

HCS SCS SB 599 -- FINANCIAL INSTRUMENTS

SPONSOR: Brown

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Financial Institutions by a vote of 10 to 0. Voted "Do Pass" by the Standing Committee on Rules- Legislative Oversight by a vote of 5 to 0.

The following is a summary of the House Committee Substitute for HCS SCS SB 599.

This bill modifies provisions relating to financial instruments.

LINKED DEPOSITS

Currently, the State Treasurer must create an investment policy that includes an asset allocation plan that limits the total amount of state moneys that may be invested in a particular investment. The asset allocation plan must also set diversification limits that include a restriction limiting the total amount of time deposits (not including linked deposits) of state money placed with any one single banking institution to no more than 10% of all time deposits of state money. This bill changes that limit to 15% of all time deposits of state money authorized under the asset allocation plan (Section 30.260, RSMo).

Currently, it is required that market rate is to be determined at least once a month by the State Treasurer using a process that gives consideration of prevailing rates offered for certificate of deposits by well-capitalized Missouri financial institutions and the advance rate established by the Federal Home Loan Bank of Des Moines. This bill requires the treasurer to also give consideration to any other calculation based on current market investment indicators determined by the State Treasurer (Section 30.260).

Currently, the State Treasurer may invest in linked deposits; however the total amount deposited at any one time may not exceed, in the aggregate, \$720 million and no more than \$110 million of the aggregate shall be used for link deposits to small businesses. This bill changes those limits to \$800 million and \$190 million, respectively (Section 30.753).

This bill requires the State Treasurer to give priority to the funding of renewed linked deposit applications over the funding of new linked deposit applications (Section 30.758).

These provisions are the same as SCS SB 599 (2020) and similar to

HB 2206 (2020) and HB 1029 and SB 439 (2019).

#### MISSOURI FAMILY TRUST COMPANY ACT FAMILY MEMBERS

The bill expands the types of entities that may be served by a family trust company to include an irrevocable trust of which one or more family members are the only permissible distributees (Section 362.1015).

#### REGISTRATION OF FAMILY TRUST COMPANIES

Currently, any family trust company that is not a foreign family trust company is required to file an organizational statement. This bill repeals that requirement and instead requires a family trust company or a foreign family trust company to pay a one-time \$5,000 filing fee, file an initial registration with the Secretary of State, and file an application for a certificate of authority (Section 362.1030).

#### AUTHORITY TO MANAGE A FAMILY TRUST COMPANY

Currently, exclusive authority to manage a family trust company may be vested in a limited liability company if the board of directors or managers consists of three directors or managers. This bill modifies that provision by allowing exclusive authority to manage a family trust company to be vested in a limited liability company if the board of directors or managers consists of at least three directors or managers (Section 362.1037).

#### ORGANIZATIONAL INSTRUMENT

The bill modifies various provisions affecting organizational instruments filed by family trust companies. An organizational instrument of a family trust company must state that the purpose for which the company is formed is to engage in any and all activities permitted under the Missouri Family Trust Company Act. Additionally, the requirement that certain relatives be designated in the organizational instrument is repealed. Such relatives are instead required to be designated in the initial and annual registration reports filed by the family trust company. Furthermore, a provision is repealed prohibiting a family trust company from having more than one designated relative (Sections 362.1015 and 362.1040).

#### PURCHASES MADE BY FAMILY TRUST COMPANIES WHILE ACTING AS A FIDUCIARY

The bill provides that, among other criteria, a family trust

company cannot, while acting as a fiduciary, make certain purchases directly from underwriters, broker-dealers, or in the secondary market unless the company discloses its intent to do so in writing to all family members for whom the investment is to be made (Section 362.1070).

These provisions are similar to SB 984 (2020).

#### CREDIT UNIONS

The bill makes several changes to credit union regulations.

#### TRIPLICATE AND DUPLICATE FILINGS

Currently, credit unions are required to make certain filings with the Director of the Division of Credit Unions (DCU) within the Department of Commerce and Insurance in triplicate or duplicate. This bill modifies these provisions to require a single filing, rather than three or two (Sections 370.010, 370.030, 370.350, 370.355, and 370.358).

#### CERTIFICATE OF ORGANIZATION REQUIREMENTS

Currently, a certificate of organization is required to create a credit union to state the par value of the general shares. This bill changes that requirement to regular shares (Section 370.020).

#### OTHER FORMS OF DELIVERY

Currently, the Director of the Division of Credit Unions (DCU) within the Department of Commerce and Insurance is required to mail copies of certain filings, as well as notice to all interested parties for certain meetings pertaining to credit union business. This bill permits any other form of delivery as an alternative to mail delivery (Sections 370.071, 370.151, and 370.358).

#### ELECTRONIC BALLOTS

Currently, a credit union is allowed to charge initial or recurring membership fees, provided such fees have been approved by a majority of the membership in attendance at any regular or special meeting or by a mail ballot. This bill allows such fees to be charged if approved by an electronic ballot as well (Section 370.071).

Currently, the bylaws of a credit union, when approved by the membership, may provide for mail ballots for the election of officers. This bill allows for the use of electronic ballots for the election of officers as well (Section 370.170 and 370.358).

## REPORTS AND EXAMINATIONS OF CREDIT UNIONS

Currently, a credit union is required to make a report of its condition on or before January 31 of each year. This bill requires reports to follow the reporting requirements of federal credit union insurers. Furthermore, it is the responsibility of the president or the president's designee to verify the report (Section 370.110).

The bill establishes a provision allowing the Director of the DCU to accept an examination of a credit union made by the federal credit union insurer instead of the director conducting an annual examination of a credit union (Section 370.120).

The bill increases the length of time a credit union has to make a report before the Director of the DCU revokes its certificate of approval from 15 days to 30 days (Section 370.130).

## BOARD OF DIRECTORS MEMBERSHIP

The bill modifies provisions relating to the board membership of credit unions by repealing a provision requiring the election of a president, vice president, secretary, and treasurer and requiring instead the election of a chair, vice chair, secretary, and treasurer. Moreover, the positions of secretary and treasurer may be held by the same person if the bylaws of the credit union so provide (Section 370.190, 370.355, 370.358, and 370.359).

## POWERS OF CREDIT UNIONS AND BOARDS OF DIRECTORS

In addition to powers currently granted, the board of directors of a credit union is permitted to:

- (1) Authorize the employment and compensation of the chief executive officer;
- (2) Approve annual operating budgets for the credit union;
- (3) Declare dividends on regular shares;
- (4) Accept resignations and fill vacancies of the board, credit committee, and supervisory committee;
- (5) Amend the bylaws; and
- (6) Hear appeals of people denied membership by the credit union.

The bill removes provisions that permit the board of directors of a credit union to:

(1) Fix the amount of the surety bond that is required of each officer having custody of funds; and

(2) Declare dividends (Section 370.200).

#### AUTHORIZATION OF LOANS OR ADVANCES

Currently, the credit committee or credit manager is required to approve every loan or advance made by the credit union to its members . This bill removes that provision and instead requires the credit committee or credit manager to follow the bylaws, policies, and procedures established by the board of directors regarding loans and advances (Section 370.220).

#### SUPERVISORY COMMITTEE MEMBERSHIP

The bill requires the supervisory committee, if the credit union bylaws so provide, to elect a chair from their own number (Section 370.230).

The bill removes a provision that bonds approved by the board of directors must be filed with the Director of the DCU within 45 days (Section 370.235).

#### CHARGES ON CREDIT UNION MEMBERS

Currently, credit unions are allowed to make a charge no more than once in a 12-month period to a member's share account if the member fails to keep the credit union informed about his or her current address. The bill modifies that to allow a quarterly charge and removes a provision that the charge be for the actual cost of determining the correct address. The bill also removes a provision limiting the charge to \$5 (Section 370.260).

#### ENTRANCE OR MEMBERSHIP FEES

The bill repeals a provision allowing credit unions to charge entrance fees or membership fees on beneficiaries, trustees, or grantors of a trust, unless a member in their own right (Sections 370.270 and 370.275).

#### CREDIT UNIONS MAY WITHHOLD PAYMENTS

A credit union may refuse to make a payment from an account to a depositor, shareholder, any trust or payable-on-death account

beneficiary, or any other person claiming an interest in the account under certain circumstances detailed in the bill, as long as the credit union notifies persons claiming an interest in the court. The credit union is not liable for damages as a result of an action taken under this provision (Section 370.288).

#### LOANS TO MEMBERS

The bill repeals a provision allowing members to receive a loan in installments instead of one sum if the loan is for purchasing necessary supplies for growing crops. The bill additionally repeals a provision allowing a borrower to repay the whole or any part of a loan on any day on which the credit union is open (Section 370.310).

#### EXPULSION OF MEMBERS

The bill allows the president or executive officer designated by the board to expel a member pursuant to the board's written policy. A person expelled may appeal such decision pursuant to such policy (Section 370.340).

These provisions are the same as HB 2204, HB 2257, and SB 797 (2020).

#### FUNDS HELD IN RESERVE FOR LIFE CARE CONTRACTS

This bill specifies that the "entire amount" of entrance fee funds held in reserve for a life care contract shall be earned by "and available for release to" the care provider as provided by law, provided that the reserve and interest thereon shall not exceed "100%", rather than "one and one-half times the percentage", of the annual long-term debt principal and interest payments of the provider applicable only to living units occupied under life care contracts.

The requirement to hold reserve funds may be met in whole or in part by other reserve funds held for the purpose of meeting loan obligations, provided that the total amount equals or exceeds the amount otherwise required.

These provisions are the same as SB 804 (2020).

#### CREDIT INSURANCE

Currently, insurance written in connection with a loan or other credit transaction with a duration of more than 10 years is not

subject to regulation. This bill increases the time period from 10 years to 15 years (Section 385.015).

This provision is the same as HB 1543 (2020) and HB 815 and SB 256 (2019).

## SECURITIES

This bill adds broker-dealers and investment advisors (or investment advisor representatives) to the individuals covered under the Senior Savings Protection Act (Sections 409.605 to 409.630).

Broker-dealers and investment advisors may notify the Department of Health and Senior Services, the Commissioner of Securities, or an immediate family member of his or her reasonable belief that financial exploitation of an vulnerable person has occurred or is being attempted. The department or commissioner may provide information on the vulnerable person to the reporting individual upon request (Section 409.610).

In the instance of a reasonable belief of financial exploitation, the bill allows a broker-dealer, investment advisor, or associated person to refuse a transaction from the account of the vulnerable person for a maximum of 10 business days. To refuse a transaction or disbursement, the broker-dealer, investment advisor, or associated person must send written notice to the vulnerable person, along with contact information for the Investor Protection Hotline. Following the refusal of a transaction or disbursement, the commissioner or department may enter an order to extend the refusal for the time necessary to protect the vulnerable person, but the agency issuing the order must review the circumstances every 30 days (Section 409.615).

The bill specifies a broker-dealer or investment advisor who complies with the Senior Savings Protection Act will be immune to civil liability (Section 409.620).

A broker-dealer or investment advisor must provide access to records relevant to the suspected financial exploitation to the department, the commissioner, or law enforcement (Section 409.625).

The commissioner must update their training website to include resources to assist broker-dealers and investment advisors in the prevention and detection of financial exploitation by September 1, 2021 (Section 409.630).

The bill allows a rule to be adopted to require a notice filing by an issuer to include a:

- (1) Copy of the Form 1-A or other forms required by the Securities and Exchange Commission;
- (2) Consent of service of process and a payment of a fee of \$100; and
- (3) Payment of \$50 fee for any late filing (Section 409.3-302).

This bill raises the maximum civil penalty under the Senior Savings Protection Act from \$5,000 to \$25,000 for each violation. The bill also raises the maximum penalty after a hearing from \$1,000 to \$25,000 for each violation and the penalty for a finding of a violation against an elderly or disabled person from \$5,000 to \$15,000 for each violation (Sections 409.4-412 and 409.6-604).

This provision is the same as HB 1736 (2020) and similar to HB 354 (2019).

#### MORTGAGE LOAN ORIGINATORS

Currently, mortgage loan originators have prelicensing education requirements of at least 20 hours. This bill states that a prelicensing education course completed by an applicant will not satisfy the education requirement if the course precedes an application by a certain time period, as determined by the Nationwide Mortgage Licensing System and Registry (NMLSR) (Section 443.717).

The bill requires certain persons, as outlined in the bill, related to a mortgage loan originator to furnish their fingerprints to the NMLSR for submission to the Federal Bureau of Investigation and any governmental agency for a state, national, and international criminal history background check. The bill allows the Director of the Division of Finance within the Department of Commerce and Insurance to use the NMLSR as an agent for transmitting information to and from the Federal Department of Justice or any other governmental agency (Section 443.825).

The bill removes a provision that the director can make rules requiring advertisements of mortgage loans to include the name and office address of the licensee, which must match the name and address on file with the director (Section 443.855).

Currently, the law requires that each residential mortgage loan broker maintain at least one full-service office in Missouri. The bill allows this requirement to be waived for persons exclusively engaged in the business of loan processing or underwriting (Section 443.857).



These provisions are similar to HB 757 (2019).

#### FINANCIAL INSTRUMENTS

This bill prohibits a court from dividing securities among multiple recipients in such a way that negotiable securities become nonnegotiable securities. However, a court may divide securities into increments equal to a multiple of the allowable tradeable amount or denomination accepted by the industry, as defined in the official statement or offering document of the original security. If these provisions prevent the distribution of property as another law requires, a court may:

- (1) Distribute securities and other property in a way so that the total value of property each recipient receives is as close to the proper proportion as practicable;
- (2) Liquidate the securities and distribute the resulting money among recipients; or
- (3) Take any other action within its power, including a combination of the options above (Section 476.419).

This provision is the same as HB 1702 (2020) and HCS HB 1083 (2019).

The following is a summary of the public testimony from the committee hearing. The testimony was based on the introduced version of the bill.

**PROPONENTS:** Supporters say that this is an important program to rural and small businesses.

Testifying for the bill were Senator Brown; Heartland Credit Union Association; Missouri Bankers Association; and the Office of The Missouri State Treasurer.

**OPPONENTS:** There was no opposition voiced to the committee.