

HC8 8 -- CIVIL PROCEEDINGS

SPONSOR: McGaugh

COMMITTEE ACTION: Voted "To Introduce" by the Standing Committee on Judiciary by a vote of 6 to 2. Voted "Return To Committee of Origin" by the Standing Committee on Rules- Legislative Oversight by a vote of 12 to 0.

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).

CHILD PROTECTION REGISTRY

This bill establishes the "Missouri Child Protection Registry" composed of a secure list of contact points belonging or accessible to minors. Contact points may include instant messaging identities, wireless telephones, pagers, facsimiles, or email addresses. Parents, guardians, schools, and other entities may add contact points to the registry by registering them with the Attorney General. The registration is for three years, and can be revoked or renewed upon notification to the Attorney General. The Attorney General shall take certain steps, as specified, to ensure the security of the registry.

The bill bans any person from sending a message to a contact point that has been registered for 30 days or more if the primary purpose of the message is to advertise or otherwise link to a message that advertises gambling, intoxicating liquor, tobacco products, vapor products, controlled substances, or material pornographic for minors. Sending this type of message is not prohibited if certain procedures are followed, as specified in the bill. The Attorney General is required to establish a mechanism for senders of such messages to verify compliance with the registry. If a person desires to send such a message, payment must be made to the Attorney General for access to the mechanism for verifying compliance at a rate of seven tenths of one cent for each time a contact is checked. The revenues generated from these provisions will be disbursed as follows: 85% to the Child Protection Registry Fund and 15% to the Attorney General to investigate, enforce, and

defend these provisions.

A person committing the offense of tampering with the Missouri Child Protection Registry shall be guilty of a class A misdemeanor. Additionally, civil action may be brought by certain individuals, as specified, who may recover either actual damages or the lesser of \$5,000 for each message received by the recipient or transmitted or \$250,000 for each day the violation occurs (Sections 407.1750, 407.1755, 407.1760, 407.1765, 407.1770, 407.1775, and 407.1780).

This provision shall become effective on January 1, 2018.

This is the same as HB 286 (2017).

GUARDIANSHIP OF MINORS

This bill allows the court to order visitation between a minor who has been appointed a guardian and the minor's parents if the minor's parents petition the court for periods of visitation and if the court finds that the visitation is in the best interest of the minor, as specified (Section 475.084).

This is similar to HCS HB 287 (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 (Section 514.040).

This bill is similar to HB 765 (2017).