5 of sections 409.108 to 409.114.

 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.
108 230.144 A);

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; **variable annuity**;
243 voting trust certificate; certificate of deposit for a security; fractional undivided
244 interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege
245 on a security, certificate of deposit, or group or index of securities, including an
246 interest therein or based on the value thereof; put, call, straddle, option, or
247 privilege entered into on a national securities exchange relating to foreign
248 currency; or, in general, an interest or instrument commonly known as a
249 "security"; or a certificate of interest or participation in, temporary or interim
250 certificate for, receipt for, guarantee of, or warrant or right to subscribe to or
251 purchase, any of the foregoing. The term:

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

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

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

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

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

267 (29) "Self-regulatory organization" means a national securities exchange
268 registered under the Securities Exchange Act of 1934, a national securities
269 association of broker-dealers registered under the Securities Exchange Act of
270 1934, a clearing agency registered under the Securities Exchange Act of 1934, or
271 the Municipal Securities Rulemaking Board established under the Securities
272 Exchange Act of 1934.

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

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

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

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

409.6-602. (a) The **secretary of state and** commissioner may:

2 (1) Conduct public or private investigations within or outside of this state
3 which the **secretary of state and** commissioner [considers] **consider** necessary
4 or appropriate to determine whether a person has violated, is violating, or is
5 about to violate this act or a rule adopted or order issued under this act, or to aid
6 in the enforcement of this act or in the adoption of rules and forms under this act;

7 (2) Require or permit a person to testify, file a statement, or produce a
8 record, under oath or otherwise as the **secretary of state and** commissioner
9 [determines] **determine**, as to all the facts and circumstances concerning a
10 matter to be investigated or about which an action or proceeding is to be
11 instituted;

12 (3) Publish a record concerning an action, proceeding, or an investigation
13 under, or a violation of, this act or a rule adopted or order issued under this act
14 if the **secretary of state and** commissioner [determines] **determine** it is
15 necessary or appropriate in the public interest and for the protection of investors;
16 and

17 (4) Appoint special investigators to aid in investigations conducted
18 pursuant to this act. Under such appointment by the **secretary of state and**
19 commissioner, special investigators who meet the qualifications of a law
20 enforcement officer pursuant to chapter 590 shall have the authority as peace
21 officers to serve subpoenas and all other process, and while investigating criminal
22 violations of this act to participate in the making of arrests and the application
23 for search warrants. Such special investigators shall coordinate arrests and

24 seizure of evidence with other state or federal law enforcement officers.

25 (b) For the purpose of an investigation under this act, the **secretary of**
26 **state and** commissioner or its designated officer may administer oaths and
27 affirmations, subpoena witnesses, seek compulsion of attendance, take evidence,
28 require the filing of statements, and require the production of any records that
29 the **secretary of state and** commissioner [considers] **consider** relevant or
30 material to the investigation.

31 (c) If a person does not appear or refuses to testify, file a statement,
32 produce records, or otherwise does not obey a subpoena as required by the
33 **secretary of state and** commissioner under this act, the **secretary of state**
34 **and** commissioner may apply to the circuit court of any county of the state or any
35 city not within a county, or a court of another state to enforce compliance. The
36 court may:

37 (1) Hold the person in contempt;

38 (2) Order the person to appear before the **secretary of state and**
39 commissioner;

40 (3) Order the person to testify about the matter under investigation or in
41 question;

42 (4) Order the production of records;

43 (5) Grant injunctive relief, including restricting or prohibiting the offer
44 or sale of securities or the providing of investment advice;

45 (6) Impose a civil penalty of not less than ten thousand dollars and not
46 greater than fifty thousand dollars for each violation; and

47 (7) Grant any other necessary or appropriate relief.

48 (d) This section does not preclude a person from applying to the circuit
49 court of any county of the state or any city not within a county for relief from a
50 request to appear, testify, file a statement, produce records, or obey a subpoena.

51 (e) An individual is not excused from attending, testifying, filing a
52 statement, producing a record or other evidence, or obeying a subpoena of the
53 commissioner under this act or in an action or proceeding instituted by the
54 commissioner under this act on the grounds that the required testimony,
55 statement, record, or other evidence, directly or indirectly, may tend to
56 incriminate the individual or subject the individual to a criminal fine, penalty,
57 or forfeiture. If the individual refuses to testify, file a statement, or produce a
58 record or other evidence on the basis of the individual's privilege against
59 self-incrimination, the **secretary of state and** commissioner may apply to the

60 circuit court of any county of the state or any city not within a county to compel
61 the testimony, the filing of the statement, the production of the record, or the
62 giving of other evidence. The testimony, record, or other evidence compelled
63 under such an order may not be used, directly or indirectly, against the
64 individual in a criminal case, except in a prosecution for perjury or contempt or
65 otherwise failing to comply with the order.

66 (f) At the request of the securities regulator of another state or a foreign
67 jurisdiction, the **secretary of state and** commissioner may provide assistance
68 if the requesting regulator states that it is conducting an investigation to
69 determine whether a person has violated, is violating, or is about to violate a law
70 or rule of the other state or foreign jurisdiction relating to securities matters that
71 the requesting regulator administers or enforces. The **secretary of state and**
72 commissioner may provide the assistance by using the authority to investigate
73 and the powers conferred by this section as the **secretary of state or**
74 commissioner determines is necessary or appropriate. The assistance may be
75 provided without regard to whether the conduct described in the request would
76 also constitute a violation of this act or other law of this state if occurring in this
77 state. In deciding whether to provide the assistance, the **secretary of state and**
78 commissioner may consider whether the requesting regulator is permitted and
79 has agreed to provide assistance reciprocally within its state or foreign
80 jurisdiction to the **secretary of state and** commissioner on securities matters
81 when requested; whether compliance with the request would violate or prejudice
82 the public policy of this state; and the availability of resources and employees of
83 the **secretary of state and** commissioner to carry out the request for assistance.

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