

HB 1008 -- FINANCIAL TRANSACTIONS (Hardwick)

LIENS ON STORED PROPERTY (Section 415.415, RSMo)

Currently, notice to sell defaulted property must be made in the classified section of a newspaper in the jurisdiction. This bill retains that notice, but allows the seller to advertise in any other commercially reasonable manner. The advertisement is commercially reasonable if at least three independent bidders arrive at the sale.

BUSINESS COVENANTS (Sections 431.201 and 431.202)

This bill modifies provisions relating to covenants between business entities and employees, distributors, dealers, franchisees, lessees, licensees, or owners or sellers of assets or interests in a business entity.

Currently, a covenant regarding solicitation, hiring, or otherwise interfering with an employee is enforceable if certain criteria is met. This bill modifies that provision and requires that a covenant between an employer and an employee promising not to solicit, recruit, hire, induce, persuade, encourage, or otherwise interfere with an employee is enforceable if the covenant is between employers and employees, excluding secretarial or clerical employees with no interest in the business entity, and the post-employment or post-business duration is no more than two years. Additionally, a covenant regarding interference with an employee shall be conclusively presumed to be reasonable if its post-employment or post-business duration is no more than two years, instead of one year.

The bill provides that a reasonable covenant in writing promising not to solicit, induce, persuade, encourage, accept business from, or otherwise interfere with, directly or indirectly, a business entity's customers shall be enforceable if the following requirements are met:

(1) The covenant is limited to customers with whom the employee dealt, as defined in the bill and is not associated with the sale or ownership of assets or any interest in a business entity and does not continue for more than two years following the end of employment;

(2) The covenant between a business entity and a distributor, dealer, franchisee, lessee of real or personal property, or licensee of a trademark, trade dress, or service mark is not associated with the sale or ownership of assets or any interest in a business entity and does not continue for more than three years

following the end of the business relationship; or

(3) The covenant between a business entity and the owner or seller of assets or interest in a business entity does not continue for more than the longer of either five years or the period during which payments are made as measured from the date of termination, closing, or disposition. A breach or threatened breach of a covenant between a business entity and the owner or seller of assets or interest in a business entity shall create a presumption of irreparable harm in the absence of injunctive relief without the necessity of establishing evidence of any actual or threatened damages or harm. Additionally, a provision in such a covenant in which an employee promises to provide notice to a business entity of the employee's intent to terminate, sell, or otherwise dispose of an asset or interest is presumed to be enforceable if the notice period is no longer than 30 days and the business entity agrees to pay the employee's regular rate of pay and regular benefits during the notice period.

(4) The reasonableness of a covenant shall be determined by the facts and circumstances pertaining to it. Furthermore, the bill provides that a covenant shall be presumed to be reasonable if its post-employment, post-termination, post-business relationship, post-sale, or post-disposition duration does not exceed the duration requirements.

(5) No express reference to geographical area is required for the enforceability of a covenant.

(6) Additionally, a covenant that is overboard, overlong, or otherwise unreasonable to protect legitimate business interests of the person seeking enforcement shall be modified by a court, which shall only grant relief reasonably necessary to protect those interests.

These provisions are the same as SB 181 (2021) and SB 922 and HB 2684 (2020).

#### TRUST DISTRIBUTIONS

This bill establishes a provision regarding interpretation of familial relationships described in trusts and modifies a provision regarding distributions of income or principal from one trust to another trust.

#### FAMILIAL RELATIONSHIPS (Section 456.1-114)

For the purposes of interpreting a term of familial relationship in a trust, a child conceived or born during a marriage is presumed to

be a child of the married persons unless a judicial proceeding is commenced before the death of the presumed parent and it is determined that the presumed parent is not the parent of the child.

Additionally, this bill provides that a child who is not conceived or born in a marriage is presumed to not be a child of a person who did not give birth to such child unless a judicial proceeding determines such parentage or the person openly recognized the child as his or her child and such person has not refused to voluntarily support the child. A trustee shall not be liable to any person for exercising discretion in regards to the sufficiency of recognition and support of a child unless the trustee acted in bad faith or with a reckless indifference to the purposes of the trust or the interests of the beneficiaries. The rights afforded to the child shall not be retroactive, but shall apply from the time the relationship is established.

This bill specifies that, a child adopted prior to 18 years of age is a child of the adopting parent and not of the natural parents, except that adoption by a spouse of a natural parent shall have no effect on the relationship between the child and the natural parent. Additionally, the terms of a trust shall prevail over this provision of the bill.

#### TRUST DECANTING (Section 456.4-419)

This bill specifies that, a trustee, other than a settlor, who has discretionary power to make a distribution, may exercise such power by distributing all or part of the income or principal to a trustee of a second trust. The power may be exercised by distributing property from the first trust to one or more second trusts or by modifying the first trust instrument to become one or more second trusts.

This bill provides requirements regarding permissible distributees of second trusts, including that at least one permissible distributee of the first trust shall be a permissible distributee of the second trust immediately after the distribution and that only a beneficiary of the first trust may be a beneficiary of the second trust. In addition, this bill modifies the use of powers of appointment in the second trust. The second trust instrument may retain, modify, or omit a power of appointment granted by the first trust and the second trust instrument may create a general or nongeneral power of appointment if the powerholder is a beneficiary of the second trust. Furthermore, this bill provides that a special-needs fiduciary may exercise the authority to make a distribution to a second trust if the second trust is a special-needs trust that has a beneficiary with a disability and if the fiduciary determines that the exercise of authority will further

the purposes of the trust.

The bill repeals the current provisions regarding a second trust's beneficiaries, the limitations on a trustee's authority to make distributions from the first trust in certain circumstances, trust contributions treated as gifts, and the exercise of the discretionary power to reduce the income interest of any income beneficiary in certain trusts. The bill provides that if the exercise of the distribution authority is limited by an ascertainable standard, under which the trustee exercising such authority is a permissible distributee of the first trust, then the discretionary power shall be subject to at least the same standard as the first trust and the trust instrument for the second trust shall not modify powers of appointment nor grant a power of appointment to a trustee who did not exist in the first trust.

A second trust shall not include or omit terms that would prevent the first trust property from qualifying as a marital deduction, as a charitable deduction, for exclusion from the gift tax, as a qualified subchapter-S trust, or for a zero inclusion ratio for purposes of the generation skipping transfer tax under the Internal Revenue Code. Additionally, if the first trust property includes shares of a S-corporation's stock and the first trust is a permitted shareholder, then the trustee of the first trust may exercise the authority with respect to the S-corporation stock if the second trust is a permitted shareholder.

Currently, a notification must be made at least 60 days prior to making a discretionary distribution to the permissible distributees of the second trust or if none then to the qualified beneficiaries of the second trust. This bill requires that the notification be made to the permissible distributees of the first trust and to the permissible distributees of the second trust.

The second trust may have a duration that is the same as the first trust. However, the property of the second trust that is attributable to the first trust is subject to the rules governing maximum perpetuity, accumulation, or suspension of the power of alienation which apply to the property of the first trust. The creation of a general power of appointment in the second trust instrument shall not be precluded by this provision.

In the event that part of the second trust instrument does not comply with this bill, the exercise of the discretionary power is effective and the provisions of the second trust instrument that are not permitted in or are required to be in the trust instrument are deemed void or included to the extent necessary to comply.

This bill is similar to SB 338 (2021) and HB 2533 (2020).