

## HCS SB 516 -- JUDICIAL PERSONNEL AND PROCEDURES

SPONSOR: Goodman (Pratt)

COMMITTEE ACTION: Voted "do pass" by the Committee on Judiciary by a vote of 11 to 0.

This substitute changes the laws regarding corporations, judicial personnel and procedures, and false and deceptive business practices.

### CERTIFIED MAIL

"Certified mail," as it relates to the laws of this state, is defined to include any package or letter carried by a delivery service that allows a sender or recipient to electronically track its location.

### CORPORATIONS

The substitute allows a corporation to change the month of its corporate registration report by designating the desired month and paying an additional \$20 fee. Beginning January 1, 2008, a corporation will also be allowed to file a corporate registration report on a biennial basis. A corporation incorporated in an even-numbered year may only file a report in an even-numbered year, and a corporation incorporated in an odd-numbered year may only file a report in odd-numbered years. The fee for filing the biennial report will be \$80 if filed in a written format and \$30 if in an electronic format. Any corporation filing a biennial report must maintain the registration for two years, but may choose to file an annual registration in subsequent years. The Secretary of State is authorized to charge a \$45 fee for a corporate filing of the original articles of organization in an electronic format.

### REAL PROPERTY TRANSFERS TO COUNTIES

Water and sewer line easements are prohibited from being considered as transfers of title of real property to counties; therefore, these easements will not need to be proved or acknowledged to be valid if authorized for recording by the county commission.

### CHILD CUSTODY

To determine which state has proper jurisdiction to make an initial determination of child custody, the substitute establishes the following order of priority:

(1) The state which is currently the home state of the child or was the child's home state within six months immediately before the commencement of a child custody proceeding if the child is absent from the state, but a parent or person acting as a parent continues to live in the state; or

(2) The state in which the child and at least one parent have a significant connection and substantial evidence concerning the custody determination is available in the state; or

(3) The state having an appropriate connection with the child. A state having jurisdiction under the first two priorities may decline to exercise its jurisdiction and transfer it to another state if it is more convenient for the parties or if one of the parties has engaged in misconduct necessitating a change.

"Home state" is defined as the state in which a child lived with a parent or person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child younger than six months of age, the term means the state in which the child lived from birth with a parent or person acting as a parent. A period of temporary absence of any of these persons is considered as part of the period.

Once a state court has made a custody determination, that state keeps jurisdiction over all matters concerning the child unless:

(1) A court of the state with jurisdiction determines that the child or the child and a parent do not have a significant connection with the state and evidence concerning the child's custody determination is not available in the state; or

(2) A court of the state with jurisdiction, or any other state, determines that the child and both parents or acting parents do not reside in the state any longer.

Once a custody determination has been made, a court of another state does not have authority to modify the determination unless the state with jurisdiction determines that it does not have jurisdiction or any state court determines that the child, parents, or any acting parents do not reside in the state which currently has jurisdiction.

A state which does not otherwise have jurisdiction may enter a temporary emergency order if the child is in danger and needs immediate protection. After issuing the order, the state court should determine if there is an existing custody order from another state in effect. If there is an existing order, the emergency court must allow a reasonable time period for the

parties to return to the state having jurisdiction and argue the issues to the court with jurisdiction. If there is no previous child custody order in existence, the emergency court's order will remain in effect until a determination is made in a court having home state jurisdiction over the child. If no determination is made and the emergency court's state becomes the home state of the child, the emergency order becomes a final determination of custody.

#### CORPORATE NAME RESERVATIONS

Currently, the Secretary of State reserves a corporate name for an applicant's exclusive use for a 60-day period. The substitute extends that holding period to a maximum of 180 days from the date of the first application and prohibits the name from being placed back in a reserve status.

#### STATE LEGAL EXPENSE FUND

The substitute allows physicians and dentists who provide medical care without compensation and who were referred by his or her city or county health department, city health department operating under a city charter, combined city-county health department, a nonprofit community health center, or any social welfare board established under Section 205.770, RSMo, to be included in the list for whom the State Legal Expense Fund is available. The fund is not available to a physician who performs an abortion procedure.

Any claim or judgment arising from these provisions is limited to a maximum of \$1 million based upon the same act or acts in a single cause of action and \$1 million for any one claimant. Liability or malpractice insurance will not be considered available to pay any portion of the judgment when the fund is liable.

#### TRAFFIC VIOLATION REVENUES

Currently, if a city, town, or village receives more than 45% of its total annual revenue from fines for traffic violations, all revenue from these violations in excess of 45% must be sent to the Department of Revenue. The substitute reduces the amount to 35% of the annual general operating revenue, but includes court costs for traffic violations in the amount. Failure to send the excess revenue to the department in a timely manner as determined by the department director will result in the city, town, or village being subject to an annual audit by the State Auditor.

#### FALSE OR DECEPTIVE BUSINESS PRACTICES

The substitute prohibits any person from advertising or conducting a live musical performance in Missouri while using a false, deceptive, or misleading affiliation between the performing group and the original recording group. The substitute does not apply when:

- (1) One member of the performing group was a member of the original recording group and has a legal right to advertise the affiliation;
- (2) The performance is identified as a tribute or salute to the original recording group;
- (3) The advertising does not relate to a performance to be held in Missouri;
- (4) The performing group has express authorization from the original recording group to use the affiliation; or
- (5) The performing group is an authorized registrant or owner of a trademark for the original recording group name.

The Attorney General or prosecuting attorney is authorized to bring an action for a temporary or permanent injunction against any person in violation. Any person found in violation will be liable to the state for a civil penalty of \$5,000 to \$15,000 per violation and may be required to pay restitution to the original recording artist for any money acquired due to the false, deceptive, or misleading affiliation between the performing group and the original recording group.

The substitute allows the Attorney General to bring a cause of action for unlawful merchandising practices when a financial institution's name is deceptively used.

Donation receptacles operating for profit are required to display on the receptacle that the donations are not for charitable organizations and will be resold for profit. A violation of this provision will be considered an unfair business practice under Section 407.202. If any of the proceeds from resale are donated to a not-for-profit organization, the donation receptacle must display the percentage of proceeds donated and the name of the not-for-profit organization.

#### REGULATION OF ATTORNEY ADVERTISING

The substitute regulates the practice of television advertising by attorneys and establishes the conditions for false and misleading advertising practices.

#### COMPENSATION OF COURT-APPOINTED MARSHALS

Marshals appointed for the courts of appeal are required to be compensated at the same amount as the highest salary for marshals of circuit courts.

#### ANNUAL JUDICIAL REPORTS

The required annual report of the Judicial Finance Commission is allowed to be combined with any other annual report prepared by the Missouri Supreme Court or the Office of State Courts Administrator if it is distributed to the required parties.

#### CIRCUIT CLERK OF GREENE COUNTY

Currently, the circuit clerk for Greene County is elected. The substitute requires that the clerk be appointed by a majority of the circuit and associate circuit judges of that circuit and may be removed for cause by a majority of judges. The circuit clerk in office on the effective date of the substitute will serve the remainder of his or her term as if appointed.

#### CIRCUIT COURT JUDGES

The substitute authorizes the addition of one circuit court judge in the 31st Judicial Circuit in Greene County beginning January 1, 2008, and the addition of one circuit court judge in the 16th Judicial Circuit in Jackson County beginning January 1, 2008. The circuit judge for the 16th Judicial Circuit will sit in the City of Independence.

#### DRUG COURT COMMISSIONER

The appointment of a drug court commissioner in the 16th Judicial Circuit in Jackson County is authorized beginning July 1, 2008. Compensation for the commissioner will be payable by the state without necessity for reimbursement.

#### FAMILY COURT COMMISSIONER

The substitute allows the 31st Judicial Circuit composed of Greene County to appoint one family court commissioner whose compensation will be paid by the state.

#### ADMINISTRATIVE ADJUDICATION OF CODE VIOLATIONS IN KANSAS CITY

The City of Kansas City is authorized to establish an administrative system for adjudicating parking and other civil, nonmoving municipal code violations. Currently, only the City of St. Louis is allowed to establish a system.

## UNAUTHORIZED PRACTICE OF LAW

The substitute increases the penalty for the unauthorized practice of law from a misdemeanor to a class A misdemeanor.

## NOTARIES PUBLIC

The substitute allows an attorney to serve as a notary public until his or her commission is revoked. Currently, a notary public serves a four-year term and is required to renew his or her status at the end of that term. An attorney will be required to submit a one-time notary fee of \$75 and a \$10 fee to the Secretary of State's Technology Trust Fund. Notary status for an attorney will be revoked if the attorney's law license is suspended, revoked, or terminated. The Secretary of State is authorized to establish rules for the implementation of the substitute.

## JURY SERVICE

Currently, upon timely application to the court, health care providers are excused from jury service. The substitute removes this provision and allows the court at its discretion to excuse a health care provider if he or she makes timely application to the court and provides a written statement certifying that he or she is providing critical health care services to patients. The substitute also disqualifies licensed attorneys from jury service.

## SERVICE OF SUMMONS

Currently, a court summons requires a defendant to appear before an associate circuit judge no less than 10 days nor more than 30 days from the date the summons was delivered. The substitute changes the 30-day requirement to 60 days.

## LANDLORD-TENANTS

Landlords are exempt from liability for any damage to personal property resulting from the enforcement of a judgment granting possession of the property. Landlords are given the right to dispose of the personal property in any manner they consider reasonable. The landlord must make a reasonable effort to notify a third party of any property left by the tenant that bears a conspicuous permanent label or marking identifying it as the property of the third party and give the third party five business days after the date of execution for recovery of the property.

Currently, any landlord organized as a corporation that owns and

manages rental property cannot bring an action to remove a tenant without being represented by an attorney. The substitute authorizes corporations or unincorporated associations to be represented in court by the president or vice-president of the entity for any rent and possession action.

#### SEXUAL OFFENDERS

The substitute makes it a class A misdemeanor for a first offense and a class D felony for a second or subsequent offense for certain sexual offenders to serve as an athletic coach, manager, or trainer for any sports team with children younger than 17 years of age.

#### BUSINESS ORGANIZATIONS

An additional method for the dissolution of a limited liability company (LLC) is authorized in the event that there are no members and the LLC is not already dissolved and not required to be wound up. The substitute also changes the definition of "issuing public corporation" in the general provisions for business corporations in Section 351.015 and defines "domestic corporation" as a corporation incorporated under Missouri laws in the merger and consolidation provisions in Section 351.459.

#### TRADEMARK REGISTRATIONS

The registration of a trademark must be filed with a signed statement that the registrant has a bona fide intention to use the mark in commerce or in connection with the goods or services listed in the application. The substitute allows a single application for the registration of the same trademark for goods or services in multiple classes.

#### ORDERS OF PROTECTION

The circuit clerk is required to notify by phone an individual who is petitioning for an ex parte order of protection when the order has been served or if no more attempts to serve are planned if the petitioner has opted to register a phone number with the victim notification system established in Section 650.310. All attempts to serve orders of protection must be tracked by the agency responsible for serving the order.

#### LEGAL SERVICES FOR NEEDY PERSONS

The substitute allows public officials or employees, who are otherwise prohibited from practicing law during their tenure in office, to provide legal services to needy persons if the services are provided without compensation.

## SCRAP METAL SALES

Purchasers or collectors of scrap metal are required to keep a written or electronic register for each purchase or trade of scrap metal exceeding \$50 or 50 pounds. A separate record must be kept for each transaction involving copper, aluminum wire, or cable. Every record must contain a copy of the driver's license or other state or federally issued identification from whom the metal is purchased and the date, time, place, weight, and full description of each purchase or trade. A person will be guilty of a class A misdemeanor for violating these provisions.

## POSSESSION OF CONTROLLED SUBSTANCES

The substitute increases the penalty for possession of a controlled substance to a class B felony for any violation by an individual while in the presence of a person younger than 17 years of age. The possession of amphetamine or methamphetamine is added to the list of violations for child endangerment.

## STATUTE OF LIMITATIONS

The statute of limitations will be two years for an injurious falsehood.

## ADULT ABUSE AND STALKING

Any court may order a court record closed that involves allegations of adult abuse or stalking if the petition is denied, dismissed, withdrawn by the petitioner, or denied after hearing. The substitute also changes the definition of "adult" to anyone 17 years of age or older for the purposes of the adult abuse statutes.

## CHANGE OF NAME

A person convicted of a felony who is in prison is prohibited from changing his or her name until his or her sentence has been completed.

The provisions of Section 302.341.2 regarding traffic violation revenues become effective January 1, 2010, for any city, town, or village located in Jackson County.

FISCAL NOTE: Estimated Effect on General Revenue Fund of an income of Up to \$668,613 to Up to \$768,613 in FY 2008, a cost of More than \$378,389 to More than \$478,398 in FY 2009, a cost of More than \$841,058 to More than \$941,058 in FY 2010. Estimated income on Other State Funds of \$112,500 in FY 2008, \$77,500 in FY 2009, and \$0 in FY 2010.



PROPONENTS: Supporters say that the bill allows associate circuit courts extra time for the service of a summons. Currently, the court must serve notice for the defendant to appear in court no less than 10 days and no more than 30 days prior to the court date. When the petition is filed with the clerk, it is stamped with the date; and service must be made to the defendant within a specific period of time. However, by the time it reaches 30 days from the court date, the court must ask for an alias summons and hire a special process server to serve the defendant's notice to appear since the time required in the current statute for service of a summons has passed.

Testifying for the bill was Representative Pratt for Senator Goodman.

OPPONENTS: There was no opposition voiced to the committee.