

HCS HCB 8 -- CIVIL PROCEEDINGS

SPONSOR: McGaugh

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Judiciary by a vote of 8 to 3. Voted "Do Pass" by the Standing Committee on Rules- Legislative Oversight by a vote of 10 to 2.

ACTIONS AGAINST VETERINARIANS

This bill specifies that actions for damages for malpractice, negligence, error, or mistake against veterinarians and entities providing veterinary services must be brought within two years from the date of the occurrence of the act, subject to exceptions, specified in the bill. The animal owner's knowledge is used when time periods are dependent on knowledge of the negligence (Section 340.285, RSMo).

This is the same as HCS HB 159 (2017).

VEXATIOUS LITIGATION

This bill specifies that in any litigation pending in any court of this state, a defendant may move the court at any time until final judgment is entered, upon notice and hearing, for an order requiring the plaintiff to furnish security or for an order dismissing the litigation. The motion must be based upon the grounds and supported by a showing that the plaintiff is a vexatious litigant and there is not a reasonable probability that he or she will prevail in the litigation against the moving defendant. The bill specifies various procedures in the event such a motion is filed, as well as procedures the court must follow if it finds the plaintiff to be a vexatious litigant.

A vexatious litigant subject to a prefiling order may file an application to vacate the prefiling order. A vexatious litigant whose application was denied must not be permitted to file another application for one year after the date of the denial of the previous application.

A court may vacate a prefiling order and order removal of a vexatious litigant's name from the state courts administrator list of vexatious litigants subject to prefiling orders upon a showing of a material change in the facts upon which the order was granted and that it is just in vacating the order (Sections 507.250, 507.253, 507.256, 507.259, and 507.262).

This is similar to HB 77 (2017).

FIDUCIARY ACCESS

This bill establishes the "Missouri Fiduciary Access to Digital Assets Act," which allows fiduciaries to access electronic records or "digital assets" of an account holder or "user." A user may allow or prohibit the disclosure of his or her digital assets to a fiduciary in a will, trust, or other record. The user may also use an online tool to direct the custodian of the digital assets to disclose some or all of the digital assets. In certain situations, the direction of the user to the custodian using the online tool can override a conflicting direction contained in the user's will, trust, or other record. Also, the user's direction regarding disclosure of the digital assets under an online tool or other record overrides a contrary provision in a terms-of-service agreement that does not require the user to take affirmative action regarding the agreement. A fiduciary's access to digital assets may be modified or eliminated by a user, federal law, or a terms-of-service agreement if the user has not provided direction through the use of an online tool or will, trust, or other record.

A custodian has the discretion to grant a fiduciary full access to the user's account, partial access, or provide a copy of the digital assets requested but is prohibited from disclosing a digital asset the user has deleted. A custodian may charge a fee for disclosure. A custodian must disclose to a fiduciary the content of an electronic communication sent or received by the user, a catalogue of electronic communications, and digital assets of the user if the fiduciary provides certain documentation as specified in the bill. If the fiduciary is an agent acting under a power of attorney, then the power of attorney must expressly grant the agent authority over the content of electronic communications sent or received by the user for the custodian to disclose the digital assets.

A custodian may disclose to a conservator the user's catalogue of electronic communications and any digital assets if the conservator is given authority by the court and provides the court order to the custodian. Additionally, a conservator may request the suspension or termination of a user's account for good cause.

A fiduciary may terminate the user's account in writing and such request must be accompanied with certain documents as provided in the bill. Finally, a custodian has 60 days to comply with a fiduciary's request for disclosure or account termination. If the custodian does not comply with the request, then the fiduciary may apply to the court to order compliance (Sections 472.400, 472.405, 472.410, 472.415, 472.420, 472.425, 472.430, 472.435, 472.440, 472.445, 472.450, 472.455, 472.460, 472.465, 472.470, 472.475,

472.480, 472.485, and 472.490).

This is the same as HCS HB 379 (2017).

GUARDIAN AD LITEM FEES

This bill excludes guardian ad litem fees from the costs and expenses that may be waived, in certain civil actions, without the necessity of a motion and court approval. Individuals may still file a certification to have such fees waived. Failure to pay the guardian ad litem fees shall not preclude a certifying party from filing future suits, including motions to modify, and shall not be used as a basis to limit the certifying party's prosecution or defense of the action. Parties shall file certification for waiver of guardian ad litem fees prior to the trial commencing. Any party may present evidence on the financial condition of the parties. Based upon the evidence, if the court finds that the certifying party has the present ability to pay, the court may enter judgment ordering the certifying party to pay a portion of the guardian ad litem fees (Section 514.040).

This bill is similar to HB 765 (2017).