HOUSE BILL REPORT
ESB 5058

As Reported by House Committee On:
Judiciary

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: 3/2/11, 3/10/11 [DP].

Brief Summary of Engrossed Bill

- Makes various changes to the statutes governing receiverships.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

Staff: Trudes Tango (786-7384).

Background:

A receivership is the means by which a court, through an appointed receiver, takes custody of property pending litigation.

Appointment of a Receiver.
Receivers are appointed in various circumstances, such as: if a business is in danger of insolvency; during the pendency of a judicial or nonjudicial foreclosure action where the property's revenue-producing potential is in danger of being lost or where the receiver must collect rent; or if a statute requires a state agent to seek an appointment of a receiver.

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.

The court appoints a general receiver if the receiver is to take possession and control of all or substantially all of the debtor's property with authority to liquidate that property. A custodial receiver is appointed if the receiver is to take charge of limited or specific property and is not given authority to liquidate property.

Automatic Stay of Certain Proceedings.
Unless otherwise ordered by the court or a statutory exception applies, the appointment of a receiver temporarily stays other actions against the debtor or the property. The stay generally expires 60 days after the appointment. The appointment of a receiver does not stay certain actions, such as proceedings involving a governmental unit enforcing its police or regulatory power.

Notice Requirements and Other Actions.
The receivership statutes establish various timeframes in which the receiver must provide notices to interested parties of certain proceedings and timeframes in which the receiver must take certain actions, such as submitting creditor claims and filing reports with the court.

Generally, within 20 days after the appointment, the receiver must file schedules, on statutorily prescribed forms, listing all known creditors and all property of the debtor.

Certain notice requirements regarding the distribution of property may not apply when the receiver makes an emergency disposition of "perishable" property.

Powers of the Receiver.
After notice and a hearing and with the court's approval, a general receiver may sell property other than in the ordinary course of business, and the sale may be free and clear of liens and rights of redemption, whether or not the sale will generate proceeds sufficient to satisfy all claims secured by the property.

Priority of Creditors.
The statutes establish the priority of creditor claims in a general receivership. Claims for wages, salaries, or commissions earned by a claimant within 90 days of the appointment of the receiver or cessation of the business are limited to $2,000. Allowable unsecured claims for monetary deposits made with the debtor for personal, family, or household services or property that were not delivered or provided are limited to $900 per claimant.

The priority of creditor claims under the receivership statutes are very similar to those under federal bankruptcy law. However, in a bankruptcy, claims for employee wages are limited to $10,950 for the 180 days previous to the bankruptcy filing or cessation of the business, and consumer layaway deposits are limited to $2,425.

Summary of Bill:

Appointment of a Receiver.
The statutes are clarified as to when particular actions or proceedings are commenced for the purposes of applying for the appointment of a receiver.

Notice Requirements and Other Actions.
For the purposes of the timeframes in which notice is required and other actions must be taken, the court has discretion to shorten or expand the timeframes for good cause shown. The time period for notice to creditors is expanded from 20 days to 30 days. The time frame under which a receiver must file certain prescribed schedules listing assets and liabilities is expanded from 20 days to 35 days.

For the purposes of a receiver providing certain notice when there is an emergency disposition of "perishable" property, the term "perishable" is changed to "property subject to eroding value."

Powers of the Receiver.
The court may order a general receiver to sell real property free and clear of liens and all rights of redemption if the property is the type that the debtor intended to sell in its ordinary course of business.

Automatic Stay of Certain Proceedings.
An additional exception to the automatic stay is created. The appointment of a receiver does not stay certain judicial and nonjudicial foreclosure proceedings if the proceeding was initiated by the party seeking the appointment of a receiver.

Priority of Creditors.
The limit on claims for employee wages, salaries, or commissions is changed to $10,950 earned by the claimant within 180 days of the appointment of the receiver of cessation of the business. The limit on consumer deposits is changed from $900 to $2,425.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) The Washington State Bar Association's Creditor/Debtor Section has been working on this bill for two years. It is not controversial and is mainly a clean-up bill. There was a very active process of vetting these changes with constituents and section members. Since 2004 when the statutes were enacted, practitioners have experienced procedural issues. The changes regarding claims mirror federal bankruptcy law so those claim amounts will be consistent in either forum. For creditors, receivership is a less expensive and more streamlined remedy than bankruptcy. Debtors have the ability to file a bankruptcy if they do not want to do a receivership. This will be "revenue positive" because assets are sold in receiverships and when sold, they are subject to excise tax on real property sales. Receiverships are more common these days and they are taxable.

(Opposed) None.

Persons Testifying: John Rizzardi, Washington State Bar Association.

Persons Signed In To Testify But Not Testifying: None.