

# HOUSE BILL REPORT

## SSB 6189

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**As Passed House - Amended:**

March 5, 2004

**Title:** An act relating to receiverships.

**Brief Description:** Regulating receiverships.

**Sponsors:** By Senate Committee on Judiciary (originally sponsored by Senators Johnson, Kline, Esser and Roach).

**Brief History:**

**Committee Activity:**

Judiciary: 2/19/04, 2/26/04 [DPA].

**Floor Activity:**

Passed House - Amended: 3/5/04, 95-0.

<p><b>Brief Summary of Substitute Bill</b> <b>(As Amended by House)</b></p> <ul style="list-style-type: none"><li>• Codifies, consolidates, and clarifies the various powers, duties, and procedures applicable to receivers and receiverships.</li></ul>
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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

**Staff:** Trudes Tango Hutcheson (786-7384).

**Background:**

A receiver is a person appointed by the court, as an officer of the court, to take charge of property in certain circumstances and to manage and dispose of the property as the court directs. A receivership is not an independent remedy or an action in itself. The appointment of a receiver is an ancillary procedure to the main action and is simply a means by which the court takes control of and administers property that is in controversy, with the view of ultimately granting some final relief to the parties.

The court has discretion to appoint a receiver in a wide variety of circumstances, such as in an action between persons jointly interested in property, actions where the property is in danger of being removed, or when a corporation has been dissolved.

A receivership may be custodial in nature or more substantive, such as a receiver for an insolvent corporation who may, among other things, liquidate the property and distribute the proceeds to pay creditors. Generally, claims against property in receivership retain their priority rights as established by law and as fixed at the time of the appointment of the receiver.

The parties, their attorneys, and other persons interested in the action are not eligible to serve as receivers. The receiver must execute a bond to secure the receiver's faithful performance of his or her duties as a receiver.

The current receivership act, Chapter 7.60 RCW, consists of five relatively short sections, most of which were originally enacted over 150 years ago. Over time there have been numerous statutes enacted throughout the code that authorize the appointment of a receiver under various circumstances. In addition, courts have developed some case law addressing some issues of receiverships that are not explicitly addressed in the statutes.

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### **Summary of Amended Bill:**

The provisions generally governing receivership proceedings are consolidated into a single chapter. The circumstances under which a court may appoint a receiver is listed in a single section, and cross-references to the specific statutes are provided.

Provisions are created to distinguish between "general receivers," who have control over all or substantially all of a person's property and have authority to liquidate that property, and "custodial receivers," who take charge of limited or specific property or do not have the authority to liquidate property.

The procedures, notice, and time lines for the appointment of receivers are specified. Any person may serve as a receiver unless the person has been convicted or is controlled by a person convicted of a felony or other crime of moral turpitude, is a party to the action or has a special relationship to a party, has an adverse interest to a party affected by the receivership, or is a sheriff of any county.

The powers and duties of receivers are specified. The power of a general receiver to assume or reject executory contracts and unexpired leases is codified. However, if the state is party to the contract, there must be agreement to assume the contract, or else it is deemed rejected. The power of a general liquidating receiver to sell property free and clear of liens is clarified. The nature and form of the bond receivers must provide is specified, and a court may approve alternative security. Claims on the bond must be made within one year of the receiver being discharged, and state agencies have priority on the bond. The personal liability of a receiver is specified, and a receiver is personally liable to state agencies for failure to remit sales taxes. The limitations and restrictions applicable to receiverships specifically provided for under current law are codified.

Provisions are established to impose a temporary stay of certain creditor actions in cases in which all of a person's property is placed in the hands of a receiver. However, a receivership does not stay a government action on tax liabilities. Any person subject to the stay may seek relief from the stay for good cause shown. A comprehensive claims procedure and system of priorities in general liquidating receiverships is established. A state agency may bring a claim within 180 days from the date notice is given of the receivership.

Statutes dealing with general assignments for the benefit of creditors are amended to include the procedures applicable to the judicial administration of an assignee's administration and liquidation of assets into those procedures applicable in a general liquidating receivership.

Provisions regarding the court's jurisdiction, abandonment of property, actions by and against the receiver, and other provisions on receiverships are included. Duplicative, inconsistent, and archaic statutes are repealed.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** This bill is not intended to be a radical change from how receiverships are operating under current law. Much of the law governing receiverships has been developed in case law, but because receiverships are not used as much today, many of those cases are old. This is largely a codification of case law. Some of the language, such as the automatic stay, is from the bankruptcy code. In developing the bill, comments were received from the various sections of the state bar association, such as bankruptcy, real property, and commercial law sections.

(With concerns) Language should be added to the bill to address state agencies' concerns regarding the collection of certain taxes, such as sales taxes, and other concerns.

**Testimony Against:** None.

**Persons Testifying:** (In support) Marc Barreca and James Austin, Washington State Bar Association.

(With concerns) Greg Potegal, Department of Revenue; Scott Bird, Department of Labor and Industry; and Suzanne Mager.

**Persons Signed In To Testify But Not Testifying:** None.