

HCS SS#2 SCS SB 968 -- BUSINESS ENTITIES

SPONSOR: Burlison (Riley)

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Judiciary by a vote of 10 to 0. Voted "Do Pass" by the Standing Committee on Rules- Administrative Oversight by a vote of 12 to 1.

The following is a summary of the House Committee Substitute for SB 968.

REQUIREMENTS FOR PUBLIC NOTICES

This bill allows invitation for bids for contracts for projects costing in excess of \$25,000 entered into by any city containing 500,000 inhabitants or more by posting on the website of the city or through an electronic procurement system. Further, invitation for bids for contracts costing in excess of \$100,000 entered into by an officer or agency of the state may be posted on the website of the officer or agency or through an electronic procurement system.

Currently, in order to qualify as a newspaper legally acceptable to run public notices and advertisements, a newspaper must have been published regularly for a period of three years; or must be the successor newspaper to a defunct newspaper and begin publication no later than 30 days after the termination of the prior newspaper.

This bill reduces the time period of regular publication from three years to one year, and increases the time period from 30 days to 90 days within which a successor newspaper must begin publication. The bill also allows a newspaper that has been purchased or newly established by another newspaper that satisfies these conditions to qualify.

This bill also modifies the requirements of notice for sale by an operator of a self-service storage facility for the sale of personal property of an occupant in default. In addition to advertising in the classified section of a newspaper prior to sale, the operator may also and instead advertise in any other commercially reasonable manner. The advertisement is commercially reasonable if at least three independent bidders attend the sale (Sections 8.250, 415.415, 493.050, 493.070, RSMo).

MISSOURI DISASTER FUND

This bill allows rural electric cooperatives, as defined in the

bill, to receive funds from the Missouri Disaster Fund (Section 44.032).

PERSONAL PRIVACY PROTECTION

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 such personal information;
- (2) Requiring any entity exempt from federal income taxation under Section 501(c) of the Internal Revenue Code to provide a 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 the public agency; or
- (4) Requiring any 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 to which it has provided financial or nonfinancial support.

The bill shall not preclude any individual or entity from being required to comply with any of the following:

- (1) Submitting any report or disclosure required by this Chapter or Chapter 130;
- (2) Responding to any lawful request or subpoena for personal information from the Missouri Ethics Commission as a part of an investigation, or publicly disclosing personal information as a result of an enforcement action from the Missouri Ethics Commission pursuant to its authority in Sections 105.955 to 105.966;
- (3) Responding to any lawful warrant for personal information issued by a court of competent jurisdiction;
- (4) Responding to any lawful request for discovery of personal information in litigation as provided in the bill;
- (5) Any report or disclosure required by state law to be filed

with the Secretary of State; and

(6) Admitting any personal information as relevant evidence before a court of competent jurisdiction. However, no court shall publicly reveal personal information absent a specific finding of good cause.

Any person or entity may bring a civil action for appropriate injunctive relief, damages, or both. Damages may be not less than \$2,500 to compensate for injury or loss caused by each violation of this bill and, for an intentional violation, a sum of money not to exceed three times the sum of damages assessed. A court may additionally award all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, to the complainant in the action if the court determines that the award is appropriate (Section 105.1500).

LLC CAMPAIGN CONTRIBUTIONS

The bill permits any limited liability company (LLC) that has not elected to be classified as a corporation under federal law to make campaign contributions to any committee, provided such LLC has been in existence for at least one year prior to making such contribution and such entity electronically files with 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 (Section 130.029).

TAX CREDIT ACCOUNTABILITY ACT

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. (Section 135.800)

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 (Section 135.802). Currently, recipients of tax credits are required 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 (Section 135.805).

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.

Currently, an administering agency is required to send a notice of delinquency 90 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 (Section 135.810).

Currently, tax credit applicants are required 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 (Section 135.815).

S CORP TAX CREDIT

Currently a tax credit is authorized 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 (Section 143.081).

SALT PARITY ACT

The 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 (Section 143.436).

UNEMPLOYMENT AUTOMATION FUND

This bill requires each employer with a contribution rate greater than zero, to pay an annual unemployment automation adjustment in an amount equal to .0002% of the employer's total taxable wages for

the 12 month period ending the preceding June 30th. The Division of Employment Security may reduce the automation adjustment percentage to ensure that the total amount of adjustment due from all employers shall not exceed \$5 million annually. All moneys collected shall be deposited into the Unemployment Automation Fund.

These provisions have a delayed effective date of January 1, 2023 (Sections 288.132 and 288.133).

ENTERTAINMENT DISTRICT SPECIAL LICENSES

This bill allows eligible persons or entities to apply to Alcohol and Tobacco control for a special license to sell intoxicating liquor by the drink for retail or consumption dispensed from the person's or entity's establishment within the common area of the entertainment district, defined in the bill, on certain days and at certain times.

CHARITABLE ORGANIZATIONS

As specified in 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 (Section 407.475).

COVENANTS NOT TO COMPETE

The bill specifies that a reasonable covenant in writing promising not to solicit, recruit, hire, induce, persuade, encourage, or otherwise interfere with the employment of one or more employees or owners of a business entity is presumed to be enforceable if it adheres to the time restrictions in the bill and it is between a business entity and an owner (Section 431.204).

ANTI-SLAPP

This bill creates the "Uniform Public Expression Protection Act".

The bill relates to causes of action filed against individuals who exercise certain constitutional rights. The bill specifies that when a person, defined in the bill as "an individual, estate, trust, partnership, business or nonprofit entity, governmental unit, or other legal entity", has a cause of action filed against

him or her based upon his or her communication in a governmental proceeding or on an issue under consideration in a governmental proceeding, or when he or she exercises his or her right of freedom of speech or of the press, the right to assemble, or the right of association, that person may file a special motion to dismiss the cause of action.

The bill establishes procedures for such special motions to dismiss. The bill specifies under which circumstances a court may award costs, reasonable attorneys' fees, and reasonable litigation expenses. The provisions of the bill apply to civil actions filed on or after August 28, 2022 (Section 537.529).

REGULATORY SANDBOX ACT

This bill 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 the bill 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 Regulatory Relief Office shall maintain a web page on the Department's website that invites residents and businesses to make suggestions regarding laws and regulations that could be modified or eliminated to reduce the regulatory burden of residents and businesses in the state (Section 620.3905).

The Regulatory Relief Office shall be responsible for evaluating and approving or denying applications to participate in the Sandbox Program. An applicant shall submit an application along with a \$300 application fee to the Regulatory Relief Office, which shall include contact information and a description of the innovative offering to be demonstrated, including statements regarding how the innovative offering is subject to licensing, legal prohibition, or other authorization requirements outside of the Sandbox Program; each law or regulation that the applicant seeks to have waived or suspended while participating in the Sandbox Program; how the innovative offering would benefit consumers; what risks might exist for consumers who use or purchase the innovative offering; and other required information, as described in the bill.

No later than five business days after the day on which a completed application is received by the Regulatory Relief Office, the Office shall review the application and refer the application to each applicable agency, as defined in the bill, that regulates the applicant's business. No later than 30 days after the day on which an applicable agency receives a completed application for review,

the applicable agency shall provide a written report to the Sandbox Program director with the applicable agency's findings, including any identifiable, likely, and significant harm to the health, safety, or financial well-being of consumers that the relevant law or regulation protects against, and a recommendation to the Regulatory Relief Office that the applicant either be admitted or denied entrance into the Sandbox Program. An applicable agency may deny an application for reasons described in the bill. The Regulatory Relief Office shall not approve any application denied by an applicable agency (Section 620.3915).

Upon the receipt of a report from all applicable agencies, the Regulatory Relief Office shall provide the application and associated reports to the "General Regulatory Sandbox Program Advisory Committee", which is created by the bill. The Advisory Committee shall be composed of eight members, as described in the bill including one member of the House of Representatives appointed by the Speaker, one member of the Senate appointed by the President Pro Tem and three members of the public or an institution of higher education appointed one each by the Governor, the President Pro Tem, and the Speaker. The Advisory Committee shall advise and make recommendations to the Regulatory Relief Office on whether to approve applications to the Sandbox Program, and may meet at its own discretion to override a decision of the Regulatory Relief Office on the admission or denial of an applicant to the Sandbox Program, provided such override is decided with a majority vote of the members of the Advisory Committee, and further provided that such vote shall be taken within 10 business days of the Regulatory Relief Office's decision. Meetings of the Advisory Committee shall be considered public meetings for the purposes of the Sunshine Law, however, meetings shall be closed if the purpose of the meeting is to discuss an application for participation in the regulatory sandbox and failing to hold a closed meeting would reveal information that constitutes proprietary or confidential trade secrets (Section 620.3910).

Upon approval of an application, a Sandbox participant shall have 24 months after the day on which its application was approved to demonstrate the innovative offering described in the Sandbox participant's application. During such period, the Sandbox participant shall be exempt from the laws and regulations outlined in an agreement entered into with the Regulatory Relief Office. Innovative offerings shall only be available to consumers who are residents of this state, and no law or regulation shall be waived or suspended if such waiver or suspension would prevent a consumer from seeking restitution in the event that the consumer is harmed. A Sandbox participant shall not be subject to prosecution or administrative penalty for a violation of any law or regulation that is waived or suspended during the duration of the

participant's demonstration period (Section 620.3920).

Prior to demonstrating an innovative offering, a Sandbox participant shall disclose certain information to consumers, as described in the bill (Section 620.3925).

At least 30 days prior to the end of a participant's demonstration period, the participant shall notify the Regulatory Relief Office that it either intends to exit the Sandbox Program or that it seeks an extension. The Regulatory Relief Office may grant an extension not to exceed 12 months, and a participant may seek additional extensions up to a cumulative maximum of seven years. If a demonstration includes an innovative offering that requires ongoing services or duties beyond the 24 month demonstration period, the participant may continue to demonstrate the offering, but shall be subject to all laws and regulations that were waived or suspended as part of the Sandbox Program.

A Sandbox participant shall retain certain records for a period of 24 months after exiting the Sandbox Program.

The Regulatory Relief Office shall establish quarterly reporting requirements for each participant, and each participant shall notify the Regulatory Relief Office and each applicable agency of any incidents that result in harm to the health, safety, or financial well-being of a consumer. Any incident reports shall be publicly available on the regulatory sandbox webpage provided, however, that any information contained in such reports that constitutes proprietary or confidential trade secrets shall not be subject to disclosure pursuant to the Sunshine Law.

No later than 30 days after a Sandbox participant exits the Sandbox Program, such participant shall submit a written report, as described in the bill, describing an overview of the demonstration. No later than 30 days after receiving such report, an applicable agency shall provide a written report to the Regulatory Relief Office that describes any statutory or regulatory reform the applicable agency recommends (Section 620.3930).

MISSOURI WORKS PROGRAM

This bill allows for a 12-month extension on certain deadlines for qualified companies and qualified military projects, as part of the Missouri Works Program, in recognition of the negative effects of COVID-19 and global supply chain disruptions.

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

PROPONENTS: Supporters say that this has to do with charitable organizations, which we rely on to do the charitable work of our state, and to make sure they are not targeted by bureaucrats and to make sure they don't have to provide any more disclosure or documentation that isn't in statute. If we want to require it, we can, but we won't allow political subdivisions to doxx donor lists of charities because it would have a chilling effect on the organizations. There are thousands of charitable organizations in Missouri and this allows for transparency and does not bog them down with unnecessary paperwork and regulations. Missouri disaster fund language was added, related to electric co-ops, and they could receive funds or grants from Missouri. Salt parity bill, which makes sure S corps are able to collect taxes on that side so an individual can get a better tax cut from the federal government on the income side. During tax cut and jobs bill, Congress implemented caps, so then states started looking at ways for an entity to pay a tax rather than the individual. Twenty-two states have passed this, so there is complexity for Missouri competitiveness (resulting from Missouri not having this). Grants for religious organizations to bolster their security was also added but it's probably unconstitutional.

Testifying for the bill were Senator Burlison; National Federation of Independent Business; Philanthropy Roundtable; Allegis/Redwood/Maxim Public Affairs - Main Stree Employers Coalition; Associated Industries of Missouri; Missouri Society of Cpa's; and the Institute for Free Speech.

OPPONENTS: Those who oppose the bill submitted their testimony in writing, which can be found online.

Testifying against the bill was Arnie C. Dienoff.

OTHERS: Others testifying on the bill wanted to mention that the business covenant language was a little concerning as it came out of the Senate but understand that the committee is working to address that.

Testifying on the bill was the Missouri Association of Trial Attorneys.

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.