

HCS#2 HB 1692, 1209, 1405, 1499, 1535 & 1811 -- JUSTICE SYSTEM
(Stevenson)

COMMITTEE OF ORIGIN: Committee on Judiciary

This substitute changes the laws regarding courts and judges, adoptions, reports of child abuse and neglect, child support, and judicial proceedings.

COURTS AND JUDGES

The substitute:

(1) Prohibits the Department of Revenue from releasing the home address or any other information contained in the motor vehicle or driver registration records of any state or federal judge or his or her immediate family members. Any state or federal judge is allowed to request the issuance of a special license plate or driver's license (Sections 32.056 and 301.146, RSMo);

(2) Specifies that the coroner must inform the appropriate prosecuting attorney of the results of an inquisition regarding the death of any person by a felonious act. Currently, the coroner must inform one or more associate circuit judges when he or she completes the inquisition (Section 58.370);

(3) Allows for the appointment of an acting county municipal court judge on a temporary basis in the event any judge of a county municipal court becomes ill or is otherwise unavailable. The acting judge appointed must already serve as a municipal court judge within the same judicial circuit (Section 66.010);

(4) Specifies that "summer camp," as it relates to the State Legal Expense Fund, means a program operated only between May and September by a person or organization with the primary function of providing a summer recreational program for children from five to 18 years of age (Section 105.711); and

(5) Specifies that a voluntary acknowledgment of paternity will be a closed public record, but a copy must be available to certain specified persons (Section 193.087).

ADOPTION RECORDS (Sections 193.125, 193.128, 193.132, and 193.255)

The substitute changes the laws regarding adoption records. For adoptions instituted or completed on or after August 28, 2010, the substitute:

(1) Allows any adopted person who is at least 18 years of age to

submit an application to the State Registrar and, upon receiving the application, be issued a copy of his or her original, unaltered birth certificate and adoption records. Currently, the registrar can only open an adoption file if a certified copy of a court order has been issued;

(2) Allows an adopted person, the adopted person's attorney, or the adopted person's descendants if the adopted person is deceased to obtain a copy of the adopted person's original birth certificate from the State Registrar upon written application and the appropriate proof of identification. The adopted person must be at least 18 years of age and have been born in Missouri;

(3) Requires the State Registrar to develop and, upon request, provide each birth parent with a contact preference form and a medical history form. If a contact preference form is filed with the registrar, a medical history form must also be filed;

(4) Requires the State Registrar, upon receipt of the completed contact preference and medical history forms, to attach the forms to the original birth certificate of the adopted person. Completed contact preference and medical history forms have the same level of confidentiality as the original birth certificate; and

(5) Requires the adopted person to agree in writing to abide by the birth parent's preference stated in the contact preference form if it is attached to the adopted person's original birth certificate. The State Registrar must also provide a medical history form if it was completed by the birth parent.

For adoptions instituted or completed prior to August 28, 2010, the substitute:

(1) Requires a copy of the medical history form, which has had all identifying information redacted, to be issued to the adopted person;

(2) Requires the State Registrar to release the original birth certificate only if the birth mother is deceased. If the birth mother is not deceased, the registrar must, within three months of application by the adopted person, make reasonable efforts to contact the birth mother via telephone, personally and confidentially, to obtain the birth mother's consent or denial to release the original birth certificate. If the registrar does not have sufficient information or resources to locate and make contact with the birth mother, the registrar may refer the adopted person to, or work in conjunction with, the child-placing agency or the juvenile court to make the contact and conduct the search. The registrar, agency, or court may charge the actual

costs for the search of the birth mother to the adopted person;
and

(3) Allows the adopted person, if the birth mother could not be contacted, to re-apply for a copy of his or her original birth certificate within one year from the end of the three-month period during which the attempted contact with the birth mother was previously made. The State Register must not release the certificate of birth until the birth mother submits a subsequent written consent for release. If the birth mother gives her consent, the registrar, child-placing agency, or juvenile court must release to the adopted person the identifying information obtained as a result of the search.

REPORTS OF CHILD ABUSE AND NEGLECT

The substitute:

(1) Requires the local office of the Children's Division within the Department of Social Services to update the information system within 45 working days, instead of the current 30 days, of the results of an investigation of a report of abuse or neglect. If an investigation involving the death of a child cannot be completed within 45 working days, the division is required to update the information system at regular intervals and upon completion of the investigation. The division is prohibited from entering a determination into the Central Registry until the alleged perpetrator fails to request a review by the Child Abuse and Neglect Review Board or a trial de novo in the circuit court within 30 days or a determination is made by the board that the alleged perpetrator has committed child abuse or neglect (Section 210.145);

(2) Allows an alleged perpetrator to have access to his or her investigation records one year after the division provided written notice to the prosecuting attorney in the jurisdiction where the act is alleged to have occurred. The prosecuting attorney may petition the circuit court to extend the one-year period for good cause shown for a time as the court may determine is necessary to complete the investigation and to file any appropriate charges (Section 210.150); and

(3) Reduces, from 60 to 30 days, the period of time an alleged perpetrator has from the date of receipt of a notice of determination by the division to seek a reversal through a review by the board. In a case where criminal charges arising out of the investigation are pending, the request for review must be made within 30 days from when an indictment is returned, an information filed, the dismissal of the charges, or after the division's release of its investigative report to the alleged

perpetrator (Section 210.152).

CHILD SUPPORT (Sections 452.340, 454.425, 454.475, 454.517, 454.548, and 454.557)

The substitute requires the Family Support Division within the Department of Social Services to charge fees for certain child support-related services including:

- (1) A nonrefundable \$60 fee to an obligee or obligor who requests the division to review a support order to determine whether a modification of a support order is appropriate;
- (2) A nonrefundable fee to an obligee or obligor who requests that the division modify a support order after the division has determined that a modification is appropriate. The fee will be \$175 if the requestor has an individual gross monthly income equal to or greater than 250% but less than 400% of the federal poverty level based on a household size of one or \$350 if the requestor has an individual gross monthly income equal to or greater than 400% of the federal poverty level based on a household size of one;
- (3) A \$25 fee for submitting past-due child and spousal support debts for collection through federal income tax refund offset. The fee will only be assessed if the division collects support using the offset; and
- (4) A \$10 fee from support received through the payment center for each order for every year or portion of a year during which payments are received by the payment center. Currently, the division may charge this fee.

The review and modification fees must be waived if the requestor has an individual gross monthly income of less than 250% of the federal poverty level based on a household size of one, if the requestor is or was receiving assistance under a state program funded under Part A of Title IV of the federal Social Security Act, or if the fee is prohibited by state or federal law. The collection fee through tax refund offset is waived if the obligee is or was receiving assistance under a state program funded under Part A of Title IV of the federal Social Security Act or if the fee is prohibited by state or federal law. The division is authorized to change the amount of the review and modification fees by administrative rule based on actual standardized costs in accordance with state rules and regulations.

The substitute also:

- (1) Requires the hearing officer, when making a finding of

financial responsibility, to consider the factors in Section 452.340;

(2) Requires a notice issued by an entity entitled to receive and disburse child support payments in Missouri to advise the obligor of the procedures available to contest a lien on the obligor's workers' compensation benefits on the grounds that the lien is improper due to a mistake of fact by requesting a hearing within 30 days of the mailing date of the notice. The certified copy of the court order and the sworn or certified statement of arrearages constitutes prima facie evidence that the department director's order is valid and enforceable. If a prima facie case is established, the obligor can only assert mistake of fact as a defense; and

(3) Specifies that a current support obligation must not be recorded in the automated child support system when the obligation of a parent to make child support payments is deemed terminated pursuant to Section 452.340.

JUDICIAL PROCEEDINGS

The substitute:

(1) Lowers the age limit for juvenile court jurisdiction for state or local traffic violations from 15 1/2 to 15 years of age (Section 211.031);

(2) Specifies that the term "employment" does not include services performed by a licensed real estate salesperson or licensed real estate broker if substantially all, instead of the current at least 80%, of the remuneration, whether or not paid in cash, for the services performed, rather than to the number of hours worked, is directly related to sales or other output, including the performance of services, performed pursuant to a written contract between the individual and the person for whom the services are performed and the contract provides that the individual will not be treated as an employee with respect to the services for federal tax purposes (Section 288.034);

(3) Requires the certificate of title for a new outboard motor to contain both the year the motor was manufactured and the year the dealer received the motor from the manufacturer (Section 306.532);

(4) Changes the laws regarding the regulation of real estate brokers and salespersons to include limited partnerships, limited liability companies, and professional corporations and specifies that "real estate broker" will include these types of companies and "real estate salesperson" will include a single member

limited liability company, partnership, limited partnership, association, professional corporation, or corporation (Sections 339.010 - 339.710);

(5) Requires the Missouri Real Estate Commission within the Department of Insurance, Financial Institutions and Professional Registration upon receiving notice from the Department of Revenue that a licensee is delinquent in paying his or her taxes to immediately send a copy of the notice to the broker with which the licensee is associated (Section 339.845 and Section 1);

(6) Exempts a tenant from liability for rent payments during the remainder of the term of a lease agreement when his or her residence is destroyed by an act of God or other natural or man-made disaster unless the tenant caused the disaster (Section 441.645);

(7) Allows the residence of a child to be relocated 60 days after notice is provided to the court by any individual having custody or visitation rights unless a parent files a motion seeking an order to prevent the relocation within 30 days after receiving the notice. The motion contesting relocation must contain an affidavit stating the specific facts for opposing the relocation. The person seeking relocation must file a response including a counter-affidavit to any motion contesting relocation within 14 days, unless extended by the court for good cause; and the counter-affidavit must contain facts supporting the relocation and a proposed revised parenting plan for the child (Section 452.377);

(8) Requires any pleading, other than the interlocutory or final judgment, or any modification thereof, in a dissolution of marriage, legal separation, or motion to modify filed before August 28, 2009, to be subject to inspection only by the parties or an attorney of record or upon order of the court for good cause shown by any person or designee of a person licensed and acting under Chapter 381 who must keep any information obtained confidential except as necessary to the performance of functions required under the chapter or by the Family Support Division within the Department of Social Services when services are being provided under Section 454.400. Persons authorized to inspect these documents are allowed to receive or make copies of the documents without requiring the clerk to redact information unless specifically ordered to do so by the court. Upon a request, the clerk must redact the Social Security number from any filings, judgment, or pleading before releasing the information to the public (Section 452.430);

(9) Requires a lien on real estate that is obtained based on a judgment or order for child support or maintenance or the notice

of garnishment and the writ of sequestration to state only the last four digits of the obligor's Social Security number (Sections 454.515 and 525.233);

(10) Specifies that, notwithstanding any other provision of law to the contrary, the public interest exception to the mootness doctrine will apply to an appeal of a full order of protection which has expired (Section 455.007);

(11) Revises the definition of "adult household member" to be any person 17 years of age or older and the definition of "child" to be any person younger than 17 years of age as they relate to child orders of protection (Section 455.501);

(12) Allows a circuit court to appoint an extra circuit court marshal if the average total inmate population in all facilities operated by the Department of Corrections located in the circuit is more than 1,500 during the previous two years. Currently, the court can appoint an extra marshal only when the total average inmate population over the two-year period is more than 2,500 (Section 476.083);

(13) Allows the decision whether the court or jury visits property in any action for private nuisance where the amount in controversy exceeds \$1 million to be a matter of discretion. Currently, if any party requests the court or jury to visit the property, the court or jury is required to make a visit (Section 537.296);

(14) Allows any action against a person for conduct or speech at a public hearing or meeting to be subject a special motion to dismiss, motion for judgment on the pleadings, or motion for summary judgment so it can be considered on an expedited basis to prevent the unnecessary expense of litigation. Currently, only actions seeking money damages against a person for conduct or speech at a public hearing or meeting are subject to these special motions (Section 537.528);

(15) Allows a warrant to search for the blood of a person involved in an accident to be executed in any part of the state where the person whose blood is the subject of the warrant is found regardless of when the person moves or is taken out of the territorial jurisdiction of the court issuing the warrant (Section 542.286);

(16) Specifies that an individual who owns or leases private property may use deadly force against a person who unlawfully enters, remains after unlawfully entering, or attempts to unlawfully enter the property. The owner or lessor of the private property does not have a duty to retreat from the

property (Sections 563.011 and 563.031);

(17) Exempts all prosecuting attorneys, assistant prosecuting attorneys, circuit attorneys, and assistant circuit attorneys who have completed the firearms safety training course required under Section 571.111 from the general prohibition on carrying concealed firearms and from certain other restrictions in Section 571.030 (Section 571.030);

(18) Lowers the minimum age requirement for obtaining a concealed carry endorsement from 23 to 21 years of age. To process a change of address for a concealed carry endorsement, the sheriff of the new jurisdiction may charge a fee of up to \$10; and a sheriff may charge a fee of up to \$10 to change the name on an endorsement (Sections 571.101 and 571.104); and

(19) Exempts the possession of antique firearms, as defined in 18 U.S.C. Section 921, from the provision that specifies a person commits the crime of unlawful possession of a firearm if he or she is a convicted felon possessing a firearm (Section 571.070).

The provision regarding outboard motor certificate of titles becomes effective January 1, 2011.

FISCAL NOTE: Estimated Effect on General Revenue Fund of a cost of \$353,967 to an income of \$120,439 in FY 2011, an income of \$65,144 to \$645,203 in FY 2012, and an income of \$67,157 to \$664,618 in FY 2013. Estimated Income on Other State Funds of \$57,750 in FY 2011, \$70,686 in FY 2012, and \$72,072 in FY 2013.