

# HOUSE RESEARCH

## Bill Summary

**FILE NUMBER:** H.F. 382

**DATE:** March 28, 2011

**Version:** As introduced

**Authors:** Hoppe and Simon

**Subject:** Receiverships and Assignments for the Benefit of Creditors

**Analyst:** Matt Gehring, 651-296-5052

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: [www.house.mn/hrd](http://www.house.mn/hrd).

---

### Overview

Portions of this summary were prepared by the Minnesota State Bar Association, the original drafters of the bill.

#### Article 1: Receiverships

Receivership is the process by which a court orders a receiver to take custodial responsibility of another's property. Receiverships are commonly used to: preserve commercial real estate from deterioration during foreclosure; liquidate fraudulently-operated businesses; seize assets to satisfy judgments; seize property withheld in marriage dissolutions; control non-functioning business entities; liquidate state regulated businesses.

#### Article 1 Highlights:

- (1) Allows courts to appoint receivers on short notice, even without all parties present (followed by a subsequent hearing with full notice and the burden of proof remaining as if it was the first hearing).
- (2) Delineates receivers' qualifications.
- (3) Requires receivers to give notice to all creditors and other parties in interest.
- (4) Requires a bond in an amount set by courts.
- (5) Requires professionals retained by the receiver to file with the court a disclosure of their retention and the proposed compensation, but does not require court approval for their retention unless there is an objection.
- (6) Allows courts to decide whether to require schedules of property and of claims, and whether to require inventories and appraisals.
- (7) Requires interim reports as the court designates, and a final report.
- (8) Requires modern accounting records of receipts and disbursements and of property received and disposed.
- (9) Allows receivers to be removed and replaced under certain circumstances.
- (10) Addresses actions by and against the receiver, turnover of receivership property, utility shut-offs, financing, executory contracts, abandonment of property, and sales free and clear of liens in certain circumstances.

**1 Definitions.** Provides definitions for terms used throughout the bill.

**2 Applicability.** Clarifies the types of receiverships to which the provisions of this article apply.

The provisions would apply to the specified statutory receiverships (and others that the court may provide, consistent with existing law), but would not apply to a receivership in which the receiver is a state agency or if the receiver is appointed, controlled, or regulated by a state agency.

- 3     **Powers of court.** Clarifies that the court has exclusive authority over the receiver and receivership property.
  - 4     **Types of receiverships.** Describes the differences between a general receivership and a limited receivership.
  - 5     **Appointment of receivers.** Specifies certain procedures relating to the process for appointing a receiver, and includes special language for receivers of mortgaged property.
  - 6     **Eligibility of receiver.** Specifies the individuals that are qualified to serve as a receiver.
  - 7     **Bond.** Requires an appointed receiver to give a bond to the court conditioned on the receiver's faithful discharge of duties under law and court order.
  - 8     **Immunity.** Specifies instances in which a receiver is immune from civil liability for actions related to the receivership.
  - 9     **Powers and duties of receivers.** Lists a number of powers of receivers.
  - 10    **Receiver as lien creditor.** Specifies certain powers and duties of powers of a receiver related to real property.
  - 11    **Respondent.** Specifies the duties of the respondent.
  - 12    **Professional assistance.** Permits a receiver to hire professional assistance (attorneys, accountants, etc.) to assist in carrying out duties related to the receivership, provided that the person hired does not have a conflict of interest in the matter.
- This section also permits compensation for the receiver and any professional employed by the receiver from the receivership property, subject to court order.
- 13    **Schedules of property and claims.** Permits a court to order the receiver or a respondent to file a schedule of receivership property and a schedule of creditors and taxing authorities.
  - 14    **Notice.** Requires a receiver to provide notice of the receivership to creditors and other parties in interest within 21 days of appointment.
  - 15    **Notices, motions, and orders.** Specifies certain procedural requirements related to the receivership.
  - 16    **Records; interim reports.** Regulates maintenance of business records related to the receivership and specifies certain reports that may be required by the court.
  - 17    **Removal of receivers.** Specifies the standards for removal of a receiver and the procedure for appointing a successor receiver.
  - 18    **Termination of receivership; final report.** Permits the court to terminate a receivership and specifies related procedures.
  - 19    **Actions by or against receiver.** Permits the receiver to sue and be sued related to the receivership, except where an action would be prohibited by other law.

Procedural standards for a suit are provided.

- 20**      **Turnover of property.** Permits a receiver to compel receivership property in the possession of any other person to be turned over to the receiver.
- 21**      **Ancillary receiverships.** Specifies certain standards related to foreign receivership issues.
- 22**      **Stays.** Specifies standards for issuance of a stays by a court related to a receivership or receivership property.
- 23**      **Utility service.** Prohibits a utility from discontinuing services to receivership property without prior notice.
- 24**      **Receivership financing.** Permits a receiver to obtain secured or unsecured debt or financing, with some limitations.
- 25**      **Executory contracts.** Specifies standards related to executor contracts.
- 26**      **Sales free and clear of lien; general receiverships.** Permits a court to order that a general receiver's sale of receivership property is free and clear of liens, consistent with standards provided in the bill.
- 27**      **Abandonment of property.** Permits a court to authorize abandonment of certain receivership property.
- 28**      **Liens against after-acquired property.** Provides that receivership property that is acquired after the appointment of the receiver is still subject to existing liens.
- 29-33**    **Claims process.** Provides standards for setting up a claims process related to the receivership.

## **Article 2: Assignments for the Benefit of Creditors**

An assignment for the benefit of creditors (ABC) is a procedure by which a debtor voluntarily assigns its property to an assignee who is responsible for using the property to pay the debts of the debtor. Current Minnesota Ch. 577 contains a few miscellaneous provisions on ABCs but is not comprehensive. It is so unworkable that statutory ABCs are never used in Minnesota. ABCs are very common in some states and there is a recent trend in other states to adopt modern ABC statutes.

ABCs are used not only by individuals, but also by businesses to facilitate sales of business assets and distribution of the proceeds to creditors.

The new proposed Ch. 577 supersedes current Ch. 577 and has its own definitions analogous to those in the receivership statute. Section 577.08 provides that the law applicable to receivers and receiverships also applies to assignees and assignments for the benefit of creditors.

### Section

- 1**      **Definitions.** Provides definitions for certain terms used in this article.
- 2**      **Requisites.** Specifies certain requirements related to assignments for the benefit of creditors.
- 3**      **Form of assignment.** Specifies standards for the form of an assignment.
- 4**      **Duty of court administrator.** Requires the court administrator to endorse the date and time of an assignment filing.
- 5**      **Assignee as lien creditor.** Specifies certain standards related to assignments of real property.

- 6        **Notice.** Requires an assignee to provide notice of the assignment to creditors and other parties in interest within 21 days of appointment.
- 7        **Removal of assignee.** Permits an assignee to be removed by the court and a new assignee appointed.
- 8        **Applicability.** Requires assignees to be treated as general receivers and assignment property be treated as receivership property, except where otherwise provided by law.
- 9        **Repealer.** Repeals existing provisions of law related to assignments.

### **Article 3**

This article enacts a number of conforming changes to statute to reflect the substantive changes made earlier in the bill.