

HCS SCS SBs 946 & 947 -- ESTATE MANAGEMENT

SPONSOR: Dixon

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Judiciary by a vote of 9 to 0. Voted "Do Pass" by the Standing Committee on Rules- Legislative Oversight by a vote of 10 to 0.

This bill specifies how a Health Savings Account may be created. Currently, a trustee of a trust consisting of trust property having a total value less than \$100,000 may, after notice to qualified beneficiaries, terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. The bill increases the dollar amount to less than \$250,000 (Section 456.006, RSMo).

Currently, there are exceptions to the general rule that the terms of a document creating or exercising a power of appointment shall take precedence over statutes governing powers of appointment. The bill adds to this list of exceptions and provides that a power of appointment can only be created when a legally valid document manifests the donor's intent to create in a powerholder a power of appointment over the appointive property exercisable in favor of a permissible appointee.

Additionally, a powerholder of a nongeneral power may create a nongeneral power in a permissible appointee (Section 456.985). 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 (Section 472.405).

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 (Section 472.405).

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 (Section 472.465).

Currently, a gift given by a person in fraud of marital rights may be recovered by the surviving spouse and applied to the payment of the spouse's share of the estate. The bill specifies that the surviving spouse may recover the gift made in fraud of the marital rights when the decedent and the surviving spouse were married at the time the gift was made (Section 474.150).

This bill is similar to HB 1250 and HB 1650 (2018).

PROPOSERS: Supporters say that this allows a surviving spouse to recover gifts in fraud of marital rights when the couple was married. Additionally, the Missouri Bar is very supportive of this legislation and aided in its drafting.

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

OPPOSERS: There was no opposition voiced to the committee.