

HCS SS SCS SB 931 -- BUSINESS ENTITIES

SPONSOR: Koenig (Riley)

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Special Committee on Government Oversight by a vote of 9 to 2. Voted "Do Pass" by the Standing Committee on Rules- Administrative Oversight by a vote of 10 to 0.

The following is a summary of the House Committee Substitute for SB 931.

MISSOURI DISASTER FUND (Section 44.032, RSMo)

This bill allows rural electric cooperatives, as defined in the bill, to receive funds from the Missouri Disaster Fund.

HOME-BASED BUSINESSES (Sections 64.008, 65.710, 71.990, and 89.500)

The bill creates new provisions governing the regulation of home-based work, as defined in the bill, by certain political subdivisions. Specifically, counties, municipalities, and townships are prohibited from enacting a zoning ordinance or regulation that:

- (1) Prohibits mail order or telephone sales for home-based work;
- (2) Prohibits service by appointment within the home or accessory structure;
- (3) Prohibits or requires structural modifications to the home or accessory structure that do not change the residential character of the residential building or adversely affect the character of the surrounding neighborhood;
- (4) Restricts the hours of operation for home-based work; or
- (5) Restricts storage or the use of equipment that does not produce effects outside the home or accessory structure.

Furthermore, any such zoning ordinance or regulation may not explicitly restrict or prohibit a particular occupation.

These provisions do not supersede any deed restriction, covenant or agreement restricting the use of land nor any master deed, by law or other document applicable to a common interest ownership community.

This bill provides that a political subdivision shall not prohibit the operation of a no-impact, home-based business or require a person to apply for any permit or license to operate such a

business. However, a political subdivision may establish reasonable regulations on such businesses that are narrowly tailored for the purpose of protecting public health and ensuring the businesses are compliant with state and federal law.

PERSONAL PRIVACY PROTECTION ACT (Section 105.1500)

This bill creates provisions relating to the disclosure of personal information to public agencies. This bill establishes the "Personal Privacy Protection Act", prohibiting public agencies from disclosing or requiring the disclosure of personal information, as defined in the bill.

The bill prohibits public agencies from:

- (1) Requiring any individual to provide the public agency with personal information or otherwise compel the release of personal information;
- (2) Requiring any entity exempt from federal income taxation under Section 501(c) of the Internal Revenue Code to provide the public agency with personal information or otherwise compel the release of personal information;
- (3) Releasing, publicizing, or otherwise publicly disclosing personal information in possession of a public agency, unless consented to by an entity exempt from federal income taxation under Section 501(c) of the Internal Revenue Code; or
- (4) Requesting or requiring a current or prospective contractor or grantee with the public agency to provide the public agency with a list of entities exempt from federal income taxation under Section 501(c) of the Internal Revenue Code of 1986, as amended, to which it has provided financial or nonfinancial support.

A person or entity alleging a violation of this section may bring a civil action for appropriate injunctive relief, damages, or both.

S CORP AND LLC CAMPAIGN CONTRIBUTIONS (Section 130.029)

The bill permits any limited liability company that has not elected to be classified as a corporation under federal law to make campaign contributions to any committee, provided such limited liability company has been in existence for at least one year prior to making such contribution and such entity submits a form to the Missouri Ethics Commission indicating that such LLC is a legitimate business with a legitimate business interest and is not created for the sole purpose of making campaign contributions.

TAX CREDIT ACCOUNTABILITY ACT (Sections 135.800-135.825)

This bill modifies the definition of "domestic and social tax credits" by removing the health care access fund tax credit, which has expired, and by adding the previously authorized health, hunger, and hygiene tax credit. This bill also modifies the definition of "recipient" to provide that such term does not include the transferee of a tax credit.

This bill requires an applicant for a tax credit, as a part of the application process, to sign a statement affirming that the applicant is aware of the reporting requirements and penalty provisions of the Tax Credit Accountability Act.

Current law requires the recipients of tax credits to file annual reports that includes either the estimated or actual project costs. This bill requires such reports to include both the estimated and actual project costs.

Additionally, current law requires the administering agency of a tax credit to make available the names of each tax credit recipient. This bill allows such information to be made available either on the Department of Economic Development's website or through the Missouri Accountability Portal. This bill modifies a provision providing that a person or entity shall not be required to submit an annual report until at least one year after the credit issuance date by making such time period one month.

Current law provides for penalties for a failure to submit required annual reports, with a penalty of 2% of the value of the tax credits for each month of delinquency of more than six months but less than one year, and a penalty of 10% of the value of the credits for each month of delinquency of more than one year. This bill modifies such penalties. Failure to file the first annual report for more than three months shall result in a penalty of 1% of the value of the credits, not to exceed 10%. Failure to file the second or third annual report for more than three months shall result in a penalty of 1.5% of the value of the credits, not to exceed 20% per report.

Current law provides for a penalty equal to 100% of the value of the credits for fraud in the tax credit application process. This bill increases such penalty to 200% for fraud in the application or reporting process. This bill also provides that the Administrative Hearing Commission shall determine whether fraud has occurred. The Department of Revenue, the Department of Economic Development, or the administering agency may file a fraud complaint to the Administrative Hearing Commission, as described in the bill.

Current law requires an administering agency to send a notice of delinquency ninety days after the annual report is due. This bill changes such requirement to 30 days. This bill also allows the Department of Revenue to enter into agreements to compromise or abate some or all of any penalties administered under the bill.

Current law requires tax credit applicants to forfeit and repay tax credits if such applicant purposely and directly employs unauthorized aliens. This bill changes such standard to an applicant knowingly employing unauthorized aliens.

S CORP TAX CREDIT (Section 143.081)

Current law authorizes a tax credit for the amount of income tax paid to another state for income that is also taxed in this state. This bill allows such tax credit to be claimed by resident shareholders of an S corporation for the amount of tax imposed by this state on income earned in another state but not taxed by such state.

EMPLOYEE STOCK OWNERSHIP PLAN DEDUCTION (Section 143.114)

Current law authorizes an income tax deduction equal to 50% of the net capital gain from selling employer securities to a qualified Missouri employee stock ownership plan, with such deduction scheduled to sunset on December 31, 2022. This bill extends the sunset date to December 31, 2028.

HEALTH INSURANCE DEDUCTION TAX CREDIT (Section 143.119)

Current law authorizes a refundable tax credit for self-employed taxpayers who are ineligible for the federal health insurance deduction. This bill modifies such tax credit by making it nonrefundable, nontransferable, and not eligible to be carried forward or backward to any other tax year. This bill also requires a taxpayer to have a Missouri income tax liability of less than \$3,000. A taxpayer shall not be able to claim such tax credit and the state health insurance deduction in current law for the same tax year.

This tax credit shall sunset on December 31, 2028.

SALT PARITY ACT (Section 143.436)

This bill establishes the "SALT Parity Act".

Current law provides that, in lieu of a corporate income tax on a pass-through entity, shareholders of such pass-through entity shall pay income tax on the shareholder's pro rata share of the entity's income attributable to Missouri. For tax years ending on or after

December 31, 2022, this bill allows the pass-through entity to elect to pay the tax, as described in the bill. The tax shall be equal to the sum of each member's income and loss items, as described in federal law, reduced by a deduction allowed for qualified business income, as described in federal law, and modified by current provisions of state law relating to the taxation of pass-through entities, with such sum multiplied by the highest rate of tax in effect for the state personal income tax.

A nonresident who is a member, as defined in the bill, shall not be required to file a tax return for a tax year if, for such tax year, the only income derived from this state for such member is from one or more affected business entities, as defined in the bill, that has elected to pay the tax imposed under this bill.

Each partnership and S corporation shall report to each of its members, for each tax year, the member's pro rata share of the tax imposed by this bill.

Each taxpayer, including part-year residents, that is subject to the state personal income tax shall be allowed a tax credit if such taxpayer is a member of an affected business entity that elects to pay the tax imposed by this bill. The tax credit shall be equal to the taxpayer's pro rata share of the tax paid under this bill. Such tax credit shall be nonrefundable, but may be carried forward to subsequent tax years, except that a tax credit authorized for taxes paid to other states shall not be carried forward.

Each corporation that is subject to the state corporate income tax shall be allowed a tax credit if such corporation is a member of an affected business entity that elects to pay the tax imposed by this bill. The tax credit shall be equal to the corporation's pro rata share of the tax paid under this bill. Such tax credit shall be nonrefundable, but may be carried forward to subsequent tax years.

Partnerships and S corporations may elect to pay the tax imposed under this bill by submitting a form to be provided by the Department of Revenue. A separate election shall be made for each tax year. Such election shall be signed either by each member of the electing entity, or by any officer, manager, or member of the electing entity who is authorized to make such election and who attests to having such authorization under penalty of perjury.

An affected business entity shall designate an affected business entity representative for the tax year to bill on behalf of the affected business entity in any action required or permitted to be taken by an affected business entity pursuant to this bill, a proceeding to protest taxes, an appeal to the Administrative Hearing Commission, or review by the judiciary with respect to such

action, and the affected business entity's members shall be bound by those actions.

MISSOURI HOUSING DEVELOPMENT COMMISSION (Section 215.020)

Current law provides that the Missouri Housing Development Commission shall be composed of 10 members. This bill adds four additional members to the Commission. Two members shall be members of the Senate, one of which shall be from the majority party appointed by the President Pro Tem and one of which shall be from the minority party appointed by the Minority Leader. The remaining two members shall be members of the House of Representatives, one of which shall be from the majority party appointed by the Speaker of the House and one of which shall be from the Minority party appointed by the Minority Leader.

NAMES OF LIMITED LIABILITY COMPANIES (Section 347.020)

The bill prohibits the name of any dissolved or canceled LLC from being used by any other for a period of one year following the dissolution or cancellation.

LIMITED LIABILITY COMPANIES - INFORMATION STATEMENTS (Sections 347.044, 347.179, 347.183)

Every limited liability company (LLC) and foreign limited liability company (foreign LLC) is required to file an information statement with the Secretary of State (SOS) once every 5 years, accompanied by a fee of \$15, or \$5 if filed electronically. The SOS is permitted to administratively cancel the articles of incorporation of an LLC or the registration of a foreign LLC for failure to timely file an information statement. The bill provides procedures for allowing a foreign LLC to apply to the SOS to have its registration reinstated following such a cancellation. Procedures are also created allowing an LLC to apply for reinstatement following the erroneous or accidental filing of a notice of winding up or notice of termination.

INVOLUNTARY DISSOLUTION OF LLCs (Section 347.143)

The modifies the procedure by which a court may decree dissolution of an LLC. Specifically, the court may issue such a decree if it determines:

- (1) It is not reasonably practicable to carry on the business in conformity with the operating agreement;
- (2) Dissolution is reasonably necessary for the protection of the rights or interests of the complaining members;

(3) The business of the limited liability company has been abandoned;

(4) The management of the limited liability company is deadlocked or subject to internal dissension; or

(5) Those in control of the limited liability company have been found guilty of, or have knowingly countenanced, persistent and pervasive fraud, mismanagement, or abuse of authority.

FILING FEES (Sections 347.179, 347.183, 358.460, and 358.470)

The bill reduces various filing fees imposed on LLC's and partnerships for filing certain documents with the SOS and provides for reduced fees for filing certain documents in an electronic format. Additionally, the bill creates the following new fees:

(1) A fee of \$95 for filing a withdrawal of an erroneously or accidentally filed notice of winding up or articles of termination;

(2) A fee of \$10 for a filing relating to a limited liability series an additional fee of 10 dollars for each series effected or \$5 if filing online in an electronic format prescribed by the secretary; and

(3) A fee of \$95 for filing an application for reinstatement or \$45 for filing online in an electronic format prescribed by the secretary.

SERIES LLCs (Section 347.186)

For purposes of Series LLCs, the maximum number of designated series that can be affected by a single filing made with the Secretary of State is 50.

MEDICAL MARIJUANA FACILITIES (Section 362.034)

This bill allows any entity that operates as a medical marijuana facility licensed or certified under Article XIV, Section 1 of the Constitution of Missouri to request in writing that a state or local licensing authority or agency, including but not limited to the Department of Health and Senior Services or Department of Revenue, share the entity's application, license, or other regulatory and financial information with a banking institution. Such written request must include a waiver giving authorization for the transfer of the individualized data, information, or records and waiving any confidentiality or privilege that applies to that individualized data, information, or records. A state or local

licensing authority or agency is permitted to share the entity's information with the banking institution's state and federal supervisory agencies as well.

CHARITABLE ORGANIZATIONS (Section 407.475)

Under this bill, the state shall not impose any additional annual filing or reporting requirements on a charitable organization that are more stringent, restrictive, or expansive than the report already required to be submitted to the Attorney General's office unless such filing or report is specifically required by federal law.

This provision shall not apply to labor organizations, state grants or contracts, or investigations by the Attorney General of charitable organizations as set forth in state statute.

The restriction on additional annual filing or reporting requirements on a charitable organization shall not apply when such organization is providing any report or disclosure required by state law to be filed with the Secretary of State.

RESTRICTIVE COVENANTS (Sections 431.201 and 431.204)

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 are 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.

This 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

(2) The covenant between a business entity and an employee 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;

(3) 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

(4) 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 conclusive 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.

The reasonableness of a covenant shall be determined by the facts and circumstances pertaining to it. Furthermore, this 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.

No express reference to geographical area is required for the enforceability of a covenant. Additionally, a covenant that is overbroad, 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.

A reasonable covenant in writing promising not to solicit, recruit, hire, induce, persuade, encourage, or otherwise interfere with, directly or indirectly, the employment of one or more employees or owners of a business entity shall be presumed to be enforceable and not a restraint of trade if it is between a business entity and the owner of the business entity and does not continue for more than two years following the end of the owner's business relationship with the business entity. Also, a reasonable covenant in writing promising not to interfere with, directly or indirectly, a business entity's customers, shall be presumed to be enforceable and not a restraint of trade if the covenant is limited to customers with whom the owner dealt and if the covenant is between a business entity and an owner, so long as the covenant does not continue for more than five years following the end of the owner's business relationship with the business entity. Furthermore, a provision in writing by which an owner promises to provide prior notice of the owner's intent to terminate, sell, or otherwise dispose of such owner's ownership interest in the business entity shall be presumed to be enforceable and not a restraint of trade.

REGULATORY SANDBOX ACT (Sections 620.3900 - 620.3930).

This bill also establishes the "Regulatory Sandbox Act", which creates the "Regulatory Relief Office" within the Department of Economic Development. The Regulatory Relief Office shall administer the provisions of this section with the purpose of identifying state laws or regulations that could potentially be waived or suspended for participating businesses during a 24 month period in which the participating business demonstrates an innovative product offering to consumers.

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 bill will save taxpayers money and will clean up a lot of records.

Testifying for the bill were Senator Koenig; Associated Industries of Missouri; Scott Tate, St. Charles Regional Chamber; Hannah Beers Sutton, Mallinckrodt Pharmaceuticals; The Boeing Company; Anhueser-Busch; Next Missouri & Biostl; National Federation of Independent Business; Allegis/Maxim/Redwood Public Affairs; Greater STL, Inc.; Scott R. Clark, Secretary Of State John R. Ashcroft; Missouri Society of Certified Public Accountants; and Lockton.

OPPONENTS: Those who oppose the bill submitted written testimony.

Testifying against the bill was Arnie Dienoff

OTHERS: Others testifying on the bill submitted written testimony.

Testifying on the bill was the Missouri Bankers Association.

Written testimony has been submitted for this bill. The full written testimony can be found under Testimony on the bill page on the House website.