

**HB350 ENROLLED**



1 HB350  
2 GGB826C-3  
3 By Representatives Faulkner, Brinyark, Almond, Robbins,  
4 England, Chestnut  
5 RFD: Financial Services  
6 First Read: 21-Mar-24



## HB350 Enrolled

1 Enrolled, An Act,

2           To create the Alabama Uniform Commercial Real Estate  
3 Receivership Act; to establish uniform requirements and the  
4 authority of a receiver appointed by a court for the  
5 management of commercial real estate during certain matters  
6 pending before the court; to provide definitions; to provide  
7 for notice and an opportunity for a hearing; to provide for  
8 scope and exclusions; to provide for the power of the courts;  
9 to provide for the appointment of a receiver, for  
10 disqualification from appointment as a receiver, and the  
11 disclosure of any interest; to provide for bond and  
12 alternative security; to provide for the status of receiver as  
13 a lien creditor; to provide for the creating of a security  
14 agreement covering after-acquired property; to provide for the  
15 collection and turnover of receivership property; to provide  
16 for the powers and duties of the receiver; to provide for the  
17 duties of the owner and mortgagor; to provide for the use or a  
18 stay of other actions and an injunction; to provide for the  
19 engagement and compensation of other professionals; to provide  
20 for the use or transfer of receivership property not in the  
21 ordinary course of business; to provide for the creation of an  
22 executory contract; to provide for defenses and immunities of  
23 the receiver and for an interim report of the receiver; to  
24 provide for notice of appointment, claims against the  
25 receivership, and the distribution to creditors; to provide  
26 for fees and expenses; to provide for the removal of the  
27 receiver and the replacement and termination of the  
28 receivership; to provide for the final report of the receiver



## HB350 Enrolled

29 and for the discharge of the receiver; to provide for a  
30 receivership in another state and ancillary reporting; to  
31 provide an effect of enforcement by a mortgagee; to provide  
32 for uniformity of application and construction; and to provide  
33 for transition.

34 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

35 Section 1. Short title.

36 This act shall be known and may be cited as the Alabama  
37 Uniform Commercial Real Estate Receivership Act.

38 Section 2. Definitions.

39 For the purposes of this act, the following terms have  
40 the following meanings:

41 (1) AFFILIATE. a. With respect to an individual:

42 1. A companion of the individual;

43 2. A lineal ancestor or descendant, whether by blood or  
44 adoption, of either of the following:

45 (i) The individual.

46 (ii) A companion of the individual;

47 3. A companion of an ancestor or descendant described  
48 in subparagraph 2.;

49 4. A sibling, aunt, uncle, great aunt, great uncle,  
50 first cousin, niece, nephew, grandniece, or grandnephew of the  
51 individual, whether related by the whole or the half blood or  
52 adoption, or a companion of any of them; or

53 5. Any other individual occupying the residence of the  
54 individual.

55 b. With respect to a person other than an individual:

56 1. Another person that directly or indirectly controls,



## HB350 Enrolled

57 is controlled by, or is under common control with the person;

58 2. An officer, director, manager, member, partner,  
59 employee, or trustee or other fiduciary of the person; or

60 3. A companion of, or an individual occupying the  
61 residence of, an individual described in subparagraph 1. or 2.

62 (2) COMPANION. Includes, but is not limited to, the  
63 spouse or romantic partner of an individual.

64 (3) COURT. A circuit court of this state as well as a  
65 federal court exercising jurisdiction over claims arising  
66 under this act.

67 (4) DISCHARGE. The removal or termination of the  
68 receiver's obligations to possess, manage, preserve, or  
69 administer the receivership property, or any combination of  
70 the foregoing.

71 (5) EXECUTORY CONTRACT. A contract, including a lease,  
72 under which each party has an unperformed obligation and the  
73 failure of a party to complete performance would constitute a  
74 material breach.

75 (6) GOVERNMENTAL UNIT. An office, department, division,  
76 bureau, board, commission, or other agency of this state or a  
77 subdivision of this state.

78 (7) INTERESTED PARTY. Any mortgagee, mortgagor, owner,  
79 professional engaged pursuant to Section 15, claimant pursuant  
80 to Section 20, or any person having an enforceable right or  
81 claim which may be affected by the proceeding. The term as it  
82 relates to particular persons may vary from time to time and  
83 must be determined according to the particular purposes of,  
84 and matter involved in, any proceeding.



## HB350 Enrolled

85 (8) LIEN. An interest in property which secures payment  
86 or performance of an obligation.

87 (9) MORTGAGE. A record, however denominated, that  
88 creates or provides for a consensual lien on real property or  
89 rents, even if the record also creates or provides for a lien  
90 on personal property.

91 (10) MORTGAGEE. A person entitled to enforce an  
92 obligation secured by a mortgage.

93 (11) MORTGAGOR. A person that grants a mortgage or a  
94 successor in ownership of the real property described in the  
95 mortgage.

96 (12) OWNER. The person for whose property a receiver is  
97 appointed.

98 (13) PERSON. An individual, estate, business or  
99 nonprofit entity, public corporation, government or  
100 governmental subdivision, agency, or instrumentality, or other  
101 legal entity.

102 (14) PROCEEDS. Any of the following property:

103 a. Whatever is acquired on the sale, lease, license,  
104 exchange, or other disposition of receivership property.

105 b. Whatever is collected on, or distributed on account  
106 of, receivership property.

107 c. Rights arising out of receivership property.

108 d. To the extent of the value of receivership property,  
109 claims arising out of the loss, nonconformity, or interference  
110 with the use of, defects or infringement of rights in, or  
111 damage to the property.

112 e. To the extent of the value of receivership property



## HB350 Enrolled

113 and to the extent payable to the owner or mortgagee, insurance  
114 payable by reason of the loss or nonconformity of, defects or  
115 infringement of rights in, or damage to the property.

116 (15) PROPERTY. All of a person's right, title, and  
117 interest, both legal and equitable, in real and personal  
118 property, tangible and intangible, wherever located and  
119 however acquired. The term includes proceeds, products,  
120 offspring, rents, or profits of or from the property.

121 (16) RECEIVER. A person appointed by the court as the  
122 court's agent, and subject to the court's direction, to take  
123 possession of, manage, and if authorized by this act or court  
124 order, to transfer, sell, lease, license, exchange, collect,  
125 or otherwise dispose of receivership property.

126 (17) RECEIVERSHIP. A proceeding in which a receiver is  
127 appointed.

128 (18) RECEIVERSHIP PROPERTY. The property of an owner  
129 which is described in the order appointing a receiver or a  
130 subsequent order. The term includes any proceeds, products,  
131 offspring, rents, or profits of or from the property.

132 (19) RECORD. When used as a noun, information that is  
133 inscribed on a tangible medium or that is stored on an  
134 electronic or other medium and is retrievable in perceivable  
135 form.

136 (20) RENTS. Any of the following:

137 a. Sums payable for the right to possess or occupy, or  
138 for the actual possession or occupation of, real property of  
139 another person.

140 b. Sums payable to a mortgagor under a policy of



## HB350 Enrolled

141 rental-interruption insurance covering real property.

142 c. Claims arising out of a default in the payment of  
143 sums payable for the right to possess or occupy real property  
144 of another person.

145 d. Sums payable to terminate an agreement to possess or  
146 occupy real property of another person.

147 e. Sums payable to a mortgagor for payment or  
148 reimbursement of expenses incurred in owning, operating, and  
149 maintaining real property or incurred in constructing or  
150 installing improvements on real property.

151 f. Other sums payable under an agreement relating to  
152 the real property of another person which constitute rents  
153 under the law of this state other than this act.

154 (21) SECURED OBLIGATION. An obligation the payment or  
155 performance of which is secured by a security agreement.

156 (22) SECURITY AGREEMENT. An agreement that creates or  
157 provides for a lien.

158 (23) SIGN. Either of the following, with present intent  
159 to authenticate or adopt a record:

160 a. To execute or adopt a tangible symbol.

161 b. To attach to or logically associate with the record  
162 an electronic sound, symbol, or process.

163 (24) STATE. A state of the United States, the District  
164 of Columbia, Puerto Rico, the United States Virgin Islands, or  
165 any territory or insular possession subject to the  
166 jurisdiction of the United States.

167 Section 3. Notice and opportunity for hearing.

168 (a) Except as otherwise provided in subsection (b), the



## HB350 Enrolled

169 court may issue an order under this act only after notice and  
170 opportunity for a hearing appropriate in the circumstances.

171 (b) The court may issue a preliminary order under this  
172 act in any of the following circumstances:

173 (1) Without prior notice if the circumstances require  
174 issuance of an order before notice is given.

175 (2) After notice and without a prior hearing if the  
176 circumstances require issuance of an order before a hearing is  
177 held.

178 (3) After notice and without a hearing, provided the  
179 court finds that the administration of justice will be  
180 preserved without a hearing.

181 (c) Upon request by an interested party for rehearing  
182 of a preliminary order entered under subdivision (b)(1) or  
183 (b)(2), the court shall schedule a hearing to make the order  
184 final and in compliance with subsection (a).

185 Section 4. Scope; exclusions.

186 (a) Except as otherwise provided in subsection (b) or  
187 (c), this act applies to a receivership for an interest in  
188 real property and any personal property related to or used in  
189 operating the real property.

190 (b) This act does not apply to a receivership for an  
191 interest in real property improved by one to four dwelling  
192 units unless:

193 (1) The interest is used for agricultural, commercial,  
194 industrial, or mineral extraction purposes, other than  
195 incidental uses by an owner occupying the property as the  
196 owner's primary residence;





## HB350 Enrolled

197           (2) The interest secures an obligation incurred at a  
198 time when the property was used or planned for use for  
199 agricultural, commercial, industrial, or mineral extraction  
200 purposes;

201           (3) The owner planned or is planning to develop the  
202 property into one or more dwelling units to be sold or leased  
203 in the ordinary course of the owner's business; or

204           (4) The owner is collecting or has the right to collect  
205 rents or other income from the property from a person other  
206 than an affiliate of the owner.

207           (c) This act does not apply to a receivership  
208 authorized by the law of this state other than this act in  
209 which the receiver is a governmental unit or an individual  
210 acting in an official capacity on behalf of the unit, except  
211 to the extent provided by other law.

212           (d) This act does not limit the authority of a court to  
213 appoint a receiver under the law of this state other than this  
214 act.

215           (e) Unless displaced by a particular provision of this  
216 act, the principles of law and equity supplement this act.

217           Section 5. Jurisdiction and venue.

218           (a) The court that appoints a receiver under this act  
219 has statewide exclusive original jurisdiction, pursuant to  
220 Section 12-11-30, Code of Alabama 1975, to direct the receiver  
221 and determine any controversy related to the receivership or  
222 receivership property.

223           (b) Venue for any actions filed pursuant to this act  
224 shall be proper in any county where a substantial portion of



## HB350 Enrolled

225 the receivership property is located.

226 Section 6. Appointment of receiver.

227 (a) The court may appoint a receiver:

228 (1) Before judgment, to protect a party that  
229 demonstrates an apparent right, title, or interest in real  
230 property that is the subject of the action, if any or all of  
231 the property, its revenues, its rents, or its proceeds:

232 a. Is being subjected to or is in danger of waste,  
233 loss, dissipation, or impairment; or

234 b. Has been or is about to be the subject of a voidable  
235 transaction;

236 (2) After judgment:

237 a. To carry the judgment into effect; or

238 b. To preserve nonexempt real property pending appeal  
239 or when an execution has been returned unsatisfied and the  
240 owner refuses to apply the property in satisfaction of the  
241 judgment; or

242 (3) In an action in which a receiver for real property  
243 may be appointed on equitable grounds.

244 (b) In connection with the foreclosure or other  
245 enforcement of a mortgage, the court may appoint a receiver  
246 for the mortgaged property. The court shall consider all of  
247 the following facts and circumstances, together with any other  
248 relevant facts in deciding whether to appoint a receiver for  
249 the mortgaged property:

250 (1) Appointment is necessary to protect the property  
251 from waste, loss, transfer, dissipation, or impairment.

252 (2) The mortgagor agreed in a signed record to



## HB350 Enrolled

253 appointment of a receiver on default.

254 (3) The owner agreed, after default and in a signed  
255 record, to appointment of a receiver.

256 (4) The property and any other collateral held by the  
257 mortgagee are not sufficient to satisfy the secured  
258 obligation.

259 (5) The owner fails to turn over to the mortgagee  
260 proceeds or rents the mortgagee was entitled to collect.

261 (6) The holder of a subordinate lien obtains  
262 appointment of a receiver for the property.

263 (c) The court may condition appointment of a receiver  
264 without prior notice or hearing under Section 3(b)(1) or  
265 3(b)(2) on the giving of security by the person seeking the  
266 appointment for the payment of damages, reasonable attorney  
267 fees, and costs incurred or suffered by any person if the  
268 court later concludes that the appointment was not justified.  
269 If the court later concludes that the appointment was  
270 justified, the court shall release the security. Provided,  
271 however, no security shall be required of this state or of an  
272 officer or agency of this state.

273 Section 7. Disqualification from appointment as  
274 receiver; disclosure of interest.

275 (a) The court may not appoint a person as receiver  
276 unless the person submits to the court a statement under  
277 penalty of perjury that the person is not disqualified.

278 (b) Except as otherwise provided in subsection (c), a  
279 person is disqualified from appointment as receiver if the  
280 person satisfies any of the following:



## HB350 Enrolled

281 (1) Is an affiliate of a party.

282 (2) Has an interest materially adverse to an interest  
283 of a party.

284 (3) Has a material financial interest in the outcome of  
285 the action, other than compensation the court may allow the  
286 receiver.

287 (4) Has a debtor-creditor relationship with a party.

288 (5) Holds an equity interest in a party, other than a  
289 noncontrolling interest in a publicly traded company.

290 (c) A person is not disqualified from appointment as  
291 receiver solely because the person satisfies any of the  
292 following:

293 (1) Was appointed receiver or is owed compensation in  
294 an unrelated matter involving a party or was engaged by a  
295 party in a matter unrelated to the receivership.

296 (2) Is an individual obligated to a party on a debt  
297 that is not in default and was incurred primarily for  
298 personal, family, or household purposes.

299 (3) Maintains with a party a deposit account as defined  
300 in Section 7-9A-102(a), Code of Alabama 1975.

301 (d) A person seeking appointment of a receiver may  
302 nominate a person to serve as receiver, but the court is not  
303 bound by the nomination.

304 Section 8. Receiver's bond; alternative security.

305 (a) Except as otherwise provided in subsection (b), a  
306 receiver shall post with the court a bond that satisfies all  
307 of the following:

308 (1) Is conditioned on the faithful undertaking of the



## HB350 Enrolled

309 receiver's duties.

310 (2) Has one or more sureties approved by the court.

311 (3) Is in an amount the court specifies.

312 (4) Is effective as of the date of the receiver's  
313 appointment.

314 (b) The court may approve the posting by a receiver  
315 with the court of alternative security, such as a letter of  
316 credit or deposit of funds. The receiver may not use  
317 receivership property as alternative security. Interest that  
318 accrues on deposited funds must be paid to the receiver on the  
319 receiver's discharge.

320 (c) The court may authorize a receiver to act before  
321 the receiver posts the bond or alternative security required  
322 by this section.

323 (d) A claim against a receiver's bond or alternative  
324 security must be made not later than the date the receiver is  
325 discharged.

326 Section 9. Status of receiver.

327 (a) On appointment of a receiver, the receiver has the  
328 status of a lien creditor under Article 9A of Title 7, Code of  
329 Alabama 1975, as to receivership property that is personal  
330 property or fixtures.

331 (b) On appointment of a receiver, the receiver has the  
332 status of a purchaser for value and without notice under  
333 Section 35-4-90(a), Code of Alabama 1975, as to receivership  
334 property that is real property.

335 Section 10. Security agreement covering after-acquired  
336 property.



## HB350 Enrolled

337           Except as otherwise provided by the law of this state  
338 other than this act, property that a receiver or owner  
339 acquires after appointment of the receiver is subject to a  
340 security agreement entered into before the appointment to the  
341 same extent as if the court had not appointed the receiver.

342           Section 11. Collection and turnover of receivership  
343 property.

344           (a) Unless the court orders otherwise, on demand by a  
345 receiver:

346           (1) A person that owes a debt that is receivership  
347 property and is matured or payable on demand or on order shall  
348 pay the debt to or on the order of the receiver, except to the  
349 extent the debt is subject to setoff or recoupment.

350           (2) Subject to subsection (c), a person that has  
351 possession, custody, or control of receivership property shall  
352 turn the property over to the receiver.

353           (b) A person that has actual notice of the appointment  
354 of a receiver and owes a debt that is receivership property  
355 may not satisfy the debt by payment to the owner.

356           (c) If a creditor has possession, custody, or control  
357 of receivership property and the validity, perfection, or  
358 priority of the creditor's lien on the property depends on the  
359 creditor's possession, custody, or control, the creditor may  
360 retain possession, custody, or control until the court orders  
361 adequate protection of the creditor's lien.

362           (d) Unless a bona fide dispute exists about a  
363 receiver's right to possession, custody, or control of  
364 receivership property, the court may sanction as civil



## HB350 Enrolled

365 contempt a person's failure to turn the property over when  
366 required by this section.

367 Section 12. Powers and duties of receiver.

368 (a) Except as limited by court order or the law of this  
369 state other than this act, a receiver may do any of the  
370 following:

371 (1) Collect, control, manage, conserve, and protect  
372 receivership property.

373 (2) Operate a business constituting receivership  
374 property, including preservation, use, sale, lease, license,  
375 exchange, collection, or disposition of the property in the  
376 ordinary course of business.

377 (3) In the ordinary course of business, incur unsecured  
378 debt and pay expenses incidental to the receiver's  
379 preservation, use, sale, lease, license, exchange, collection,  
380 or disposition of receivership property.

381 (4) Assert a right, claim, cause of action, or defense  
382 of the owner which relates to receivership property.

383 (5) Seek and obtain instruction from the court  
384 concerning receivership property, exercise of the receiver's  
385 powers, and performance of the receiver's duties.

386 (6) Upon subpoena, compel a person to submit to  
387 examination under oath, or to produce and permit inspection  
388 and copying of designated records or tangible things, with  
389 respect to receivership property or any other matter that may  
390 affect administration of the receivership.

391 (7) Engage a professional as provided in Section 15.

392 (8) Apply to a court of another state for appointment



## HB350 Enrolled

393 as ancillary receiver with respect to receivership property  
394 located in that state.

395 (9) Exercise any power conferred by court order, this  
396 act, or the laws of this state other than this act.

397 (b) With court approval, a receiver may do any of the  
398 following:

399 (1) Incur debt for the use or benefit of receivership  
400 property other than in the ordinary course of business.

401 (2) Make improvements to receivership property.

402 (3) Use or transfer receivership property other than in  
403 the ordinary course of business as provided in Section 16.

404 (4) Adopt or reject an executory contract of the owner  
405 as provided in Section 17.

406 (5) Pay compensation to the receiver as provided in  
407 Section 21, and to each professional engaged by the receiver  
408 as provided in Section 15.

409 (6) Recommend allowance or disallowance of a claim of a  
410 creditor as provided in Section 20.

411 (7) Make a distribution of receivership property as  
412 provided in Section 20.

413 (c) A receiver shall do all of the following:

414 (1) Prepare and retain appropriate business records,  
415 including a record of each receipt, disbursement, and  
416 disposition of receivership property.

417 (2) Account for receivership property, including the  
418 proceeds of a sale, lease, license, exchange, collection, or  
419 other disposition of the property.

420 (3) File with the appropriate probate court for





## HB350 Enrolled

421 recording a copy of the order appointing the receiver and, if  
422 a legal description of the real property is not included in  
423 the order, the legal description.

424 (4) Disclose to the court any fact arising during the  
425 receivership which would disqualify the receiver under Section  
426 7.

427 (5) Perform any duty imposed by court order, this act,  
428 or law of this state other than this act.

429 (d) The powers and duties of a receiver may be  
430 expanded, modified, or limited by court order.

431 Section 13. Duties of owner and mortgagor.

432 (a) An owner and a mortgagor shall do all of the  
433 following:

434 (1) Preserve and turn over to the receiver all  
435 receivership property in the owner's possession, custody, or  
436 control.

437 (2) Identify all records and other information relating  
438 to the receivership property, including a password,  
439 authorization, or other information needed to obtain or  
440 maintain access to or control of the receivership property,  
441 and make available to the receiver the records and information  
442 in the owner's possession, custody, or control.

443 (3) On subpoena, submit to examination under oath by  
444 the receiver concerning the acts, conduct, property,  
445 liabilities, and financial condition of the owner or any  
446 matter relating to the receivership property or the  
447 receivership.

448 (4) Perform any duty imposed by court order, this act,



## HB350 Enrolled

449 or law of this state other than this act.

450 (5) Assist and cooperate with the receiver in the  
451 administration of the receivership and the undertaking of the  
452 receiver's duties in accordance with the intent of this  
453 subsection.

454 (b) If an owner is a person other than an individual,  
455 this section applies to each officer, director, manager,  
456 member, partner, trustee, or other person exercising or having  
457 the power to exercise control over the affairs of the owner.

458 (c) If a person knowingly fails to perform a duty  
459 imposed by this section, the court may do any of the  
460 following:

461 (1) Award the receiver actual damages caused by the  
462 person's failure, reasonable attorney fees, and costs.

463 (2) Sanction the failure as civil contempt.

464 Section 14. Stay; injunction.

465 (a) Except as otherwise provided in subsection (d) or  
466 ordered by the court, upon the earlier of: (1) recording of  
467 the receivership order pursuant to Section 12(c)(3); or (2)  
468 receipt of actual knowledge of the appointment of a receiver,  
469 an order appointing a receiver operates as a stay, applicable  
470 to all persons, of an act, action, or proceeding:

471 a. To obtain possession of, exercise control over, or  
472 enforce a judgment against receivership property; and

473 b. To enforce a lien against receivership property to  
474 the extent the lien secures a claim against the owner which  
475 arose before entry of the order.

476 (b) Except as otherwise provided in subsection (d), the



## HB350 Enrolled

477 court may enjoin an act, action, or proceeding against or  
478 relating to receivership property if the injunction is  
479 necessary to protect the property or facilitate administration  
480 of the receivership.

481 (c) A person whose act, action, or proceeding is stayed  
482 or enjoined under this section may apply to the court for  
483 relief from the stay or injunction for cause.

484 (d) An order under subsection (a) or (b) does not  
485 operate as a stay or injunction of any of the following:

486 (1) An act, action, or proceeding to foreclose or  
487 otherwise enforce a mortgage by a party holding a senior lien  
488 to the person seeking appointment of the receiver.

489 (2) An act, action, or proceeding to foreclose or  
490 otherwise enforce a mortgage by the person seeking appointment  
491 of the receiver.

492 (3) An act, action, or proceeding to perfect, or  
493 maintain or continue the perfection of, an interest in  
494 receivership property.

495 (4) Commencement or continuation of a criminal  
496 proceeding.

497 (5) Commencement or continuation of an action or  
498 proceeding, or enforcement of a judgment other than a money  
499 judgment in an action or proceeding, by a governmental unit to  
500 enforce its police or regulatory power.

501 (6) Establishment by a governmental unit of a tax  
502 liability against the owner or receivership property or an  
503 appeal of the liability.

504 (e) The court may void any act that violates a stay or



## HB350 Enrolled

505 injunction under this section.

506 (f) If a person knowingly violates a stay or injunction  
507 under this section, the court may do any of the following:

508 (1) Award actual damages caused by the violation,  
509 reasonable attorney fees, and costs.

510 (2) Sanction the violation as civil contempt.

511 Section 15. Engagement and compensation of  
512 professional.

513 (a) With court approval, a receiver may engage an  
514 attorney, accountant, appraiser, auctioneer, broker, or other  
515 professional to assist the receiver in performing a duty or  
516 exercising a power of the receiver. The receiver shall  
517 disclose to the court all of the following:

518 (1) The identity and qualifications of the  
519 professional.

520 (2) The scope and nature of the proposed engagement.

521 (3) Any potential conflict of interest.

522 (4) The proposed compensation.

523 (b) A person is not disqualified from engagement under  
524 this section solely because of the person's engagement by,  
525 representation of, or other relationship with the receiver, a  
526 creditor, or a party. This act does not prevent the receiver  
527 from serving in the receivership as an attorney, accountant,  
528 auctioneer, or broker when authorized by law.

529 (c) A receiver or professional engaged under subsection  
530 (a) shall file with the court an itemized statement of the  
531 time spent, work performed, and billing rate of each person  
532 that performed the work and an itemized list of expenses. The



## HB350 Enrolled

533 receiver shall pay the amount approved by the court or pay  
534 amounts otherwise allowed by the court.

535 Section 16. Use or transfer of receivership property  
536 not in ordinary course of business.

537 (a) In this section, "good faith" means honesty in fact  
538 in the conduct or transaction concerned.

539 (b) With court approval, a receiver may use  
540 receivership property other than in the ordinary course of  
541 business.

542 (c) With court approval, a receiver may transfer  
543 receivership property other than in the ordinary course of  
544 business by sale, lease, license, exchange, or other  
545 disposition. Unless the agreement of sale provides otherwise,  
546 a sale under this section is free and clear of a lien of the  
547 person that obtained appointment of the receiver, any  
548 subordinate lien, and any right of redemption but is subject  
549 to a senior lien.

550 (d) A lien on receivership property which is  
551 extinguished by a transfer under subsection (c) attaches to  
552 the proceeds of the transfer with the same validity,  
553 perfection, and priority the lien had on the property  
554 immediately before the transfer, even if the proceeds are not  
555 sufficient to satisfy all obligations secured by the lien.

556 (e) A transfer under subsection (c) may occur by means  
557 other than a public auction sale. A creditor holding a valid  
558 lien on the property to be transferred may purchase the  
559 property and offset against the purchase price part or all of  
560 the allowed amount secured by the lien, if the creditor



## HB350 Enrolled

561 tenders funds sufficient to satisfy in full the reasonable  
562 expenses of transfer and the obligation secured by any senior  
563 lien extinguished by the transfer.

564 (f) A reversal or modification of an order approving a  
565 transfer under subsection (c) does not affect the validity of  
566 the transfer to a person that acquired the property in good  
567 faith nor revive against the person any lien extinguished by  
568 the transfer, whether the person knew before the transfer of  
569 the request for reversal or modification, unless the court  
570 stayed the order before the transfer.

571 Section 17. Executory contract.

572 (a) In this section, "timeshare interest" means an  
573 interest having a duration of more than three years which  
574 grants its holder the right to use and occupy an  
575 accommodation, facility, or recreational site, whether  
576 improved or not, for a specific period less than a full year  
577 during any given year.

578 (b) Except as otherwise provided in subsection (h),  
579 with court approval, a receiver may adopt or reject an  
580 executory contract of the owner relating to receivership  
581 property. The court may condition the receiver's adoption and  
582 continued performance of the contract on terms appropriate  
583 under the circumstances. If the receiver does not request  
584 court approval to adopt or reject the contract within a  
585 reasonable time after the receiver's appointment or discovery  
586 of the executory contract, the receiver is deemed to have not  
587 rejected the contract.

588 (c) A receiver's performance of an executory contract



## HB350 Enrolled

589 before court rejection under subsection (b) of its adoption or  
590 rejection is not an adoption of the contract and does not  
591 preclude the receiver from seeking approval to reject the  
592 contract.

593 (d) A provision in an executory contract which requires  
594 or permits a forfeiture, modification, or termination of the  
595 contract because of the appointment of a receiver or the  
596 financial condition of the owner does not affect a receiver's  
597 power under subsection (b) to adopt the contract.

598 (e) A receiver's right to possess or use receivership  
599 property pursuant to an executory contract terminates on  
600 rejection of the contract under subsection (b). Rejection is a  
601 breach of the contract effective immediately before  
602 appointment of the receiver. A claim for damages for rejection  
603 of the contract must be submitted by the later of:

604 (1) The time set for submitting a claim in the  
605 receivership; or

606 (2) Thirty days after the court approves the rejection.

607 (f) If at the time a receiver is appointed, the owner  
608 has the right to assign an executory contract relating to  
609 receivership property under the law of this state other than  
610 this act, the receiver may assign the contract with court  
611 approval.

612 (g) If a receiver rejects under subsection (b) an  
613 executory contract for the sale of receivership property that  
614 is real property in possession of the purchaser or a real  
615 property timeshare interest, the purchaser may do either of  
616 the following:



## HB350 Enrolled

617 (1) Treat the rejection as a termination of the  
618 contract, and in that case the purchaser has a lien on the  
619 property for the recovery of any part of the purchase price  
620 the purchaser paid.

621 (2) Retain the purchaser's right to possession under  
622 the contract, and in that case the purchaser shall continue to  
623 perform all obligations arising under the contract and may  
624 offset any damages caused by nonperformance of an obligation  
625 of the owner after the date of the rejection, but the  
626 purchaser has no right or claim against other receivership  
627 property or the receiver on account of the damages.

628 (h) A receiver may not reject an unexpired lease of  
629 real property under which the owner is the landlord if:

630 (1) The tenant occupies the leased premises as the  
631 tenant's primary residence;

632 (2) The receiver was appointed at the request of a  
633 person other than a mortgagee; or

634 (3) The receiver was appointed at the request of a  
635 mortgagee and any of the following are true or occur:

636 a. The lease is superior to the lien of the mortgage.

637 b. The tenant has an enforceable agreement with the  
638 mortgagee or the holder of a senior lien under which the  
639 tenant's occupancy will not be disturbed as long as the tenant  
640 performs its obligations under the lease.

641 c. The mortgagee has consented to the lease, either in  
642 a signed record or by its failure to timely object that the  
643 lease violated the mortgage.

644 d. The terms of the lease were commercially reasonable





## HB350 Enrolled

645 at the time the lease was agreed to and the tenant did not  
646 know or have reason to know that the lease violated the  
647 mortgage.

648 Section 18. Defenses and immunities of the receiver.

649 A receiver is entitled to all defenses and immunities  
650 provided by the law of this state other than this act for an  
651 act or omission within the scope of the receiver's  
652 appointment.

653 Section 19. Interim report of receiver.

654 A receiver may file or, if ordered by the court, shall  
655 file an interim report that includes all of the following:

656 (1) The activities of the receiver since appointment or  
657 a previous report.

658 (2) Receipts and disbursements, including a payment  
659 made or proposed to be made to a professional engaged by the  
660 receiver.

661 (3) Receipts and dispositions of receivership property.

662 (4) A request for, or demand for, payment of fees and  
663 expenses of the receiver and, if not filed separately, a  
664 request for approval of payment of the fees and expenses.

665 (5) Any other information required by the court.

666 Section 20. Notice of appointment; claim against  
667 receivership; distribution to creditors.

668 (a) Except as otherwise provided in subsection (f), a  
669 receiver shall give notice of appointment of the receiver to  
670 creditors of the owner by both of the following:

671 (1) First-class mail addressed to the last known  
672 address of the creditor, or by other mechanism reasonably



## HB350 Enrolled

673 calculated to provide actual notice, to all creditors with  
674 claims against the receivership property who are known or  
675 reasonably ascertainable by the receiver within 30 days after  
676 appointment.

677 (2) Publishing a notice once a week for three  
678 successive weeks in a newspaper of general circulation  
679 published in the county in which the receiver was appointed,  
680 or if none is published in the county, in the one published  
681 nearest to the courthouse thereof or in an adjoining county.

682 (b) Except as otherwise provided in subsection (f), the  
683 notice required by subsection (a) must specify the date by  
684 which each creditor holding a claim against the owner which  
685 arose before appointment of the receiver must submit the claim  
686 to the receiver. The date specified must be at least 90 days  
687 after the later of notice under subdivision (a)(1) or last  
688 publication under subdivision (a)(2). The court may extend the  
689 period for submitting the claim. Unless the court orders  
690 otherwise, a claim that is not submitted timely is not  
691 entitled to a distribution from the receivership.

692 (c) A claim submitted by a creditor under this section  
693 must satisfy all of the following:

- 694 (1) State the name and address of the creditor.
- 695 (2) State the amount and basis of the claim.
- 696 (3) Identify any property securing the claim.
- 697 (4) Be signed by the creditor under penalty of perjury.
- 698 (5) Include a copy of any record on which the claim is  
699 based.

700 (d) An assignment by a creditor of a claim against the



## HB350 Enrolled

701 owner is effective against the receiver only if the assignee  
702 gives timely notice of the assignment to the receiver in a  
703 signed record.

704 (e) At any time before entry of an order approving a  
705 receiver's final report, the receiver or any interested party  
706 may file with the court an objection to a claim of a creditor  
707 stating the basis for the objection. The court shall allow or  
708 disallow the claim according to the law of this state other  
709 than this act.

710 (f) If the court concludes that receivership property  
711 is likely to be insufficient to satisfy claims of each  
712 creditor holding a perfected lien on the property, the court  
713 may order both of the following:

714 (1) That the receiver need not give notice under  
715 subsection (a) of the appointment to all creditors of the  
716 owner, but only to such creditors as the court directs.

717 (2) That unsecured creditors need not submit claims  
718 under this section.

719 (g) Subject to Section 21:

720 (1) A distribution of receivership property to a  
721 creditor holding a perfected lien on the property must be made  
722 in accordance with the creditor's priority under the law of  
723 this state other than this act; and

724 (2) A distribution of receivership property to a  
725 creditor with an allowed unsecured claim must be made as the  
726 court directs according to the law of this state other than  
727 this act, pro rata as to the allowed amount.

728 Section 21. Fees and expenses.



## HB350 Enrolled

729 (a) The court may award a receiver from receivership  
730 property the reasonable and necessary fees and expenses of  
731 performing the duties of the receiver and exercising the  
732 powers of the receiver.

733 (b) The court may order one or more of the following to  
734 pay the reasonable and necessary fees and expenses of the  
735 receivership, including reasonable attorney fees and costs:

736 (1) A person that requested the appointment of the  
737 receiver, if the receivership does not produce sufficient  
738 funds to pay the fees and expenses.

739 (2) A person whose conduct justified or would have  
740 justified the appointment of the receiver under Section  
741 6(a)(1).

742 Section 22. Removal of receiver; replacement;  
743 termination of receivership.

744 (a) The court may remove a receiver for cause.

745 (b) The court shall replace a receiver that dies,  
746 resigns, or is removed.

747 (c) If the court finds that a receiver that resigns or  
748 is removed or the representative of a receiver that is  
749 deceased has accounted fully for and turned over to the  
750 successor receiver all receivership property and has filed a  
751 report of all receipts and disbursements during the service of  
752 the replaced receiver, the replaced receiver is discharged.

753 (d) The court may discharge a receiver and terminate  
754 the court's administration of the receivership property if the  
755 court finds that appointment of the receiver was improvident  
756 or that the circumstances no longer warrant continuation of



## HB350 Enrolled

757 the receivership. If the court finds that the appointment was  
758 sought in bad faith, the court may assess both of the  
759 following against the person that sought the appointment:

760 (1) The fees and expenses of the receivership,  
761 including reasonable attorney fees and costs.

762 (2) Actual damages caused by the appointment, including  
763 reasonable attorney fees and costs.

764 Section 23. Final report of receiver; discharge.

765 (a) If required by the court, on completion of a  
766 receiver's duties the receiver shall file a final report  
767 including all of the following:

768 (1) A description of the activities of the receiver in  
769 the conduct of the receivership.

770 (2) A list of receivership property at the commencement  
771 of the receivership and any receivership property received  
772 during the receivership.

773 (3) A list of disbursements, including payments to  
774 professionals engaged by the receiver.

775 (4) A list of dispositions of receivership property.

776 (5) A list of distributions made or proposed to be made  
777 from the receivership for creditor claims.

778 (6) If not filed separately, a request for approval of  
779 the payment of fees and expenses of the receiver.

780 (7) Any other information required by the court.

781 (b) If the court requires a final report, the receiver  
782 is discharged when the court approves the final report filed  
783 under subsection (a) and the receiver distributes all  
784 receivership property.



## HB350 Enrolled

785 (c) If the court does not require a final report, the  
786 receiver is discharged upon distribution of all receivership  
787 property.

788 Section 24. Receivership in another state; ancillary  
789 proceeding.

790 (a) The court may appoint a receiver appointed in  
791 another state, or that person's nominee, as an ancillary  
792 receiver with respect to property located in this state or  
793 subject to the jurisdiction of the court for which a receiver  
794 could be appointed under this act, if:

795 (1) The person or nominee would be eligible to serve as  
796 receiver under Section 7; and

797 (2) The appointment furthers the person's possession,  
798 custody, control, or disposition of property subject to the  
799 receivership in the other state.

800 (b) The court may issue an order that gives effect to  
801 an order entered in another state appointing or directing a  
802 receiver.

803 (c) Unless the court orders otherwise, an ancillary  
804 receiver appointed under subsection (a) has the rights,  
805 powers, and duties of a receiver appointed under this act.

806 Section 25. Effect of enforcement by mortgagee.

807 A request by a mortgagee for appointment of a receiver,  
808 the appointment of a receiver, or application by a mortgagee  
809 of receivership property or proceeds to the secured obligation  
810 does not do any of the following:

811 (1) Make the mortgagee a mortgagee in possession of the  
812 real property.



## HB350 Enrolled

813 (2) Make:

814 a. The mortgagee an agent of the owner, receiver, or  
815 mortgagor;

816 b. The owner an agent of the mortgagee, receiver, or  
817 mortgagor;

818 c. The receiver an agent of the mortgagee, owner, or  
819 mortgagor; or

820 d. The mortgagor an agent of the owner, mortgagee, or  
821 receiver.

822 (3) Constitute an election of remedies that precludes a  
823 later action to enforce the secured obligation.

824 (4) Make the secured obligation unenforceable.

825 (5) Limit any right available to the mortgagee with  
826 respect to the secured obligation.

827 Section 26. Uniformity of application and construction.

828 In applying and construing this uniform act,  
829 consideration must be given to the need to promote uniformity  
830 of the law with respect to its subject matter among states  
831 that enact it.

832 Section 27. Relation to Electronic Signatures in Global  
833 and National Commerce Act; and Relation to Condemnation  
834 Proceedings.

835 (a) This act modifies, limits, or supersedes the  
836 Electronic Signatures in Global and National Commerce Act, 15  
837 U.S.C. §7001 et seq., but does not modify, limit, or supersede  
838 Section 101(c) of that act, 15 U.S.C. §7001(c), or authorize  
839 electronic delivery of any of the notices described in Section  
840 103(b) of that act, 15 U.S.C. §7003(b).



## HB350 Enrolled

841 (b) Notwithstanding any provision to the contrary, this  
842 act shall have no effect on any condemnation action or  
843 proceeding to acquire for public use all or any portion or  
844 interest in the receivership property, whether filed before or  
845 after the receivership. The receivership court may not stay or  
846 enjoin any condemnation action involving the receivership  
847 property, nor shall the receivership court have jurisdiction  
848 over any action to condemn the receivership property. The  
849 receiver may negotiate to settle any condemnation action  
850 involving the receivership property, and may convey to the  
851 condemning authority the property or interest therein sought  
852 to be condemned. The receiver may be named as a defendant in  
853 any eminent domain or condemnation action involving the  
854 receivership property.

855 Section 28. Transition.

856 This act does not apply to a receivership for which the  
857 receiver was appointed before January 1, 2025.

858 Section 29. This act shall become effective on January  
859 1, 2025.





**HB350 Enrolled**

860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890

---

Speaker of the House of Representatives

---

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 09-Apr-24.

John Treadwell  
Clerk

Senate

---

**08-May-24**

---

Passed