

# HOUSE RESEARCH

## Bill Summary

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### Article 1: Judiciary

#### Overview

This article makes various changes relating to the judiciary, including: clarifying placement of vehicle license plates; amending data sharing; establishing administrative dismissal process for submitting proof of insurance in failure to provide vehicle insurance cases; clarifying certain fees and surcharges; streamlining notary provisions and certain lien filing and record procedures; modifying service provisions for OFP dismissals; amending record retention provisions for probate records; clarifying GAL expenses; amending spousal maintenance calculations; authorizing the court to issue protective orders for Safe at Home participants in legal proceedings; and modifying standards for opening juvenile delinquency proceedings.

- 1 **Legal proceedings; protective order.** Provides that if a Safe at Home participant is involved in a legal proceeding as a party or witness, the court may issue a protective order to prevent disclosure of the program participant's location. [H.F. 465]
- 2 **Access by probationary agencies.** Permits law enforcement to share criminal investigative data on domestic violence-related offenses with corrections or probation. *Not public data* keeps its classification under this section.
- 3 **Public benefit data.** Permits probation or corrections agency to release private or confidential court services data related to domestic violence to a court, law enforcement, prosecutor, corrections, or an agency performing pretrial release supervision or studies for criminal justice purposes.
- 4 **Other motor vehicles.** Clarifies requirements regarding placement of motor vehicle license plates. Provides that two plates must be displayed and must be mounted on the front and rear bumpers or on the front and back of the vehicle exterior in places designed to hold a license plate. [H.F. 440, 1st eng.]
- 5 **Penalty.** Establishes a process for administrative dismissal of a citation for failure to provide vehicle insurance. Allows a driver or owner to submit proof of insurance to the court administrator. If the required proof is timely received, the person shall not be convicted of violating this section. (This process is currently used in "no proof of insurance" violations.) [H.F. 440, 1st eng.]
- 6 **General.** Modifies the standard for opening juvenile delinquency hearings to the public and making related records open to public inspection. Maintains current standards for certification hearings and

EJJ proceedings.

Current law provides that hearings are public if the child is 16 or 17 years old and the alleged offense is a felony. This section provides that, for delinquency hearings, the court must also determine that, due to the violent or serious nature of the offense, the hearing should be open to the public because the benefits to public safety outweigh the potential consequences to the child.

Under a separate statute, only records arising from public hearings are available for public inspection; all other juvenile court records are available only by court order. Accordingly, this section will keep juvenile delinquency court records closed to the public unless the new standard for a public hearing is also met. [H.F. 876, as amended]

- 7 **Court expenses.** Provides that in no event may a court charge guardian ad litem expenses upon a county. (Current law provides that the state Guardian Ad Litem Board shall pay GAL expenses. [H.F. 440, 1st eng.]
- 8 **Fees.** Streamlines the procedures for processing the fee on a confession of judgment for delinquent taxes by eliminating the step of paying the fee to the court administrator and instead paying it directly to the county. [H.F. 440]
- 9 **Surcharges on criminal and traffic offenders.** Provides that a surcharge imposed in cases where a defendant participates in a diversion program or receives a continuance or stay of adjudication be paid upon entering the program and not upon completion. Clarifies that only one surcharge may be imposed per case. [H.F. 440, 1st eng.]
- 10-11 **Notaries.** Eliminates a reference requiring a district court administrator to record the commission of a notary and indicates that the recording duty is with the county. [H.F. 440]
- 12-13 **Filing hospital liens.** Directs that hospital and public assistance liens be filed in the appropriate county office rather than with the court administrator. [H.F. 440]
- 14 **Maintenance calculated after child support.** Amends § 518.552 by adding subdivision 6. Requires the court to calculate spousal maintenance after the amount of child support has been determined. Effective for all dissolution actions filed on or after Jan. 1, 2012. [H.F. 473, as amended]
- 15 **Calculation of gross income.** Amends § 518A.29. Provides that court ordered spousal maintenance received from a person other than a parent of the joint child is included in gross income. Current law states that spousal maintenance is included in gross income when received under a previous order or in the current proceeding. Clarifies that support or maintenance payment ordered by a court for a nonjoint child or person other than a parent of the joint child are deducted for purposes of determining joint income. Effective for all dissolution actions filed on or after Jan. 1, 2012. [H.F. 473, as amended]
- 16 **Service; OFP dismissals.** Authorizes personal service or service by mail of an order for dismissal of an order for protection. [H.F. 440]
- 17-18 **Documents in probate proceedings.** Authorizes immediate destruction of probate documents if approved copies are on file. (Currently, destruction of documents cannot occur until the proceeding is closed.) Updates list of approved archive copies to include digitally imaged and electronic copies of the original. [H.F. 440]

## Article 2: Will and Trust Construction Revision

### Overview

This article addresses an issue relating to the construction of wills and trusts. It clarifies which definitions should be used when wills or trusts refer to certain terms defined in the federal estate tax laws. [H.F. 1573]

### Article 3: Uniform Disclaimer of Property Interests Act

#### Overview

This article clarifies that a disclaimer of an interest in real property is effective upon filing with the county recorder or registrar of titles, rather than the clerk of court. It also clarifies the right to disclaim partial interests in property that exists as of the effective date of the statute. [H.F. 951]

### Article 4: Protected Persons and Wards

#### Overview

This article adds the term "ward" to clarify that the statute on compensation for professional services applies to guardians and wards. [H.F. 952]

### Article 5: Receiverships

#### Overview

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. [H.F. 382, 1st eng., art. 1]

#### Article 5 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 6: Assignments for the Benefits of Creditors**

### **Overview**

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 chapter 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 chapter 577 supersedes current chapter 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. [H.F. 382, 1st eng., art. 2]

- 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 7: Conforming amendments**

#### **Overview**

This article enacts a number of conforming changes to statute to reflect the substantive changes made in articles 5 and 6. [H.F. 382, 1st eng., art. 3]

Portions of this summary (articles 2-7) were prepared by the Minnesota State Bar Association as drafters of the language.

### **Article 8: Civil Rights Notices**

#### **Overview**

This article specifies procedures for notifying individuals charged with or convicted of a crime of the status of their civil rights, including the right to vote, and requires development of a publication by the secretary of state on the topic of voting rights for individuals with criminal or arrest records. [H.F. 718, 2nd eng.]

- 1        **Duties of secretary of state; voting rights.** Requires the secretary of state to develop a comprehensive publication on the voting rights of individuals who have been charged with or convicted of a felony.
- The publication must be made available electronically for distribution, including by the state court administrator to court personnel and by the department of corrections to corrections personnel and members of the public.
- 2        **Delivery of ballots.** Prohibits providing absentee ballots to an incarcerated offender. Directs county auditor or municipal clerk to notify county attorney if an application lists a correctional facility as an address. Directs DOC to implement procedures in line with this section.
- 3        **Notice of restoration of right to vote.** Requires a written notice to be provided to an individual whose civil rights have been restored informing the individual of that fact. The contents of the notice is specified in the bill. The notice must be delivered by either the chief executive officer of a correctional facility, or by a probation officer or supervised release agent, upon release or discharge of an individual, if the individual's civil rights have been restored as provided by existing law.
- This section also requires that the chief executive officer of state correctional facilities designate an official within the facility to provide the notice specified in this section. The official may also maintain voter registration applications and other material to accompany the notice.
- A failure to provide the notice required by this section does not prevent restoration of an individual's civil rights.
- 4        **Defendants; notice of loss of civil rights.** Requires the court to notify a defendant, on a felony-level offense, that a conviction or guilty plea for the offense will result in the defendant's civil rights being rescinded until the sentence has been discharged.

**Article 9: Seat Belts**

- 1** **Seat belt requirement.** Eliminates a violation of the seat belt law as a primary offense. Provides that a peace officer may not issue a citation for a seat belt violation unless the officer has stopped the driver for some other moving violation.