

SECOND REGULAR SESSION

# HOUSE BILL NO. 1957

91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE LUETKEMEYER.

Read 1<sup>st</sup> time February 14, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4613L.011

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## AN ACT

To repeal sections 409.204 and 409.402, RSMo, and to enact in lieu thereof two new sections relating to the regulation of securities.

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

Section A. Sections 409.204 and 409.402, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 409.204 and 409.402, to read as follows:

409.204. (a) The commissioner may by order deny, suspend, or revoke any registration  
2 or bar or censure any registrant or any officer, director, partner or person occupying a similar  
3 status or performing similar functions for a registrant, from employment with a registered  
4 broker-dealer or investment adviser, or restrict or limit a registrant as to any function or activity  
5 of the business for which registration is required in this state, if [he] **the commissioner** finds (1)  
6 that the order is in the public interest and (2) that the applicant or registrant or, in the case of a  
7 broker-dealer or investment adviser, any partner, officer, or director, any person occupying a  
8 similar status or performing similar functions, or any person directly or indirectly controlling the  
9 broker-dealer or investment adviser:

10 (A) Has filed an application for registration which as of its effective date, or as of any  
11 date after filing in the case of an order denying effectiveness, was incomplete in any material  
12 respect or contained any statement which was, in light of the circumstances under which it was  
13 made, false or misleading with respect to any material fact;

14 (B) Has willfully violated or willfully failed to comply with any provision of sections  
15 409.101 to 409.419 or a predecessor act or any rule or order [under] **pursuant to** sections  
16 409.101 to 409.419 or a predecessor act;

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

17 (C) Has been convicted, within the past ten years, of any misdemeanor involving a  
18 security or any aspect of the securities business, or any felony;

19 (D) Is permanently or temporarily enjoined by any court of competent jurisdiction from  
20 engaging in or continuing any conduct or practice involving any aspect of the securities business;

21 (E) Is the subject of an order of the commissioner denying, suspending, or revoking  
22 registration as a broker-dealer, agent, investment adviser, or investment adviser representative;

23 (F) Is the subject of an adjudication or determination, after notice and opportunity for  
24 hearing, within the past ten years by a securities or commodities agency or administrator of  
25 another state or a court of competent jurisdiction that the person has willfully violated the  
26 Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of  
27 1940, the Investment Company Act of 1940 or the Commodity Exchange Act, or the securities  
28 or commodities law of any other state;

29 (G) Has engaged in dishonest or unethical practices in the securities business;

30 (H) Is insolvent, either in the sense that his **or her** liabilities exceed his **or her** assets or  
31 in the sense that he **or she** cannot meet [his] obligations as they mature; but the commissioner  
32 may not enter an order against a broker-dealer or investment adviser [under] **pursuant to this**  
33 clause without a finding of insolvency as to the broker-dealer or investment adviser;

34 (I) Is not qualified on the basis of such factors as training, experience, and knowledge  
35 of the securities business, except as otherwise provided in subsection (b) of this section;

36 (J) Has failed reasonably to supervise his **or her** agents or employees if he **or she** is a  
37 broker-dealer, or [his] adviser representatives or employees if [he is] an investment adviser; for  
38 the purposes of this clause no person shall be deemed to have failed reasonably to supervise any  
39 person if there have been established procedures, and a system for applying such procedures,  
40 which would reasonably be expected to prevent and detect, insofar as practicable, any such  
41 violations by such other person, and such person has reasonably discharged the duties and  
42 obligations incumbent upon him **or her** by reason of such procedures and system without  
43 reasonable cause to believe that such procedures and system were not being complied with;

44 (K) Has failed to pay the proper filing fee; but the commissioner may enter only a denial  
45 order [under] **pursuant to** this clause, and he **or she** shall vacate any such order when the  
46 deficiency has been corrected; or

47 (L) Has been denied the right to do business in the securities industry, or the person's  
48 respective authority to do business in the securities industry has been revoked by any other state,  
49 federal or foreign governmental agency or self-regulatory organization for cause, or is the subject  
50 of a final order in a criminal action for securities or fraud related violations of the law of any  
51 state, federal, or foreign governmental unit, or within the last ten years the person has been the  
52 subject of a final order in a civil, injunctive or administrative action for securities or fraud related

53 violations of the law of any state, federal, or foreign governmental unit.

54 [An agent registered in Missouri transferring from one Missouri registered broker-dealer  
55 to another Missouri registered broker-dealer shall automatically have a temporary permit to  
56 transact securities business for one hundred twenty days following the date their application  
57 becomes complete and nondeficient, unless the commissioner has issued an order of denial or  
58 summary postponement under this section. The one hundred twenty-day temporary permit  
59 creates no property right for the agent or the broker dealer. During the one hundred twenty-day  
60 temporary permit the agent's application may be denied or summarily postponed under this  
61 section by the commissioner; however, if no denial or postponement has been entered during the  
62 period of the temporary permit, the agent will have a registration in Missouri. The commissioner  
63 shall have one hundred twenty days from the date of an initial or renewal registration in which  
64 to issue a revocation or suspension on the basis of a fact or transaction which was known to him  
65 when the registration became effective.]

66 (b) The following provisions govern the application of section 409.204(a)(2)(I):

67 (1) The commissioner may not enter an order against a broker-dealer on the basis of the  
68 lack of qualification of any person other than (A) the broker-dealer himself if he **or she** is an  
69 individual or (B) an agent of the broker-dealer.

70 (2) The commissioner may not enter an order against an investment adviser on the basis  
71 of the lack of qualification of any person other than (A) the investment adviser himself if he is  
72 an individual or (B) an investment adviser representative.

73 (3) The commissioner may not enter an order solely on the basis of lack of experience  
74 if the applicant or registrant is qualified by training or knowledge or both.

75 (4) The commissioner shall consider that an agent who will work under the supervision  
76 of a registered broker-dealer need not have the same qualifications as a broker-dealer and that  
77 an investment adviser representative who will work under the supervision of a registered  
78 investment adviser need not have the same qualifications as an investment adviser.

79 (5) The commissioner shall consider that an investment adviser is not necessarily  
80 qualified solely on the basis of experience as a broker-dealer or agent. When [he] **the**  
81 **commissioner** finds that an applicant for initial or renewal registration as a broker-dealer is not  
82 qualified as an investment adviser, [he] **the commissioner** may by order condition the applicant's  
83 registration as a broker-dealer upon [his] **the applicant** not transacting business in this state as  
84 an investment adviser.

85 (6) The commissioner may by rule provide for an examination, including an examination  
86 developed or approved by an organization of securities administrators, which examination may  
87 be written or oral or both, to be taken by any class of or all applicants, as well as persons who  
88 represent or will represent an investment adviser in doing any of the acts which make him **or her**

89 an investment adviser; provided, however, that no examination may be required of any person  
90 (1) who was registered as a broker-dealer or as an agent or who was a general partner or officer  
91 of a registered broker-dealer January 1, 1968, and (2) who has been continuously registered  
92 [under] **pursuant to** this law since that time. The commissioner may by rule or order waive the  
93 examination requirement as to a person or class of persons if the commissioner determines that  
94 the examination is not necessary for the protection of advisory clients.

95 (c) The commissioner may by order summarily postpone or suspend registration pending  
96 final determination of any proceeding [under] **pursuant to** this section, including a proceeding  
97 to determine the completeness of an application or where the commissioner is requesting  
98 additional information regarding the application. Upon the entry of the order, the commissioner  
99 shall promptly notify the applicant or registrant, as well as the employer or prospective employer  
100 if the applicant or registrant is an agent or investment adviser representative, that it has been  
101 entered and of the reasons therefor and that within fifteen days after the receipt of a written  
102 request the matter will be set down for hearing. If no hearing is requested and none is ordered  
103 by the commissioner, the order will remain in effect until it is modified or vacated by the  
104 commissioner. If hearing is requested or ordered, the commissioner, after notice of and  
105 opportunity for hearing, may modify or vacate the order or extend it until final determination.

106 (d) If the commissioner finds that any registrant or applicant for registration is no longer  
107 in existence or has ceased to do business as a broker-dealer, agent, investment adviser or  
108 investment adviser representative, or is subject to an adjudication of mental incompetence or to  
109 the control of a committee, conservator, or guardian, or cannot be located after reasonable search,  
110 the commissioner may by order cancel the registration or application.

111 (e) Withdrawal from registration as a broker-dealer, agent, investment adviser or  
112 investment adviser representative becomes effective thirty days after receipt of an application  
113 to withdraw or within such shorter period of time as the commissioner may determine, unless  
114 a revocation or suspension proceeding is pending when the application is filed or a proceeding  
115 to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days  
116 after the application is filed. If a proceeding is pending or instituted, withdrawal becomes  
117 effective at such time and upon such conditions as the commissioner by order determines. If no  
118 proceeding is pending or instituted and withdrawal automatically becomes effective, the  
119 commissioner may nevertheless institute a revocation or suspension proceeding [under]  
120 **pursuant to** section 409.204(a)(2)(B) within one year after withdrawal became effective and  
121 enter a revocation or suspension order as of the last date on which registration was effective.

122 (f) (1) If a proceeding is instituted to revoke or suspend a registration of any agent,  
123 broker-dealer [or], investment adviser [under], **or investment adviser representative pursuant**  
124 **to** sections 409.101 to 409.419, the commissioner shall refer the case to the administrative

125 hearing commission. The administrative hearing commission shall conduct hearings and make  
126 findings of fact and conclusions of law in such cases. The commissioner shall have the burden  
127 of proving a ground for suspension or revocation [under] **pursuant to** sections 409.101 to  
128 409.419.

129 (2) The administrative hearing commission shall conduct hearings and make findings  
130 of fact and conclusions of law in those cases wherein a person files a petition with the  
131 commission, which petition states that the commissioner has denied any registration of any  
132 agent, broker-dealer or investment adviser [under] **pursuant to** sections 409.101 to 409.419.

133 (3) Upon receipt of a written complaint or petition filed pursuant to subsections (1) and  
134 (2) of this subsection (f), the administrative hearing commission shall cause a copy of the  
135 complaint or petition to be served upon the appropriate parties in person or by certified mail,  
136 together with a notice of the place of and date upon which the hearing on the complaint or  
137 petition will be held.

138 (4) Hearing procedures, action by the commissioner in revoking, suspending or denying  
139 any registration of any agent, broker-dealer or investment adviser hereunder, judicial review of  
140 the decisions of the commissioner and of the administrative hearing commission, and all other  
141 procedural matters hereunder shall be governed by the provisions of sections 621.015 to 621.193,  
142 RSMo.

143 **(g) An agent or investment adviser representative registered in this state**  
144 **transferring from one Missouri registered broker-dealer or investment adviser to another**  
145 **Missouri registered broker-dealer or investment adviser shall automatically have a**  
146 **temporary registration to transact securities business for thirty days following the date the**  
147 **application becomes complete and nondeficient, unless the commissioner has withdrawn**  
148 **the temporary registration or issued an order of denial or summary postponement**  
149 **pursuant to this section. The thirty-day temporary registration creates no property right**  
150 **for the agent, broker-dealer, investment adviser, or investment adviser's representative.**  
151 **During the thirty-day temporary registration, the agent's or investment adviser's**  
152 **application may be denied or summarily postponed by the commissioner pursuant to this**  
153 **section; however, if no denial or postponement has been entered during the period of**  
154 **temporary registration, the agent or investment adviser representative shall have a**  
155 **registration in this state.**

156 **(h) The commissioner shall have one hundred twenty days from the date of an**  
157 **initial or renewal registration in which to institute a proceeding to revoke or suspend a**  
158 **registration of any agent, broker-dealer, investment adviser, or investment adviser**  
159 **representative because of a fact or transaction that was known by the commissioner when**  
160 **the registration became effective.**

409.402. (a) The following securities are exempted from sections 409.301 and 409.403:

2 (1) Any security (including a revenue obligation) issued or guaranteed by the United  
3 States, any state, any political subdivision of a state, or any agency or corporate or other  
4 instrumentality of one or more of the foregoing; or any certificate of deposit for any of the  
5 foregoing;

6 (2) Any security issued or guaranteed by Canada, any Canadian province, any political  
7 subdivision of any such province, any agency or corporate or other instrumentality of one or  
8 more of the foregoing, or any other foreign government with which the United States currently  
9 maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or  
10 guarantor;

11 (3) Any security issued by and representing an interest in or a debt of, or guaranteed by,  
12 any bank organized [under] **pursuant to** the laws of the United States, or any bank, savings  
13 institution, or trust company organized and supervised [under] **pursuant to** the laws of any state;

14 (4) Any security issued by and representing an interest in or a debt of, or guaranteed by,  
15 any federal savings and loan association, or any building and loan or similar association  
16 organized [under] **pursuant to** the laws of any state and authorized to do business in this state;

17 (5) Any security issued by an agricultural cooperative corporation organized [under]  
18 **pursuant to** the laws of this state and operated as an agricultural "cooperative association" if the  
19 commissioner is notified in writing thirty days, or such shorter period of time as the  
20 commissioner may by rule or order specify, before any such security is sold or offered for sale  
21 other than in transactions exempted [under] **pursuant to** subsection (b) [hereof] **of this section**,  
22 which notification shall contain the form of prospectus or other sales literature intended to be  
23 used in connection with the offering of such security together with financial statements;

24 (6) Any security issued or guaranteed by any federal credit union or any credit union,  
25 industrial loan association, or similar association organized and supervised [under] **pursuant to**  
26 the laws of this state;

27 (7) Any security issued or guaranteed by any railroad, other common carrier, public  
28 utility, or holding company which is (A) subject to the jurisdiction of the Interstate Commerce  
29 Commission; (B) a registered holding company [under] **pursuant to** the Public Utility Holding  
30 Company Act of 1935 or a subsidiary of such a company within the meaning of that act; (C)  
31 regulated in respect of its rates and charges by a governmental authority of the United States or  
32 any state; or (D) regulated in respect of the issuance or guarantee of the security by a  
33 governmental authority of the United States, any state, Canada, or any Canadian province;

34 (8) Any security listed or approved for listing upon notice of issuance on the New York  
35 Stock Exchange, the American Stock Exchange, or the Midwest Stock Exchange or any other  
36 duly organized stock exchange approved by the commissioner by rule or order; any other security

37 of the same issuer which is of senior or substantially equal rank, any security called for by  
38 subscription rights or warrants so listed or approved; or any warrant or right to purchase or  
39 subscribe to any of the foregoing;

40 (9) Any security issued by any person organized and operated not for private profit but  
41 exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or  
42 reformatory purposes, or as a chamber of commerce or trade or professional association if the  
43 commissioner is notified in writing thirty days, or such shorter period of time as the  
44 commissioner may by rule or order specify, before any such security is sold or offered for sale  
45 other than in transactions exempted [under] **pursuant to** subsection (b) [hereof] **of this section;**

46 (10) Any commercial paper which arises out of a current transaction or the proceeds of  
47 which have been or are to be used for current transactions, and which evidences an obligation  
48 to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal  
49 of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

50 (11) Any security offered, sold, issued, distributed or transferred in connection with an  
51 employees' stock ownership, savings, pension, profit-sharing, stock bonus, or similar benefit plan  
52 or trust (including a self-employed persons retirement plan), provided, in the case of plans or  
53 trusts which are not qualified [under] **pursuant to** section 401 of the Internal Revenue Code of  
54 1954 and which provide for contributions by employees, if the commissioner is notified in  
55 writing thirty days before the inception of the plan or, with respect to plans which are in effect  
56 on January 1, 1968, within sixty days thereafter (or within thirty days before they are reopened  
57 if they are closed on January 1, 1968). The commissioner may for good cause shown accept  
58 written notification at any time before the issuance of any such security in this state or any  
59 security offered, sold, issued, distributed or transferred in connection with an employees' stock  
60 purchase or stock option plan. In the case of issuers who do not have a class of securities  
61 registered [under] **pursuant to** section 12 of the Securities Exchange Act of 1934 the  
62 commissioner may for good cause shown accept notification in writing before the first issuance  
63 of interests or participations under a stock purchase plan or before the first exercise of options  
64 under a stock option plan.

65 (b) The following transactions are exempted from sections 409.301 and 409.403 except  
66 that no transaction in a certificate of interest or participation, including a limited partnership  
67 interest, in an oil, gas or mining title or lease, or in payments out of production or under such a  
68 title or lease shall be so exempted:

69 (1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;

70 (2) Any nonissuer distribution of an outstanding security if (A) a recognized securities  
71 manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as  
72 of a date within eighteen months, and a profit and loss statement for either the fiscal year

73 preceding that date or the most recent year of operations, or (B) the security has a fixed maturity  
74 or a fixed interest or dividend provision and there has been no default during the current fiscal  
75 year or within the three preceding fiscal years, or during the existence of the issuer and any  
76 predecessors if less than three years, in the payment of principal, interest, or dividends on the  
77 security;

78 (3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant  
79 to an unsolicited order to buy if the broker-dealer acts as agent for the purchaser and receives no  
80 commission or other compensation from any source other than the purchase; but the  
81 commissioner may by rule require that the purchaser acknowledge upon a specified form that his  
82 **or her** order to buy was unsolicited, and that a signed copy of each such form be preserved by  
83 the broker-dealer for a specified period;

84 (4) Any transaction between the issuer or other person on whose behalf the offering is  
85 made and an underwriter, or among underwriters;

86 (5) Any transaction in a bond or other evidence of indebtedness secured by a real or  
87 chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the  
88 entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of  
89 indebtedness secured thereby, is offered and sold as a unit;

90 (6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in  
91 bankruptcy, guardian, or conservator;

92 (7) Any transaction executed by a bona fide pledgee without any purpose of evading this  
93 act;

94 (8) Any offer or sale to a bank, savings institution, trust company, insurance company,  
95 investment company as defined in the Investment Company Act of 1940, pension or  
96 profitsharing trust, or other financial institution or institutional buyer, or to a broker-dealer,  
97 whether the purchaser is acting for itself or in some fiduciary capacity;

98 (9) Any transaction by an issuer in a security of its own issue if immediately thereafter  
99 the total number of persons who are known to the issuer to have any direct or indirect record or  
100 beneficial interest in any of its securities (but not including persons with whom transactions have  
101 been exempted by paragraph (8) of this subsection) does not exceed twenty-five and if no  
102 commission or other remuneration is paid or given to anyone for procuring or soliciting the  
103 transaction;

104 (10) Any transaction by an issuer in a security of its own issue if (A) during the twelve  
105 months' period ending immediately after such transaction the issuer will have made no more than  
106 fifteen transactions exempted by this paragraph (other than transactions also exempted by  
107 paragraphs (8) and (9), and (B) the issuer reasonably believes that the buyer is purchasing for  
108 investment and the buyer so represents in writing and (C) no commission or other remuneration



109 is paid or given to anyone for procuring or soliciting the sale; but the commissioner may by rule  
110 or order, as to any security or transaction or any type of security or transaction, withdraw or  
111 further condition this exemption, or increase or decrease the number of prior transactions  
112 permitted by clause (A) or waive the conditions in clauses (B) or (C) with or without the  
113 substitution of a limitation on remuneration;

114 (11) Any transaction pursuant to an offer to existing security holders of the issuer,  
115 including persons who at the time of the transaction are holders of convertible securities,  
116 nontransferable warrants, or transferable warrants exercisable within not more than ninety days  
117 of their issuance, if (A) no commission or other remuneration (other than a standby commission)  
118 is paid or given directly or indirectly for soliciting any security holder in this state, or (B) the  
119 issuer first files a notice specifying the terms of the offer and the commissioner does not by order  
120 disallow the exemption within the next five full business days;

121 (12) Any offer (but not a sale) of a security for which registration statements have been  
122 filed [under] **pursuant to** both this act and the Securities Act of 1933 if no stop order or refusal  
123 order is in effect and no public proceeding or examination looking toward such an order is  
124 pending [under] **pursuant to** either act;

125 (13) Any nonissuer transaction by a person who does not control, or who is not  
126 controlled by or under common control with, the issuer in a security which has been (and  
127 securities which are of the same class as securities of the same issuer which have been) either  
128 registered for sale [under] **pursuant to** the laws of this state regulating the sale of securities or  
129 lawfully sold in this state as a security exempt from such registration;

130 (14) Any nonissuer transaction in a security which at the time of such transaction would  
131 be eligible for registration by notification;

132 (15) Any nonissuer transaction by a person who does not control, and is not controlled  
133 by or under common control with, the issuer if (i) the transaction is at a price reasonably related  
134 to the current market price, and (ii) the security is registered with the Securities and Exchange  
135 Commission [under] **pursuant to** section 12 of the Securities Exchange Act of 1934 and the  
136 issuer files reports with the Securities and Exchange Commission pursuant to section 13 of that  
137 act;

138 (16) Any patronage distributions of an agricultural cooperative corporation received by  
139 a patron or member in the form of capital stock, revolving fund certificate, retain certificate,  
140 certificate of indebtedness, letter of advice, or other written notice.

141 (c) The commissioner may by rule or order exempt from sections 409.301 and 409.403  
142 any other transaction not exempted in subsection (b), and may by order withdraw or condition  
143 the exemption as [he] **the commissioner** deems necessary in the public interest.

144 (d) The commissioner may by order deny or revoke any exemption specified in clause

145 (9) or (11) of subsection (a) or in subsection (b) with respect to a specific security or transaction.  
146 No such order may be entered without appropriate prior notice to all interested parties,  
147 opportunity for hearing, and written findings of fact and conclusions of law, except that the  
148 commissioner may by order summarily deny or revoke any of the specified exemptions pending  
149 final determination of any proceeding [under] **pursuant to** this subsection. Upon the entry of  
150 a summary order, the commissioner shall promptly notify all interested parties that it has been  
151 entered and of the reasons therefor and that within fifteen days of the receipt of a written request  
152 the matter will be set down for hearing. If no hearing is requested and none is ordered by the  
153 commissioner the order will remain in effect until it is modified or vacated by the commissioner.  
154 If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing  
155 to all interested persons, may modify or vacate the order or extend it until final determination.  
156 No order [under] **pursuant to** this subsection may operate retroactively. No person may be  
157 considered to have violated section 409.301 or 409.403 by reason of any offer or sale effected  
158 after the entry of an order [under] **pursuant to** this subsection if he **or she** sustains the burden  
159 of proof that he **or she** did not know, and in the exercise of reasonable care could not have  
160 known, of the order.

161 (e) The commissioner may by order after a hearing deny or revoke any exemption for  
162 a security issued by an agricultural cooperative corporation not qualifying [under] **pursuant to**  
163 clause (5) of subsection (a).

164 (f) In any proceeding [under] **pursuant to** this act, the burden of proving an exemption,  
165 **qualification as a federal covered security**, or an exception from a definition is upon the  
166 person claiming it.

167 (g) A person required to file for an exemption [under] **pursuant to** this section shall pay  
168 a fee not to exceed one hundred dollars.