



# Legal Updates for Missouri Government Plans

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# HUSCH BLACKWELL

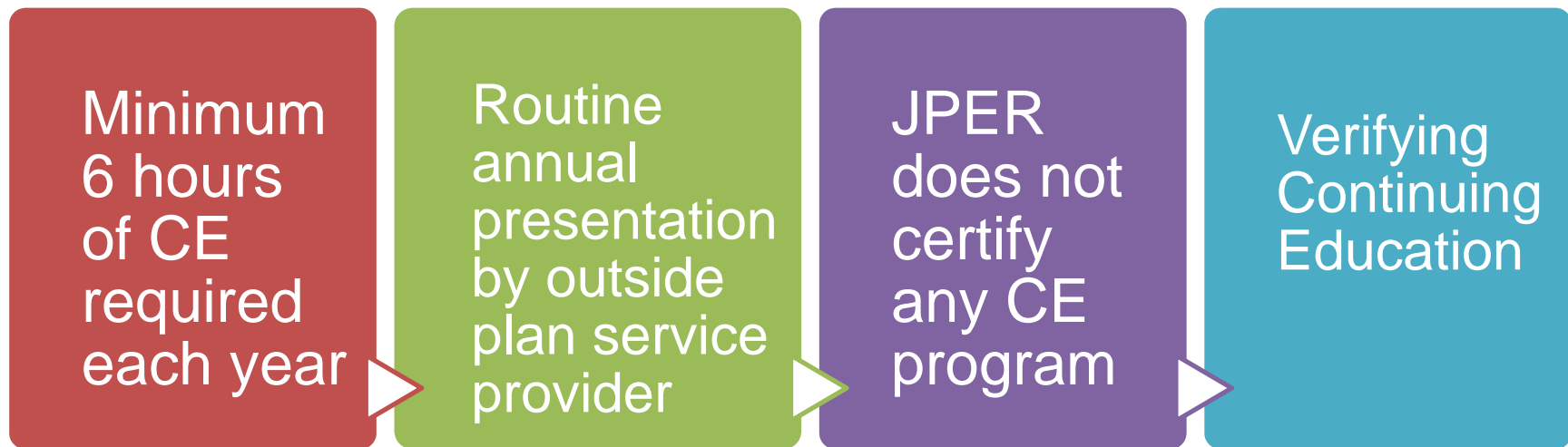
# H.B. 1882

## What Needs To Be Covered?

1. Duties and responsibilities of board members as trustees
2. Ethics
3. Governance process and procedures
4. Pension plan design and administration of benefits
5. Investments including but not limited to the fiduciary duties as defined under section 105.688
6. Legal liability and risks associated with the administration of a plan
7. Sunshine law requirements under chapter 610
8. Actuarial principles and methods related to plan administration
9. The role of staff and consultants in plan administration

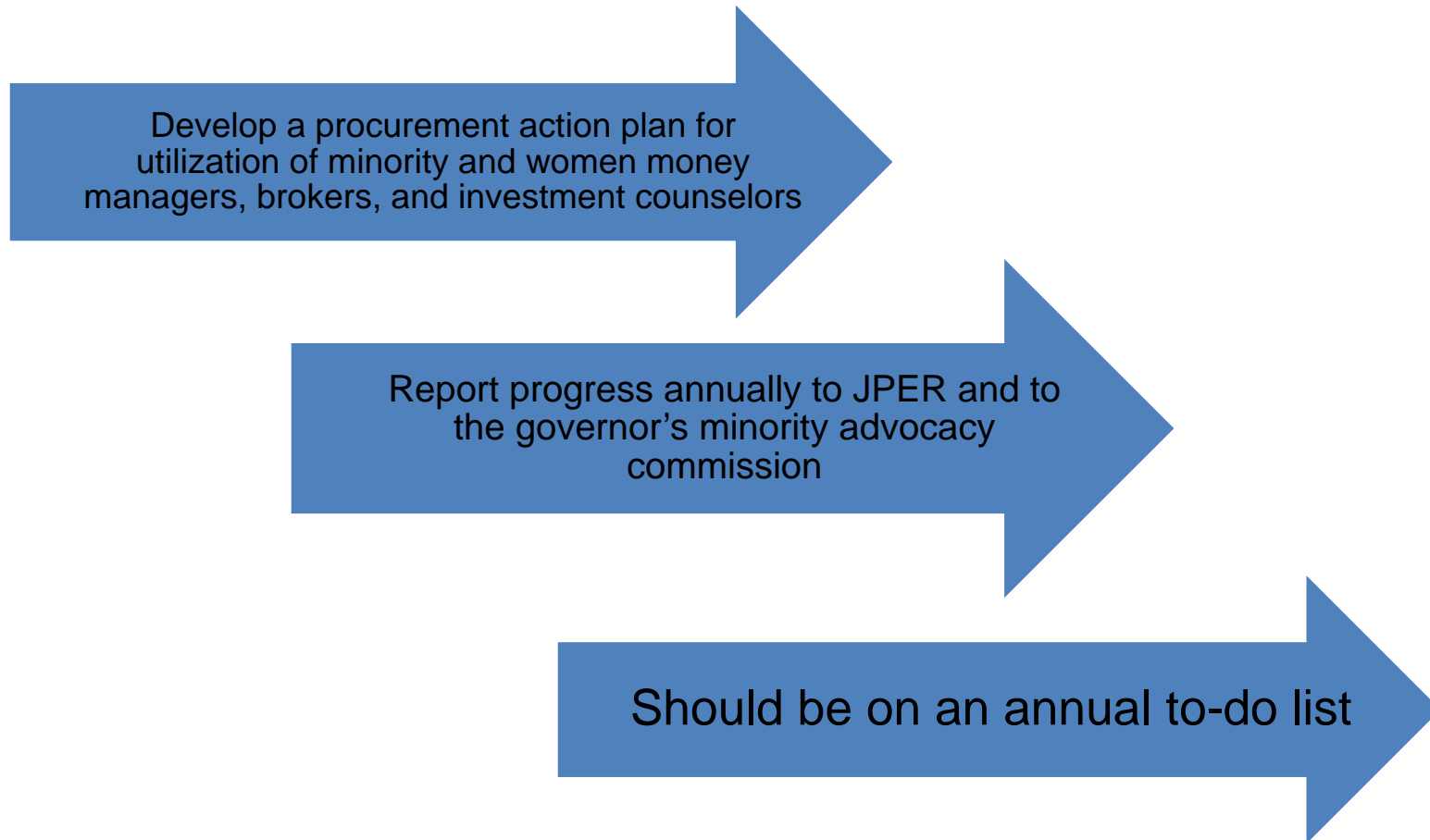
# H.B. 1882

## What Needs To Be Covered?



# H.B. 1882

## Procurement Action Plan



# Survivor Benefits to Same Sex Spouses

- Recognition of same sex marriages
  - Required?
  - Permitted?
  - Impact on survivor benefits, spousal consent to form of benefit, QDROs



# Survivor Benefits to Same Sex Spouses

Article I, Section 33 of Missouri Constitution

That to be valid and recognized in this state,  
a marriage shall exist only between a man  
and a woman

# Survivor Benefits to Same Sex Spouses

- RSMo §451.022
  - It is the public policy of this state to recognize marriage only between a man and a woman
  - Any purported marriage not between a man and a woman is invalid
  - No recorder shall issue a marriage license, except to a man and a woman
  - A marriage between persons of the same sex will not be recognized for any purpose in this state even when valid where contracted

# Survivor Benefits to Same Sex Spouses

- RSMo §104.012
  - For the purposes of public retirement systems administered pursuant to this chapter, any reference to the term “spouse” only recognizes marriage between a man and a woman





# Survivor Benefits to Same Sex Spouses

C

*Barrier v. Vasterling*

A

- Six same-sex couples who were married in other states applied for and were denied marriage licenses in Kansas City.
- Court's conclusions:
  - Sections 451.022 and 104.012 of Missouri statutes, and Article I, section 33 of the Missouri Constitution, deny plaintiffs their right to equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution.
  - Defendants are enjoined from enforcing the prohibition on same-sex marriages.

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# Survivor Benefits to Same Sex Spouses

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*State of Missouri v.  
Jennifer Florida*

- Recorder of Deeds and Vital Records Registrar of the City of St. Louis issued marriage licenses to four same-sex couples. State of Missouri sought to enjoin the defendant from issuing marriage licenses to same-sex couples.
- Court's conclusions:
  - RSMo section 451.022 and Article I, section 33 of the Missouri Constitution violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article I, section 2 of the Missouri Constitution.
  - RSMo section 451.022 and Article I, section 33 of the Missouri Constitution violate the Due Process Clause to the Fourteenth Amendment of the United States Constitution.

# Survivor Benefits to Same Sex Spouses

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*Lawson v. Kelly*

- One male and one female same sex couple applied for marriage licenses from the Jackson County Recorder of Deeds. They sued to enjoin enforcement of the state law that precluded the issuance of marriage licenses to them.
- Court's conclusions:
  - Prohibition on same-sex marriage violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
  - Prohibition on same-sex marriage violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

# Survivor Benefits to Same Sex Spouses

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*In re the Marriage of  
M.S. v D.S.*

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- M.S. filed a petition for dissolution of his marriage to D.S. in the circuit court of St. Louis County.
- Court dismissed because it lacked subject matter jurisdiction, constitutional authority or statutory authority to dissolve the parties' marriage based on Article I, section 33 of the Constitution and RSMo 451.011.

# Survivor Benefits to Same Sex Spouses

- No pension plan was a defendant
- Decisions are not binding precedent for any court
- MOSERS
- Article VII, section 11 of Missouri Constitution
- Fiduciary duty not to waste plan assets

# Should We Restate the Plan/ Get a Determination Letter?

- Rev. Proc. 2007-44
  - Cycle for plan restatements and requesting determination letters
  - Governmental plans are in cycle C but may elect cycle E

# Should We Restate the Plan/ Get a Determination Letter?

- Rev. Proc. 2007-44
  - Should you comply with the IRS restatement cycle?
    - Reasons to comply
    - Reasons not to comply
  - Should you get a determination letter?
    - Advantages
    - Disadvantages

# Investment Responsibilities

- Duties of investment fiduciaries are set out at RSMo §105.688
- Who is an investment fiduciary?

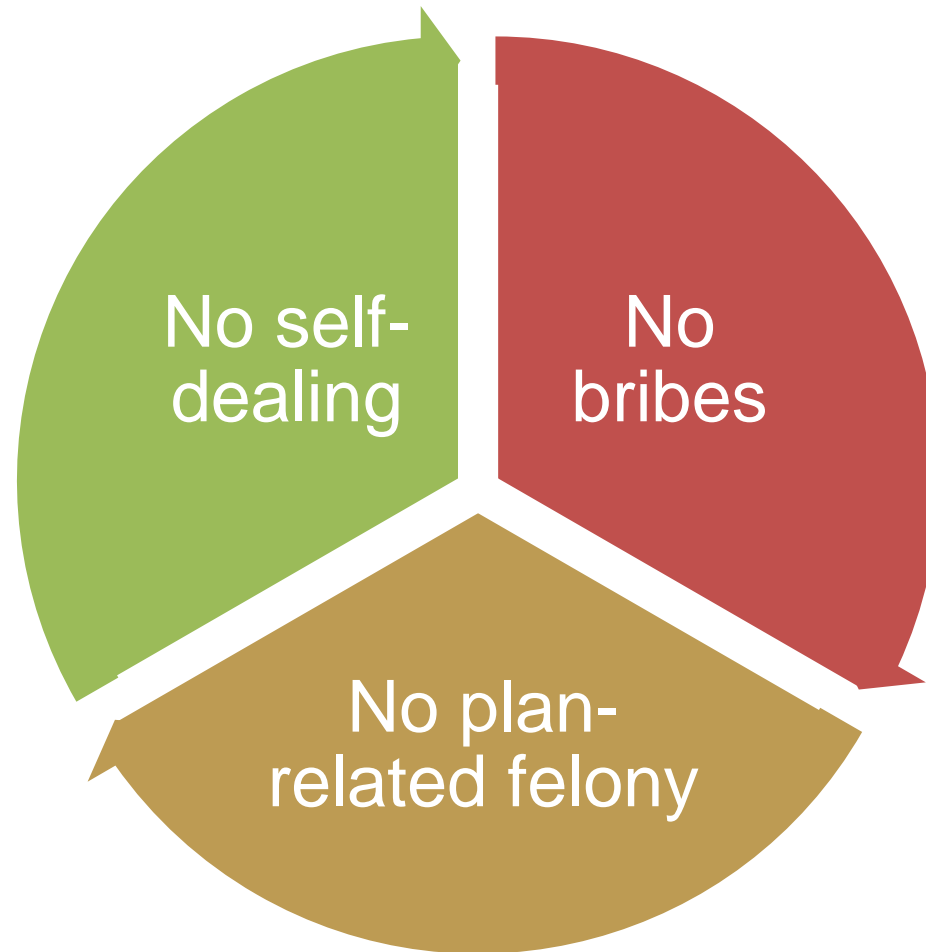




# Investment Responsibilities

- Fiduciary duties
  - Prudent expert
  - Knowledge of the investment
  - Investment objectives
  - Role of investment in the portfolio
  - Consider benefits to state and citizens
- Geographic considerations

# Other Fiduciary Responsibilities





Questions?

Thank You

**HUSCH BLACKWELL**