

CCS SCS#2 SB 128 -- JUDICIAL PROCEEDINGS

CONFLICT OF INTEREST

This bill provides that, upon request by a prosecuting attorney or law enforcement agency, the State Auditor or his or her authorized designee may audit all or part of any government entity. The bill also provides that violating provisions relating to conflict of interest and lobbying is a class E felony if the offense involves more than \$750 in value or if the offender has previously been found guilty of official misconduct. A court may enter judgment of restitution against an offender and may order the offender to make restitution to the victim, a government entity, or a third-party payor. The bill makes provisions regarding the determination and enforcement of the restitution. The bill also creates the offense of official misconduct in the first degree, which is a class E felony, and the offense of official misconduct in the second degree, which is a class A misdemeanor (Sections 29.225 and 105.478, RSMo).

STATE LEGAL EXPENSE FUND

The bill requires the Attorney General and the Commissioner of Administration to report to the General Assembly, at a time specified in the bill, regarding the settlements and judgments paid in the previous month from the State Legal Expense Fund (Section 105.713).

SALES TAX EXEMPTIONS

The bill affirms the construction and application of existing law as expressed by the Missouri Supreme Court in *Bridge Data Co. v. Director of Revenue*, 794 S.W.2d 204 (Mo. banc 1990), *DST Systems, Inc. v. Director of Revenue*, 43 S.W.3d 799 (Mo. banc 2001), *Southwestern Bell Tel. Co. v. Director of Revenue*, 78 S.W.3d 763 (Mo. banc 2002), and *Southwestern Bell Tel. Co. v. Director of Revenue*, 182 S.W.3d 226 (Mo. banc 2005) regarding certain sales tax exemptions, as described in the bill (Section 144.026).

RESPONSIVE PLEADINGS

This bill requires the responding party to file a response to any motion to modify a child support, spousal maintenance, or child custody judgment (Sections 210.845, 452.370, 452.747, and 454.500).

CUSTODY OF A CHILD THROUGH A POWER OF ATTORNEY

This bill may be known as the "Supporting and Strengthening Families Act." It provides that during a child protective

investigation if the child is at risk for possible removal the Children's Division shall provide information to the parent about community service programs that provide support services for families in crisis.

Additionally, a parent or legal custodian of a child may delegate to an attorney-in-fact, without compensation, any powers regarding the care and custody of a child for a period not to exceed one year, unless an exception applies as specified in the bill. Such delegation does not change parental or legal rights established by a court order or deprive the parent or legal custodian of any rights regarding child custody, visitation, or support.

A parent who intentionally uses a power of attorney to permanently avoid legal responsibility for the care of the child is guilty of violating current law on transferring child custody without a court order. A child subject to the power of attorney shall not be considered placed in foster care and the parties shall not be subject to any licensing regulations for foster care or community care for children.

Community service programs for families in crisis must conduct a background check of an attorney-in-fact and any adult members of his or her household prior to the placement of the child.

An attorney-in-fact must make arrangements to ensure that the child attends classes at an appropriate school based upon the residency requirements of the school, and the child's school shall be notified of the existence of the power of attorney and be provided a copy of the power of attorney. The delegation of care under the bill shall not modify a child's eligibility for the benefits, such as free or reduced lunch, that the child is receiving at the time of the execution of the power of attorney.

Finally, this bill specifies the information to be included on a form delegating any powers regarding the care and custody of a child under this bill (Sections 210.1109, 475.600, 475.602, and 475.604).

IGNITION INTERLOCK DEVICES

This bill specifies that exemptions for ignition interlock device requirements shall not be granted to individuals who are self-employed or who wholly or partially own or control an entity that owns an employer-owned vehicle (Section 302.441).

FILING FALSE DOCUMENTS

This bill creates the offense of filing a false document, which is

committed if, with intent to defraud, deceive, harass, alarm, or negatively impact financially, a person files, causes to be filed, or attempts to file, creates, uses as genuine, transfers or has transferred, presents, or prepares with knowledge or belief that it will be filed, presented, or transferred to the Secretary of State or his or her designee, any county recorder of deeds or his or her designee, any municipal, county, district, or state government entity or office, or any credit bureau or financial institution specified documents. For the first offense, filing a false document is a class D felony. Filing false documents is a class C felony in certain specified instances. Any person who is found guilty of committing such offense will be ordered to make full restitution to any person or entity that has sustained any actual losses as a result of the commission of such offense.

The bill specifies that a system must be created, by January 1, 2018, in which suspicious filings are logged, and outlines the process for petitioning the court when a person has probable cause to believe a filing is fraudulent.

If a filing or record is deemed invalid, court costs and fees are the responsibility of the party who originally initiated the filing or record. If the filing fee is deemed valid, no court costs or fees, in addition to standard filing fees, shall be assessed (Sections 400.9-501 and 570.095).

TRUST INSTRUMENTS

The bill adds definitions for "directed trust" and "trust protectors," and it modifies provisions related to termination of trust instruments, no contest clauses in trusts, and to trust protectors (Sections 456.1-103, 456.4-414, 456.4-420, and 456.8-808).

REVISED FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

This bill establishes the "Missouri Fiduciary Access to Digital Assets Act," which allows fiduciaries to access electronic records or "digital assets" of an account holder or "user." A user may allow or prohibit the disclosure of his or her digital assets to a fiduciary in a will, trust, or other record. The user may also use an online tool to direct the custodian of the digital assets to disclose some or all of the digital assets. In certain situations, the direction of the user to the custodian using the online tool can override a conflicting direction contained in the user's will, trust, or other record. Also, the user's direction regarding disclosure of the digital assets under an online tool or other record overrides a contrary provision in a terms-of-service agreement that does not require the user to take affirmative action

regarding the agreement. A fiduciary's access to digital assets may be modified or eliminated by a user, federal law, or a terms-of-service agreement if the user has not provided direction through the use of an online tool or will, trust, or other record.

A custodian has the discretion to grant a fiduciary full access to the user's account, partial access, or provide a copy of the digital assets requested but is prohibited from disclosing a digital asset the user has deleted. A custodian may charge a fee for disclosure. A custodian must disclose to a fiduciary the content of an electronic communication sent or received by the user, a catalogue of electronic communications, and digital assets of the user if the fiduciary provides certain documentation as specified in the bill. If the fiduciary is an agent acting under a power of attorney, then the power of attorney must expressly grant the agent authority over the content of electronic communications sent or received by the user for the custodian to disclose the digital assets.

A custodian may disclose to a conservator the user's catalogue of electronic communications and any digital assets if the conservator is given authority by the court and provides the court order to the custodian. Additionally, a conservator may request the suspension or termination of a user's account for good cause.

A fiduciary may terminate the user's account in writing and such request must be accompanied with certain documents as provided in the bill. Finally, a custodian has 60 days to comply with a fiduciary's request for disclosure or account termination. If the custodian does not comply with the request, then the fiduciary may apply to the court to order compliance (Sections 472.400, 472.405, 472.410, 472.415, 472.420, 472.425, 472.430, 472.435, 472.440, 472.445, 472.450, 472.455, 472.460, 472.465, 472.470, 472.475, 472.480, 472.485, and 472.490).

GUARDIANSHIP OF MINORS

This bill allows the court to order visitation between a minor who has been appointed a guardian and the minor's parents if the minor's parents petition the court for periods of visitation and if the court finds that the visitation is in the best interest of the minor, as specified (Section 475.084).

SIXTEENTH JUDICIAL CIRCUIT

This section moves Division 12 in the 16th Judicial Circuit from Kansas City to the City of Independence (Section 478.463).

MUNICIPAL COURTS

A court serving more than one municipality shall be treated as a single municipality for the purposes of the provisions of the section prohibiting municipal judges from serving on more than five municipalities at one time (Section 479.020).

COURT REPORTER COST

This bill repeals provisions of law that specify that court reporters shall receive \$3.50 per page in proceedings in any circuit court. The bill also repeals the requirement that court reporters be reimbursed at \$3.50 per page (Sections 479.020 and 488.2250).

PROPERTY EXEMPT FROM EXECUTION

This bill adds engagement rings valued up to \$1,500 to the list of property exempt from attachment and execution. Currently, any miscellaneous property valued up to \$600 in the aggregate is exempt from attachment and execution. This bill increases the value to \$1,200. The bill also adds 401(k)s and any type of individual retirement arrangement as defined by Publication 590 of the IRS, but this exemption is limited by federal law.

Finally, the law currently allows each head of a family to select and hold various property and debts and wages valued up to \$1,250 plus up to \$350 for each head's unmarried dependent children under the age of 21, to be exempt from execution. This bill increases the values to \$1,650 plus \$450 for the person's unmarried dependent children under the age of 21 (Sections 513.430 and 513.440).

GUARDIAN AD LITEM FEES

This bill excludes guardian ad litem fees from the costs and expenses that may be waived, in certain civil actions, without the necessity of a motion and court approval. Individuals may still file a certification to have such fees waived. Failure to pay the guardian ad litem fees shall not preclude a certifying party from filing future suits, including motions to modify, and shall not be used as a basis to limit the certifying party's prosecution or defense of the action. Parties shall file certification for waiver of guardian ad litem fees prior to the trial commencing. Any party may present evidence on the financial condition of the parties. Based upon the evidence, if the court finds that the certifying party has the present ability to pay, the court may enter judgment ordering the certifying party to pay a portion of the guardian ad litem fees (Section 514.040).

DEPARTMENT OF MENTAL HEALTH

This bill provides that after a person accused of committing an offense has been committed to the Department of Mental Health due to lack of mental fitness to stand trial, the legal counsel for the department shall have standing to participate in hearings regarding involuntary medications for the accused (Section 552.020).

OFFENSE OF ACCEDING TO CORRUPTION

The offense of acceding to corruption is a class D felony if a witness accepts a benefit on the understanding that he or she will disobey a legal process in a felony prosecution proceeding (Section 575.280).

INTOXICATION-RELATED OFFENSES

The definition of the terms "habitual offender" and "intoxication-related traffic offense" are modified as used in provisions relating to public safety criminal offenses. Driving while intoxicated is a class B felony if the person acts with criminal negligence to:

- 1) Cause the death of another who is not in the vehicle;
- 2) Cause death of two or more persons; or
- 3) Cause the death of any person while having a blood alcohol content of at least .18 of 1% (Section 577.001).

TOBY'S LAW

This bill creates "Toby's Law," which provides that a person who has been found guilty of driving while intoxicated must complete a victim impact program approved by the court. The person is responsible for any charges imposed by the program (Section 577.011).

CHEMICAL ANALYSIS OF BREATH

This bill requires admission of relevant chemical analysis of a person's breath in proceedings for any criminal offense, violations of county or municipal ordinances, or license suspension or revocation proceedings arising out of acts occurring between December 30, 2012 and April 4, 2014, relating to the operation of a vehicle, vessel, or aircraft while in an intoxicated condition so long as the evidence meets certain specified conditions. These provisions are a procedural rule and applicable to all proceedings in progress whether commenced before or after the enactment of the section (Section 577.037).

This bill abrogates the holdings of *Stiers v. Dir. of Revenue*, 477 S.W.3d 611, (Mo. 2016) and *Stiers v. Dir. of Revenue*, ED 101407, 2015 WL 343310 (Mo.App. E.D. Jan. 27, 2015).

LEAVING THE SCENE OF AN ACCIDENT

This bill specifies that the offense of leaving the scene of an accident is a class D felony if a death occurs as a result of the accident (Section 577.060).

ADDRESS CONFIDENTIALITY PROGRAM

This bill adds provisions related to the Address Confidentiality Program, which protects program participants from having their actual addresses disclosed in certain situations (Section 589.664).

COURT ORDERED RESTITUTION

The bill also provides that a court may enter a judgment of restitution against an offender and may order the offender to pay restitution against the victim, a government entity, or a third-party payor. The bill makes provisions regarding the determination and enforcement of this restitution (Section 595.219).

This bill also includes clean-up language for the criminal code revision from 2014 (Sections 252.069, 479.170, 488.029, 557.035, 565.076, 565.091, 566.010, 575.280, 577.001, 577.010, and 595.045).