

HCS SS#4 SB 224 -- DISCOVERY

SPONSOR: Luetkemeyer

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Judiciary by a vote of 14 to 1. Voted "Do Pass" by the Standing Committee on Rules- Administrative Oversight by a vote of 7 to 2.

This bill modifies numerous Supreme Court rules relating to discovery.

DISCOVERY IN CRIMINAL CASES

This bill specifies that prosecutors will have discretion to redact personal identifying information which is contained in materials and information that the state shall disclose to the defendant's counsel during the discovery process of a criminal proceeding. The provisions of these rules are similar to SB 22 (2019).

DISCOVERY IN CIVIL CASES - REQUIREMENT OF PROPORTIONALITY

The bill requires that parties may discover any relevant matter, not privileged, as described in the bill, provided that the matter is proportional to the needs of the case considering several factors described within the bill.

DISCOVERY IN CIVIL CASES - LIMITS ON FREQUENCY OR EXTENT OF DISCOVERY AND ELECTRONICALLY STORED INFORMATION

The bill requires that the court limit the frequency or extent of discovery if it determines that certain factors exist.

Additionally, a party does not need to provide discovery of electronically stored information if the source of the information is not reasonably accessible because of an undue burden or cost. The court may order and specify the conditions for the discovery nonetheless if the requesting party shows good cause.

DISCOVERY IN CIVIL CASES - LIMITS ON PRIVILEGED INFORMATION AND TRIAL PREPARATION MATERIALS

When a party withholds information on the basis of privilege or protection as trial preparation materials, the party may notify any party that received information of the claim and the basis for it. A notified party is required to return, sequester, or destroy the specified information and may present it under seal to the court for claim determination. Additionally, the party shall take steps to retrieve any information disclosed prior to notification, shall preserve the information until the claim is resolved, and shall not use or disclose the information until the claim is resolved. An attorney who receives privileged information involving an adverse or third party and who has reasonable cause to believe that the information was wrongfully obtained shall not read the information, shall promptly notify the attorney to return the information, and shall delete and take reasonable measures to assure that the information is inaccessible. An attorney notified has the obligation to preserve the information.

The production of privileged or protected trial preparation materials is not a waiver of the privilege or protection from discovery in the proceeding.

DISCOVERY IN CIVIL CASES - LIMITS ON INTERROGATORIES AND DEPOSITIONS

The bill limits the number of written interrogatories that may be served upon a party to 25, including all discrete subparts. For oral or written depositions, leave of court is required if the deponent is confined in prison or the parties have not stipulated to a deposition and:

- (1) The deposition would result in more than 10 depositions being taken by the plaintiffs, or by the defendants, or by the third-party defendants;
- (2) The deponent has already been deposed in the case; or
- (3) The plaintiff seeks a deposition prior to the expiration of 30 days after the service of the summons and petition upon any defendant, except leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery.

The bill additionally limits the length of any oral deposition to one day of seven hours, provided that the court may order additional time for any deposition under certain circumstances. The court is permitted to impose sanctions on persons who impede, delay, or otherwise frustrate the fair examination of a deponent.

DISCOVERY IN CIVIL CASES - LIMITS ON REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

This bill specifies that a party may serve a request to produce and permit the requesting party or its representative to inspect, copy, test, or sample designated documents, electronically stored information, or any designated tangible things. Requests may specify that electronically stored information be produced in native format. Objections to part of a request shall specify the part and permit inspection of the rest.

DISCOVERY IN CIVIL CASES - LIMITS ON REQUESTS FOR ADMISSIONS

The bill limits the number of written requests for admission that may be served upon a party to 25 without leave of the court or stipulation of the parties. However, this limitation shall not apply to requests regarding the genuineness of documents.

PROPOSERS: Supporters say that this will bring Missouri in line with federal courts and other states, as this is a very good civil procedure bill. Discovery is currently the most time-consuming aspect of litigation, and this creates some limits. It does allow for leave of court, with or without notice, when necessary.

Testifying for the bill were Senator Luetkemeyer; Missouri Organization of Defense Lawyers; Missouri Association of Prosecuting Attorneys/Missouri Office of Prosecution Services; Kansas City Southern Railway; Monsanto; Enterprise; Doe Run; Missouri Insurance Coalition; Missouri Railroad Association;

Associated Industries of Missouri; and the Missouri Chamber of Commerce and Industry.

OPPONENTS: There was no opposition voiced to the committee.