

HCS SB 909 -- THE MANAGEMENT OF CERTAIN PROPERTY INTEREST

SPONSOR: Dixon (Plocher)

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on General Laws by a vote of 8 to 3. Voted "Do Pass" by the Standing Committee on Rules- Legislative Oversight by a vote of 9 to 1.

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.

The user's direction regarding the disclosure of the digital assets under the use of 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 (Section 472.415, RSMo).

A custodian shall disclose to the 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 catalog 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 (Section 472.420).

A custodian has the discretion to grant to a fiduciary full access to the user's account, partial access, or provide a copy of the digital assets requested. The custodian may charge a fee for disclosure, but may not disclose a digital asset that the user has deleted (Section 472.425).

A fiduciary may terminate the user's account in writing and such request must be accompanied with certain documents as provided in

the bill.

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 (Section 472.475).

These provisions are similar to SB 909 (2018).

Currently, notice of the sale of real estate made pursuant to a mortgage or deed of trust is required to be made with at least 20 days' notice through a newspaper. This bill provides that notice of sale may also be made through electronic publication, at the discretion of the trustee. The bill also sets forth restrictions and requirements for the posting of the notice on the Internet (Section 443.320).

This provision is similar to HB 1651 (2018).

This bill specifies that the terms of an instrument creating or exercising a power of appointment prevail over provisions of the Missouri Uniform Powers of Appointment except the requisites for the creation of a power of appointment under subsections 1 to 4 of Section 456.990, of the Missouri Uniform Powers of Appointment.

Additionally, the powerholder of a nongeneral power may create a nongeneral power in a permissible appointee.

The bill repeals the provision specifying that a trust instrument may provide for the appointment of a trust protector and replaces it with a provision specifying that a trust instrument may provide for one or more persons, not then serving as a trustee and not the settlor or a beneficiary, to be given any powers over the trust as expressly granted in the trust instrument. Any such person may be identified and appointed as a trust protector or similar term. When a trust designates a trust protector, the trust shall be deemed a direct trust.

Finally, a trust protector shall act in a fiduciary capacity; however, the trust may provide that the trust protector shall act in a nonfiduciary capacity. In carrying out any written directions given to the trustee by the trust protector, the trustee shall not be subject to the provisions of the Prudent Investor Act. Furthermore, no trustee of a directed trust shall be accountable under law or equity for any act or omission of a trust protector and the trustee shall stand absolved from liability for executing the decisions or instructions from a trust protector or for monitoring the actions or inactions of a trust protector. A trustee shall take reasonable steps to facilitate the activity of a trust protector in a directed trust (Section 456.8-808).

These provisions are similar to HB 1845 (2018).

Currently, here are certain circumstances under which a no-contest clause, in a trust instrument is unenforceable against an interested person. This bill adds the following circumstances:

(1) Filing a motion, pleading, or other claim for relief concerning breach of trust by a trustee; and

(2) Filing a motion, pleading, or other claim for relief concerning removal of a trustee (Section 456.4-420).

This provision is similar to HB 1650 (2018).

The bill is similar to HCS SCS SBs 946 & 947 (2018).

PROPONENTS: Supporters say that the Missouri Bar Association supports this bill.

Testifying for the bill were Senator Dixon and The Board of Governors of The Missouri Bar.

OPPONENTS: There was no opposition voiced to the committee.