

SENATE BILL REPORT

SSB 6189

As Passed Senate, February 12, 2004

Title: An act relating to receiverships.

Brief Description: Regulating receiverships.

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

Brief History:

Committee Activity: Judiciary: 1/28/04, 2/4/04 [DPS].

Passed Senate: 2/12/04, 49-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6189 be substituted therefor, and the substitute bill do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove, Haugen, Kline and Roach.

Staff: Aldo Melchiori (786-7439)

Background: A receiver is a person appointed by a court to take charge, as the court's own agent, over property of a party. A receivership is the means by which a court takes property into custody pending litigation. Unlike insolvency proceedings under the federal Bankruptcy Code, proceedings involving the administration of assets by a receiver are not an end in themselves. The appointment of a receiver is a procedure exercised in aid of a court's jurisdiction to grant some other ultimate relief. A receiver in appropriate circumstances may be appointed over all of a person's assets, and given the power to liquidate those assets for the general benefit of creditors. In other circumstances, a receiver may serve simply a caretaking role.

Washington's current receivership chapter consists of five sections, most of which were originally enacted by the Territorial Legislature over 150 years ago. The current statutes do not deal expressly with many issues confronted in current receivership proceedings, leaving gaps that have had to be filled in by court decisions. Proponents for the reform of the receivership statutes argue that, because there exists no comprehensive and easily discernable set of rules governing receivership proceedings, lawyers tend to avoid the appointment of a receiver, even in circumstances in which the appointment may be appropriate.

Summary of Bill: The rules generally governing receivership proceedings are consolidated into a single chapter. Chapter 7.08 RCW, dealing with general assignments for the benefit of creditors, is modified to include the procedures applicable to the judicial administration of an assignee's administration and liquidation of assets into those applicable in a general liquidating

receivership. The rules applied to general liquidating receiverships versus the rules applied when a receiver serves a temporary custodial function are clarified.

As an aid to practitioners, a single section is created to list all circumstances in which a receiver's appointment is permissible. 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 moral turpitude (dishonesty of a high degree), is a party to 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 nature and form of bond required of receivers is specified. A court may approve alternative security.

The powers and duties of receivers are specified. The power of a receiver in a general liquidating receivership to assume or reject executory contracts and unexpired leases is codified. Provisions of a contract specifying the consequences of a party's bankruptcy that would prevent a receiver from assuming a contract are made unenforceable. The power of a general liquidating receiver to sell property free and clear of liens is clarified.

The redemption rights of owners of agricultural and homestead property are protected against the inappropriate circumvention by the use of receiverships. The limitations and restrictions applicable to receiverships specifically provided for under current law are preserved.

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, is imposed to provide the receiver with an opportunity to address emergent situations, while giving anyone stayed the opportunity to seek relief from the stay for good cause. A comprehensive claims procedure and system of priorities in general liquidating receiverships is established.

Duplicative, inconsistent and archaic statutes are repealed.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill is the result of a Washington State Bar Association workgroup meeting over a ten-year period. Most receivership law is provided by case law. This bill codifies the procedures to make them clear and available to practitioners.

Testimony Against: Insurance receivership statutes should be kept separate to preserve the priority of state actions over federal actions (addressed by substitute bill).

Testified: PRO: Senator Johnson, prime sponsor; Marc Barreca, WSBA; James Austin, WSBA CONCERNS: Bill Daley, Office of the Insurance Commissioner.

House Amendment(s): The amended bill adds provisions that: (a) require that claims made against the receiver's bond must be made within one year from the date the receiver is discharged; (b) give a state agency's claim on the receiver's bond priority; (c) clarify that the court controlling the receivership cannot transfer other pending actions to the court's jurisdiction if, in the other action, a state agency is a party and there is a statute that vests jurisdiction or venue elsewhere; (d)

explicitly add regulatory and taxing state agencies in the various provisions to include them in the entities that must be notified; (e) clarify that the receivership does not stay government actions or appeals of tax liabilities; (f) provide that if a state is a party to a contract, the receiver and the state agency must agree to the receiver assuming the contract, or else it is deemed rejected by the receiver; (g) provide that a receiver may not abandon property that is a hazard or potential hazard to the public; (h) explicitly provide that a receiver is personally liable to state agencies for failure to remit sales tax collected after appointment; (i) allow state agencies to bring claims on the general receiver within 180 days (as opposed to 30 days) from the date notice is given of the receivership; (j) require any objection to a claim to be mailed to the creditor at least 30 days (rather than 20) prior to the hearing to approve the general receiver's final report; (k) provide that rejected state claims are not subject to mediation unless agreed upon by the state; and (l) explicitly add support debts to the list of allowed claims in a general receivership, unless the support debt is assigned to another entity.