

SENATE BILL REPORT

ESB 5058

As Passed Senate, February 25, 2011

Title: An act relating to receivership.

Brief Description: Addressing receiverships.

Sponsors: Senators Pflug, Kline and Harper; by request of Washington State Bar Association.

Brief History:

Committee Activity: Judiciary: 1/11/11, 1/18/11 [DP].

Passed Senate: 2/25/11, 48-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Harper, Vice Chair; Pflug, Ranking Minority Member; Carrell, Hargrove, Kohl-Welles, Regala and Roach.

Staff: Juliana Roe (786-7438)

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 appoints a custodian over property pending litigation. In appropriate circumstances a receiver may be appointed over all of an entity'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 pending a creditor's action, such as a foreclosure.

In 2004 the Legislature enacted new receivership statutes. The rules generally governing receivership proceedings were consolidated into a single chapter, RCW 7.08, to clarify the powers, duties, and procedures applicable to receivers and receiverships. The frequency of receiverships has steadily increased since the financial crisis began in 2007. Receiverships, as a remedy, are more streamlined than federal bankruptcy proceedings and are less costly, yet proved a streamlined process for monetizing property for creditors. Practitioners in this area have proposed the following changes primarily to clarify ambiguities and address procedural issues that have been experienced since the 2004 statutes were enacted.

Summary of Engrossed Bill: The time at which an action or proceeding for foreclosure or forfeiture is commenced for purposes of a provisional appointment of a receiver is clarified.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Courts are provided flexibility to lengthen or shorten time frames addressed in administering receiverships for good cause.

The amount of time a receiver is given to file a schedule A: a list of all known creditors and applicable regulatory and taxing agencies; their mailing addresses; the amount and nature of their claims, and whether their claims are disputed; and a schedule B: a list of all property of the estate, including liquidation value, and location of the real property; and a legal description of any real property, is increased from 20 to 35 days.

An additional automatic stay exception is created to permit a petitioning creditor who has commenced foreclosure proceedings to obtain appointment of a receiver without staying its own pending foreclosure.

The term "perishable property" is substituted with the term "property subject to eroding value" to expand the types of property covered.

The period in which to provide notice to creditors and other interested parties is increased from 20 to 30 days.

The number of days over which wages, salaries, or commissions including vacation, severance, and sick leave pay, or contributions to an employee benefit plan is increased from 90 days to 180 days. The dollar amount for allowed unsecured claims arising from consumer deposits for household purchases is increased \$900 to \$2425 to bring the amount in line with federal bankruptcy law.

A general receiver may sell real property free and clear of liens and all rights of redemption if the real property is of the type that the debtor would have sold in the ordinary course of business, whether or not the sale of the real property will generate proceeds sufficient to fully satisfy all claims secured by the property.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The Washington State Bar Association (WSBA) has been working on this bill for the past two years. It passed out of the Judiciary committee last year, but never got out of rules. In 2004 the statutes regarding receivership were changed. Since then, we have had about six years of experience in using these statutes. Most of the issues we have identified are procedural, streamlining changes that will help administration of the case. Only one change is substantive: claim amounts that have been changed to mirror federal bankruptcy law. Receiverships are faster, less costly, and more effective than federal bankruptcy.

Persons Testifying: PRO: John Rizzardi, WSBA.