

HCS SB 59 -- JUDICIAL PROCEDURES

SPONSOR: Keaveny (Diehl)

COMMITTEE ACTION: Voted "do pass" by the Committee on Judiciary by a vote of 9 to 1.

This substitute changes the laws regarding judicial procedures.

FIDUCIARIES (Sections 404.710, 456.3-301, 456.4-419, 456.5-505, 456.5-508, 456.8-813, 469.411, 469.437, and 469.459, RSMo)

The substitute:

(1) Specifies that a power of attorney is not required to expressly authorize the attorney in fact to amend or revoke a trust agreement if the trust agreement expressly authorizes the attorney in fact to amend or revoke the agreement;

(2) Allows an attorney authorized in a power of attorney to exercise and give consent to a do-not-resuscitate order on behalf of the principal or to make an anatomical gift of all or part of the principal's body or to exercise the right to bury the principal's body;

(3) Specifies that consent to represent and bind another person is binding on the person represented regardless of whether the person represented objects if the person who may represent and bind is:

(a) The holder of a testamentary power of appointment and the interests of the person represented are subject to the power;

(b) The conservator, conservator ad litem, or guardian and the person represented is disabled; or

(c) A parent and the person represented is a minor or unborn child of the parent;

(4) Changes the laws regarding the Missouri Uniform Trust Code by:

(a) Allowing certain trustees to move trust assets from a first trust to a second trust if the trustee of the first trust determines that moving the trust assets to the second trust is necessary or desirable after considering the terms and purposes of the first and second trusts and the consequences of the move;

(b) Specifying that a second trust can only have beneficiaries who were eligible to receive income or principal under the first

trust or may in the future receive income or principal from the first trust;

(c) Prohibiting a trustee from moving trust assets to a second trust if the trustee is a beneficiary of the first trust or if a beneficiary can remove and replace the trustee of the first trust with a person who is related to that beneficiary;

(d) Prohibiting a trustee from moving trust assets to a second trust if it would increase the distributions to the trustee or to a beneficiary who could replace the trustee or if it would remove restrictions that were in the document creating the first trust;

(e) Specifying that moving trust assets cannot reduce any income interest of an income beneficiary of a trust for which a marital deduction has been taken for federal or state tax purposes, a charitable remainder trust, a grantor retained annuity trust, or a Subchapter S trust or an electing small business trust;

(f) Specifying that a spendthrift clause or a provision in the first trust prohibiting amendment or revocation of the first trust cannot prevent the trustee from moving trust assets from the first trust to the second trust;

(g) Requiring the trustee of the first trust to notify the permissible distributees or the qualified beneficiaries of the second trust at least 60 days prior to making a discretionary distribution;

(h) Specifying that a trustee does not have a duty to move trust assets from a second trust;

(i) Specifying that a creditor of a person who creates a trust may not reach that person's interest in the trust regardless of whether the person retains the ability to dispose of his or her interest through a testamentary power of appointment;

(j) Prohibiting a creditor of certain beneficiaries of a trust from attaching trust property or beneficial interest, obtaining a court order forcing a judicial sale, compelling the exercise of the power, or reaching the trust property or beneficial interests by any other means to satisfy the beneficiary's debts; and

(k) Changing the number of days, from 60 to 120, in which a trustee must notify the qualified beneficiaries of the trust's existence; the identity of the settlor or settlors; the right to request a copy of the trust instrument; the right to a trustee's report; the acceptance of the trusteeship; and the trustee's name, address, and telephone number; and

(5) Changes the calculation of the unitrust amount under the provisions of the Uniform Principal and Income Act by requiring the unitrust amount of a trust determined for each accounting year to be a percentage between 3% and 5% of the average net fair market value of the trust and specifies certain income sources from which the unitrust amount must be paid. If a trust contains an election to qualify for a marital deduction, upon the request of a surviving spouse, the trustee must demand that the person administering the plan distribute the plan income to the trust, allocate a payment from the plan to income, and distribute that amount to the surviving spouse.

GUARDIANSHIP OF AN INCAPACITATED PERSON (Sections 475.060 and 475.061)

Any person is allowed to file a petition to appoint himself or herself or another qualified person as the guardian of an incapacitated person. The substitute specifies the information that must be included in the petition.

TRANSFER REQUESTS OF COURT CASES BY PUBLIC ADMINISTRATORS (Section 475.115)

A public administrator is allowed to request the transfer of any case to the jurisdiction of another county by filing a petition for transfer and requires the court to transfer the case if the requirements for venue are met and the administrator of the receiving county consents to the transfer. The receiving county court must appoint its public administrator as successor guardian and/or successor conservator and issue the appropriate letters. In the case of a conservatorship, the final settlement must be filed in the original county within 30 days and forwarded to the receiving county upon audit and approval.

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT (Sections 475.501 - 475.555)

The substitute authorizes Missouri to enter into the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act which:

- (1) Allows a court to treat a foreign country as if it were a state for the purpose of the act;
- (2) Allows a court to communicate with an out-of-state court concerning a guardianship or protective proceeding;
- (3) Allows a court to request an out-of-state court to:
 - (a) Hold an evidentiary hearing;

- (b) Order an individual to produce evidence or give testimony;
- (c) Order that an evaluation or assessment be made of a respondent;
- (d) Order any appropriate investigation of an individual involved in a guardianship or protective proceeding;
- (e) Forward to the court of this state a certified copy of the transcript or other record of an evidentiary hearing or any other proceeding any evidence otherwise produced and any evaluation or assessment prepared in compliance with a court order;
- (f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person; and
- (g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including specified protected health information;
- (4) Allows testimony taken in another state from a witness who is located in another state to be offered by deposition or other means allowable;
- (5) Permits a court to allow a witness located in another state to be deposed or to testify by telephone, audiovisual, or other electronic means;
- (6) Specifies when a court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent;
- (7) Specifies that when a court of this state is otherwise lacking jurisdiction it has special jurisdiction for specified guardianship actions;
- (8) Specifies that a court which has appointed a guardian or issued a protective order has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own term;
- (9) Allows a court to decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum;
- (10) Allows a guardian or conservator to petition the court to transfer the guardianship or conservatorship to another state;
- (11) Specifies that if a guardian has been appointed in another

state and a petition for the appointment of a guardian is not pending in this state, the guardian may register, after giving notice to the appointing court of an intent to register, the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office;

(12) Specifies that if a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator may register, after giving notice to the appointing court of an intent to register, the protective order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office and of any bond; and

(13) Specifies that upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except those powers prohibited under the laws of this state.

QUALIFIED SPOUSAL TRUSTS (Section 1)

The substitute establishes provisions regarding a qualified spousal trust by:

(1) Specifying that a "qualified spousal trust" is a trust where the settlors of which are husband and wife at the time of the creation of the trust and the terms of the trust provide that during the joint lives of the settlors all property or interests in property are:

(a) Held for the benefit of both settlors and revocable by either or both settlors and having the right to receive income distributions from the entire trust for each individual settlor's life; or

(b) Held in two separate shares of one trust for the benefit of each settlor and revocable by each settlor with respect to each settlor's separate share without consent of the other settlor and each having the right to receive income distributions from the settlor's separate share for the individual settlor's life;

(2) Specifying that property transferred to a qualified spousal trust will have the same immunity from individual creditors as would have existed if the settlors continued to hold the property as husband and wife as tenants by the entirety as long as both settlors are alive and remain married and the property, proceeds, or income continues to be held in trust by the trustee of the qualified spousal trust;

(3) Specifying that the right of a claimant to any property placed in a qualified spousal trust that was not held as tenants by the entirety will not be affected by these provisions;

(4) Specifying that upon the death of each settlor, the current terms of the governing instrument of the trust will control the distribution of trust property or interests;

(5) Specifying that a transfer of spousal property by a husband and wife as settlors to a qualified spousal trust will not affect or change either settlor's marital property rights to the transferred property or interest immediately prior to the transfer in the event of a dissolution of marriage of the spouses unless both spouses agree in writing; and

(6) Specifying that these provisions will apply to all trusts that fulfill the requirements of these provisions regardless of whether the trust was created before or after the effective date of the substitute.

FISCAL NOTE: No impact on state funds in FY 2012, FY 2013, and FY 2014.

PROPOSERS: Supporters say that the bill creates flexibility for certain trustees to transfer assets between trusts without the need of burdensome judicial proceedings.

Testifying for the bill were Senator Keaveny; The Missouri Bar; and Riezman Berger, P.C.

OPPOSERS: There was no opposition voiced to the committee.