

HCS SS SCS SBs 3 & 69 -- BUSINESS DEVELOPMENT

SPONSOR: Hoskins (Riley)

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Economic Development by a vote of 10 to 5 with 1 present. Voted "Do Pass" by the Standing Committee on Rules-Legislative Oversight by a vote of 8 to 0.

The following is a summary of the House Committee Substitute for SB 3.

RIGHT-TO-START ACT

This bill establishes the "Right-to-Start Act". By no later than June 30, 2025, and annually thereafter, this bill requires the Commissioner of the Office of Administration to file a report with the General Assembly that includes information on contracts awarded to businesses that have been in operation for less than three years, as described in the bill.

This bill also requires the Commissioner of the Office of Administration, in conjunction with the Office of Entrepreneurship, which is established by the bill, to file a report with the General Assembly making recommendations on improving access and resources for new Missouri businesses that have been in operation for less than three years, including businesses owned by a racial minority group, and women-owned and veteran-owned businesses (Section 34.195, RSMo).

UNIFORM LIMITED LIABILITY COMPANY ACT

This bill repeals the Missouri Limited Liability Company Act and replaces it with the Uniform Limited Liability Company Act as proposed by the National Conference of Commissioners on Uniform State Laws (Section 347.1000).

DEFINITION OF TERMS AND TRANSITION REQUIREMENTS FOR PREEXISTING LIMITED LIABILITY COMPANIES

The bill defines several terms including, but not limited to, "limited liability company (LLC)"; "foreign limited liability company"; "manager"; "member"; "operating agreement"; and "transfer" that apply to Sections 347.1000 to 347.1228.

Before August 28, 2023, Sections 347.1000 to 347.1228 apply to an LLC formed on or after August 28, 2023 and to an LLC formed before August 28, 2023, which elects in its operating agreement to be subject to these sections. For an LLC formed before August 28, 2023 the LLC's articles of organization are deemed to be its

certificate of organization and as further indicated in the bill (Sections 347.1002 to 347.1018).

OPERATING AGREEMENT

The operating agreement governs the relationship between the members as members and between the members and the LLC, the rights and duties of a manager and the conditions for amending the operating agreement. The bill specifies what the operating agreement shall not contain, such as eliminating the duty of loyalty or the duty of care, eliminating the contractual obligation of good faith and fair dealing or exonerating a person from liability for conduct involving bad faith, willful or intentional misconduct, or knowing violation of the law. The operating agreement cannot alter or eliminate any other fiduciary duty or unreasonably restrict the right of a member to maintain direct action, derivative action, or to appoint a special litigation committee to investigate the claims asserted under Section 347.1136.

The bill includes provisions explaining what the operating agreement may include. The bill also specifies when a court can determine as a matter of law whether a term of an operating agreement is manifestly unreasonable. An operating agreement may specify that an amendment requires the approval of a person that is not a party to the agreement or the satisfaction of a condition (Sections 347.1008, 347.1010, and 347.1012).

FILING OF RECORDS WITH SECRETARY OF STATE

The bill includes detailed requirements relating to the name of the LLC and the name under which a foreign LLC may register to do business in Missouri, which must be distinguishable on the records of the Secretary of State (SOS). The LLC or foreign LLC may use a name that is not distinguishable upon providing the SOS with a certified copy of the court judgment establishing the right to use the name. The bill explains how a foreign LLC, who is not registered to do business in Missouri, may register its name or its alternate name that is adopted. An LLC or registered foreign LLC shall deliver an annual report to the SOS and include information provided in the bill. An LLC may also provide the SOS with a statement of authority as indicated in the bill (Sections 347.1022, 347.1024, 347.1026, 347.1064, 347.1068, and 347.1070).

DESIGNATION OF A REGISTERED AGENT AND SERVICE OF PROCESS

Each LLC and each registered foreign LLC shall designate and maintain a registered agent in Missouri. The bill explains the duties of the registered agent, notification of change of an agent

and address of an agent, and resignation of an agent. An LLC or foreign LLC is served with process, notice, or demand under the law by serving the registered agent as specified in the bill (Sections 347.1028 to 347.1036).

MEMBERS RELATIONSHIP BETWEEN THEMSELVES AND THE LLC

The bill contains an explanation on topics relating to organizers of the LLC, a person's contribution to the LLC, distributions made by the LLC to members before its dissolution and winding up, contributions to the LLC, member-managed LLCs, reimbursements to a member or manager of a member-managed LLC for payments made on behalf of the LLC, members duty of loyalty and care, transferable interests, court entered charging order against a member, or transferee from transferring interest of the judgment debtor (Sections 347.1074 to 347.1098).

DISASSOCIATION AS A MEMBER OF AN LLC

A person can disassociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will. The bill sets out when the disassociation of a member is regarded as wrongful. The bill also includes provisions explaining when a person is disassociated as a member in the case of an individual or in a member-managed LLC. A person's disassociation does not discharge the person from any debt, obligation, or other liability to the LLC or other members that were incurred while a member (Sections 347.1102, 347.1104 and 347.1106).

DISSOLUTION OF AN LLC

A LLC is dissolved and its affairs and activities are wound up based upon the occurrence of events or circumstances explained in the bill. A dissolved LLC continues after dissolution only for the purpose of winding up. The bill explains the requirements for a rescission of a dissolution, publication of notice of dissolution and for persons having any claims against the LLC to present them in accordance with the notice.

A LLC may be administratively dissolved by the SOS based upon factors indicated in the bill (Sections 347.1108 to 347.1120).

FOREIGN LIMITED LIABILITY COMPANY

The bill includes provisions relating to registration of a foreign LLC with the SOS and delivering a foreign registration statement including information that is specified in the bill. The activities that do not constitute doing business in the state, dissolution, or conversion of a foreign LLC to a domestic or

foreign entity that does not require public filing of a record, other than a limited liability partnership, and delivering a withdrawal statement to the SOS with certain information, are further specified in the bill. Transfer of registration based upon a merger is also detailed in the bill (Sections 347.1142 to 347.1160).

ADDITIONAL PROVISIONS

These sections contain definitions including but not limited to: "conversion", "domestication", "entity", "governance interest" and "interest holder" and transactions effected under these sections relate to changes in control, takeover, business combination, control-share acquisition involving a domestic merger, acquisition, conversion, domesticating business corporation, plan of merger, plan of interest exchange, plan of domestication, and others as set out in the bill (Sections 347.1164 to 347.1228).

Sections 347.1000 to 347.1228 modify, limit and supersede the Electronic Signatures in Global and National Commerce Act with certain exceptions.

Sections 347.1000 to 347.1228 do not affect an action commenced, proceeding brought, or right accrued before August 28, 2022.

MERCHANDISING PRACTICES - AUTOMATICALLY RENEWED TRANSACTIONS

This bill requires businesses that make automatic renewal or continuous service offers to provide customers with clear information and costs, including any price changes after initial free trial periods or gifts, in a manner that may be retained by the customer, prior to collecting payment for any goods or services. This bill also requires that the customer be given cost effective, timely, and easy-to-use mechanisms for cancellation and for automatic renewal or continuous service as explained in the bill. Further, the bill includes provisions relating to termination of the automatic renewal or continuous service and material changes to the terms of service(Section 407.205).

LEASED PRODUCTS

This bill specifies that any leased technology product can be returned to the physical location a person first acquired the product. The person can not be required to ship the product back to the entity that owns it if there is a physical location to return the product (Section 407.2110).

EMPLOYMENT COVENANTS

No "facility" in this state shall require any "health care professional", as both are defined in Section 376.1350, who is working in a non-research role to sign any covenant not to compete as a condition of employment. Any such covenant in an employment contract that is in violation of this subsection shall be void and unenforceable (Section 407.2100).

OFFICE OF ENTREPRENEURSHIP

This bill creates the Office of Entrepreneurship within the Department of Economic Development. The Office shall employ an individual to promote policies and initiatives to support the growth of entrepreneurship of Missouri-based businesses with less than 10 employees, including entrepreneurship within racial minority groups, and women and veteran entrepreneurship, in this state (Section 620.3800).

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 two-year 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; and what risks might exist for consumers who use or purchase the innovative offering, as described in the bill.

No later than 15 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 60 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 in the bill. The Advisory Committee shall be composed of 11 members, as described in the bill. 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 two-thirds majority vote of the members of the Advisory Committee, and further provided that such vote shall be taken within 15 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 (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 45 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 multiple extensions. If a demonstration includes an innovative offering that requires ongoing services or duties beyond the two-year

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, provided that any participant that receives an extension to the demonstration period shall not be subject to the waived or suspended laws and regulations until after the end of the extended demonstration period.

A Sandbox participant shall retain certain records for a period of two years 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.

No later than 45 days after a Sandbox participant exits the Sandbox Program, such participant shall submit a written report 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).

SMALL BUSINESS REGULATORY FAIRNESS BOARD

Provisions in current law establishing the Small Business Regulatory Fairness Board are repealed (Section 536.305).

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

PROPONENTS: Supporters say that allowing Missouri startups a chance to develop new, innovative products and services without the burden of governmental regulation will strengthen the state economy, incentivize companies to relocate here, keep existing businesses in-state, and help to create a workforce that is competitive nationwide.

Testifying in person for the bill were Senator Hoskins; Missouri Retailers Association; Missouri Grocers Association; National Federation of Independent Business; Associated Industries of Missouri; Cicero Action; Greater Kansas City Chamber of Commerce; Next Missouri; and the Missouri Chamber of Commerce And Industry.

OPPONENTS: There was no opposition voiced to the committee.

Written testimony has been submitted for this bill. The full written testimony and witnesses testifying online can be found under "House Testimony on Senate Bills" on the House website.