

SECOND REGULAR SESSION

# HOUSE BILL NO. 1798

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES BRUNS (Sponsor), NANCE,  
KELLY AND VIEBROCK (Co-sponsors).

4567L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

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

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

Section A. Sections 105.915 and 105.927, RSMo, are repealed and two new sections  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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16           **2. Except as provided in this subsection,** participation in such plan shall be by a  
17 specific written agreement between state employees and the state, which shall provide for the  
18 deferral of such amounts of compensation as requested by the employee subject to any  
19 limitations imposed under federal law. Participating employees must authorize that such  
20 deferrals be made from their wages for the purpose of participation in such program. **An**  
21 **election to defer compensation shall be made before the beginning of the month in which**  
22 **the compensation is paid, and contributions shall be made effective for payroll periods**  
23 **beginning on or after the first day of the month after the election is made. Beginning**  
24 **September 1, 2010, each employee eligible to participate in the plan hired on or after**  
25 **September 1, 2010, shall be enrolled in the plan automatically to have his or her employer**  
26 **withhold and contribute to the plan an amount equal to the maximum appropriated state**  
27 **contribution under section 105.927, but in no event shall such contribution be less than**  
28 **twenty-five dollars per month, and contributions shall be made effective for payroll periods**  
29 **beginning on or after the first day of the month following the date of hire, unless the**  
30 **participating employee elects before such automatic enrollment date to change the**  
31 **contribution or opt out of the plan. The contribution rate for employees who are**  
32 **automatically enrolled and who do not subsequently elect to change that contribution rate**  
33 **shall adjust automatically based on any increase to the maximum appropriated state**  
34 **contribution under section 105.927 that may occur after the initial automatic enrollment**  
35 **unless the employee changes the contribution or opts out of the plan. Employees who are**  
36 **employed by a state college or university shall not be automatically enrolled but may elect**  
37 **to participate in the plan provided such election to defer compensation is made before the**  
38 **beginning of the month in which the compensation is paid, and contributions shall be made**  
39 **effective for payroll periods beginning on or after the first day of the month after the**  
40 **election is made. Employees who are enrolled automatically may elect at any time to**  
41 **contribute more or less than the automatic enrollment amount of contribution, as**  
42 **permitted by the plan. Employees who opt out of the automatic enrollment may at a later**  
43 **date elect to participate in the plan and make contributions effective for payroll periods**  
44 **beginning on or after the first day of the month after the election is made. All assets and**  
45 **income of such fund shall be held in trust by the board for the exclusive benefit of participants**  
46 **and their beneficiaries. Assets of such trust may be pooled solely for investment management**  
47 **purposes with assets of the trust established under section 104.320, RSMo.**

48           **3. Notwithstanding any other provision of sections 105.900 to 105.927, funds held for**  
49 **the state by the board in accordance with written deferred compensation agreements between the**  
50 **state and participating employees may be invested in such investments as are deemed appropriate**  
51 **by the board. All administrative costs of the program described in this section, including staffing**

52 and overhead expenses, may be paid out of assets of the fund, which may reduce the amount due  
53 participants in the fund. Such investments shall not be construed to be a prohibited use of the  
54 general assets of the state.

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

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

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

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

70 **8. Beginning on or after September 1, 2010, if a participant under the deferred**  
71 **compensation plan or the plan established under 105.927 is married, the participant's**  
72 **surviving spouse shall be automatically designated as the primary beneficiary under both**  
73 **plans, unless the surviving spouse consented in writing to allow the participant to designate**  
74 **a nonspouse beneficiary. As used in this subsection, "surviving spouse" means the**  
75 **individual of the opposite sex to whom the participant is lawfully married on the date of**  
76 **death of the participant, provided that a former spouse shall be treated as the surviving**  
77 **spouse of the participant to the extent provided under a judgment, decree, or order that**  
78 **relates to child support, alimony payments, or marital property rights made under**  
79 **Missouri domestic relations law that creates or recognizes the existence of such former**  
80 **spouse's right to receive all or a portion expressed as a stated dollar amount or specific**  
81 **percentage stated in integers of the benefits payable from such plan upon the death of the**  
82 **participant. This subsection shall not apply to beneficiary designations made prior to**  
83 **September 1, 2010.**

84 9. The board may adopt and amend plan documents to change the terms and  
85 conditions of the deferred compensation plan and the plan established under section  
86 105.927 that are consistent with federal law.

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

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

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