

SCS HB 1250 -- TRUSTS AND ESTATES

This bill specifies how a health savings account may be created. Currently, a trustee of a trust consisting of trust property having a total value of less than \$100,000 may, after notice to qualified beneficiaries, terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. The bill increases the dollar amount to less than \$250,000.

There are currently certain circumstances under which a no-contest clause in a trust instrument is unenforceable against an interested person. This bill adds the following circumstances:

- (1) Filing a motion, pleading, or other claim for relief concerning breach of trust by a trustee; and
- (2) Filing a motion, pleading, or other claim for relief concerning removal of a trustee.

The bill specifies that a trust instrument may provide for one or more persons, not then serving as a trustee and not the settlor or a beneficiary, to be given any powers over the trust as expressly granted in the instrument. Such person may be identified and appointed as a trust protector or similar term. Whenever a trust instrument names, appoints, authorizes, or otherwise designates a trust protector, the trust shall be deemed a directed trust. In carrying out any written directions given by the trustee, the trust protector shall not be subject to the Prudent Investor 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.