

HCS SB 577 -- ESTATE PLANNING

SPONSOR: Keaveny (Cornejo)

COMMITTEE ACTION: Voted "Do Pass with Amendments" by the Standing Committee on Civil and Criminal Proceedings by a vote of 6 to 1. Voted "Do Pass with HCS" by the Select Committee on Judiciary by a vote of 10 to 0.

ATTORNEY IN FACT (Section 404.717, RSMo)

Currently, if an attorney in fact or his or her successor, appointed to bill as agent pursuant to a written power of attorney, acts in bad faith, fraudulently or dishonestly then the attorney in fact shall be liable to the principal or the principal's successors in interest for damages as well as attorney's fees. This bill provides that the attorney in fact shall be liable if she or he engages in willful misconduct or fraud or acts with willful disregard for the purposes, terms, or conditions of the power of attorney. For the purposes of these provisions "successors in interest" include those who can prove that they have been damaged as a result of the attorney in fact's actions.

IRREVOCABLE TRUST (Sections 465.3-304, 456.4b-411, and 456.7-706)

The bill provides that when a noncharitable irrevocable trust is modified or terminated without a court order pursuant to current law, a beneficiary, who is not a qualified beneficiary, may be represented in such non judicial proceedings by a qualified beneficiary who has substantially identical interests (Section 456.3-304).

Currently, a court may modify or terminate a noncharitable irrevocable trust which became irrevocable on or after January 1, 2005, upon finding that the interests of nonconsenting beneficiaries will be protected, and terminating or modifying the trust does not affect the material purpose of the trust. This bill provides that a court may modify or terminate all noncharitable irrevocable trusts which meet such conditions.

The bill also repeals a provision of law regarding the termination and modification of a trust instrument that became irrevocable prior to January 1, 2005.

Currently, a settlor, co-trustee, or a qualified beneficiary may request the court to remove a trustee or the trustee may be removed by the court's own initiative. This bill specifies that a court may also replace the trustee. When a corporation is the trustee being removed the successor trustee shall be selected by the court.

PRINCIPAL AND INCOME ACT (Section 469.467)

The bill provides that the Principal and Income Act shall apply to every trust or decedent's estate existing on or after August 28, 2001, rather than solely to those trusts or decedents' estates existing on August 28, 2001.

LETTERS OF ADMINISTRATION (Section 473.050)

Currently, law provides that for letters of administration to be issued an application must be made to the court within one year of the death of the decedent. This bill provides that this time limit rule applies on the issuance of letters of administration except as provided under current law that when a will is presented to the probate court within the proper time limits, then administration may be granted on the will at any time after presentation.

PUBLIC ADMINISTRATOR (Sections 473.730 and 473.748)

The bill states that each candidate for public administrator must provide to the election authority a copy of a signed affidavit from a surety company, indicating the candidate meets the bond requirements for the office of public administrator.

The bill specifies that no public administrator acting as guardian or conservator can be required to disclose any personal or financial information including his or her Social Security number or personal bank account number to any party with which they are contracting on behalf of a ward or protectee. Upon request, a consumer credit reporting agency (CCRA) must provide a public administrator a free credit report on a quarterly basis. The CCRA must remove all references to any debt owed by a ward of the public administrator from the public administrator's credit report. The CCRA is authorized to request the public administrator provide a copy of the order appointing him or her as the public administrator for a ward. A public administrator must not be held personally liable or act as the guarantor for debts of their ward or protectee. A violation of these provisions may result in civil liability and a fine of up to \$50.

RESPITE CARE (Section 475.125)

The bill adds respite to the list of purposes that the court may make an order for the management of the estate of a protectee.

PROPONENTS: Supporters say that this bill deals with durable power of attorney. The bill changes the standard so they must comply with the standards in the power of attorney. This contains clean-

up language, including the effective date. The bar is in favor of these changes.

Testifying for the bill were Senator Keaveny and the Missouri Bar Association.

OPPONENTS: There was no opposition voiced to the committee.