

CCS HCS SB 59 -- JUDICIAL PROCEDURES

This bill changes the laws regarding judicial procedures.

TRANSPARENCY IN PRIVATE ATTORNEY CONTRACTS ACT (Sections 34.376, 34.378, and 34.380, RSMo)

The Transparency in Private Attorney Contracts Act is established which:

(1) Prohibits the state and any of its agents from contracting with a private attorney for a contingency fee unless the Attorney General makes a written determination prior to the contract that the contingency fee representation is both cost effective and in the public interest;

(2) Requires the Attorney General to request written proposals from private attorneys to represent the state if the determination to contract with a private attorney is made unless the Attorney General determines and puts in writing that requesting proposals is not feasible under the circumstances;

(3) Requires the Attorney General to select the lowest and best bid or to request the Office of Administration to establish an independent panel to evaluate the proposals and choose the lowest and best bid;

(4) Requires the government attorney to retain complete control over the course and conduct of the case and the contracted attorney in any contingency fee contract and requires the Attorney General to include provisions in the contract detailing the expectations of both the contracted attorney and the state;

(5) Requires a copy of any contingency fee contract, the Attorney General's written determination, and payments of contingency fees to be posted on the Attorney General's web site;

(6) Requires a private attorney under contract with the state on a contingency fee basis to maintain detailed records of his or her services, expenses, and fees, including time records in increments of no greater than 1/10 of an hour for at least four years after the expiration or termination of the contract. Any request for inspection and copying of records under the Open Meetings and Records Law, commonly known as the Sunshine Law, must be served upon and responded to by the Attorney General's office; and

(7) Requires the Attorney General to annually submit a report by February 1 to the President Pro Tem of the Senate and the Speaker of the House of Representatives describing the use of contingency

fee contracts with private attorneys in the preceding calendar year and specifies the information which must be included in the report.

POWERS OF ATTORNEY AND THE UNIFORM TRUST CODE (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)

The bill:

(1) Allows an individual authorized to act as a power of attorney to make or prohibit an anatomical gift of all or part of the principal's body under the Revised Uniform Anatomical Gift Act or to exercise the right to bury the principal's body;

(2) 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;

(3) 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 interests, 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

(4) 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 federal 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)

The bill changes the specified information that must be stated in a petition for a person to appoint himself or herself or another qualified person as the guardian of an incapacitated person.

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

The bill allows a public administrator 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, without the necessity of a hearing, its public administrator as successor guardian and/or successor conservator and issue the appropriate letters. In the case of a conservatorship, the final settlement of the public administrator's conservatorship must be filed in the original county within 30 days of the transfer and forwarded to the receiving county upon audit and approval.

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

Missouri is authorized 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 applying certain provisions 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 in this state;

(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 to 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, a certified copy of the order and letter 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, a certified copy of the order and letter 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.

SMALL CLAIMS COURT ACTIONS (Sections 482.305 and 482.315)

The amount in controversy is increased from less than \$3,000 to less than \$5,000 for a case where the judge of a small claims court will have original jurisdiction.

QUALIFIED SPOUSAL TRUSTS (Section 1)

The bill 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 or interests in 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 interest in

the 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 August 28, 2011.