

HB350 INTRODUCED



1 HB350
2 HVAK866-1
3 By Representatives Faulkner, Brinyark, Almond, Robbins,
4 England, Chestnut
5 RFD: Financial Services
6 First Read: 21-Mar-24



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SYNOPSIS:

This act would create the Alabama Uniform Commercial Real Estate Receivership Act.

This bill would create a uniform process for state courts to appoint a receiver in disputes that arise over commercial real estate, typically a default, and would establish provisions governing the appointment and powers of a receiver for real property that is used for certain commercial purposes and any personal property related to or used in operating that real property.

A BILL
TO BE ENTITLED
AN ACT

To create the Alabama Uniform Commercial Real Estate Receivership Act; to establish uniform requirements and the authority of a receiver appointed by a court for the management of commercial real estate during certain matters pending before the court; to provide definitions; to provide for notice and an opportunity for a hearing; to provide for scope and exclusions; to provide for the power of the courts; to provide for the appointment of a receiver, for



HB350 INTRODUCED

29 disqualification from appointment as a receiver, and the
30 disclosure of any interest; to provide for bond and
31 alternative security; to provide for the status of receiver as
32 a lien creditor; to provide for the creating of a security
33 agreement covering after-acquired property; to provide for the
34 collection and turnover of receivership property; to provide
35 for the powers and duties of the receiver; to provide for the
36 duties of the owner and mortgagor; to provide for the use or a
37 stay of other actions and an injunction; to provide for the
38 engagement and compensation of other professionals; to provide
39 for the use or transfer of receivership property not in the
40 ordinary course of business; to provide for the creation of an
41 executory contract; to provide for defenses and immunities of
42 the receiver and for an interim report of the receiver; to
43 provide for notice of appointment, claims against the
44 receivership, and the distribution to creditors; to provide
45 for fees and expenses; to provide for the removal of the
46 receiver and the replacement and termination of the
47 receivership; to provide for the final report of the receiver
48 and for the discharge of the receiver; to provide for a
49 receivership in another state and ancillary reporting; to
50 provide an effect of enforcement by a mortgagee; to provide
51 for uniformity of application and construction; and to provide
52 for transition.

53 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

54 Section 1. Short title.

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



HB350 INTRODUCED

57 Section 2. Definitions.

58 For the purposes of this act, the following terms have
59 the following meanings:

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

61 1. A companion of the individual;

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

64 (i) The individual.

65 (ii) A companion of the individual;

66 3. A companion of an ancestor or descendant described
67 in subparagraph 2.;

68 4. A sibling, aunt, uncle, great aunt, great uncle,
69 first cousin, niece, nephew, grandniece, or grandnephew of the
70 individual, whether related by the whole or the half blood or
71 adoption, or a companion of any of them; or

72 5. Any other individual occupying the residence of the
73 individual.

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

75 1. Another person that directly or indirectly controls,
76 is controlled by, or is under common control with the person;

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

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

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

83 (3) COURT. A circuit court of this state as well as a
84 federal court exercising jurisdiction over claims arising



HB350 INTRODUCED

85 under this act.

86 (4) DISCHARGE. The removal or termination of the
87 receiver's obligations to possess, manage, preserve, or
88 administer the receivership property, or any combination of
89 the foregoing.

90 (5) EXECUTORY CONTRACT. A contract, including a lease,
91 under which each party has an unperformed obligation and the
92 failure of a party to complete performance would constitute a
93 material breach.

94 (6) GOVERNMENTAL UNIT. An office, department, division,
95 bureau, board, commission, or other agency of this state or a
96 subdivision of this state.

97 (7) INTERESTED PARTY. Any mortgagee, mortgagor, owner,
98 professional engaged pursuant to Section 15, claimant pursuant
99 to Section 20, or any person having an enforceable right or
100 claim which may be affected by the proceeding. The term as it
101 relates to particular persons may vary from time to time and
102 must be determined according to the particular purposes of,
103 and matter involved in, any proceeding.

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

106 (9) MORTGAGE. A record, however denominated, that
107 creates or provides for a consensual lien on real property or
108 rents, even if the record also creates or provides for a lien
109 on personal property.

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

112 (11) MORTGAGOR. A person that grants a mortgage or a



HB350 INTRODUCED

113 successor in ownership of the real property described in the
114 mortgage.

115 (12) OWNER. The person for whose property a receiver is
116 appointed.

117 (13) PERSON. An individual, estate, business or
118 nonprofit entity, public corporation, government or
119 governmental subdivision, agency, or instrumentality, or other
120 legal entity.

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

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

124 b. Whatever is collected on, or distributed on account
125 of, receivership property.

126 c. Rights arising out of receivership property.

127 d. To the extent of the value of receivership property,
128 claims arising out of the loss, nonconformity, or interference
129 with the use of, defects or infringement of rights in, or
130 damage to the property.

131 e. To the extent of the value of receivership property
132 and to the extent payable to the owner or mortgagee, insurance
133 payable by reason of the loss or nonconformity of, defects or
134 infringement of rights in, or damage to the property.

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

140 (16) RECEIVER. A person appointed by the court as the



HB350 INTRODUCED

141 court's agent, and subject to the court's direction, to take
142 possession of, manage, and if authorized by this act or court
143 order, to transfer, sell, lease, license, exchange, collect,
144 or otherwise dispose of receivership property.

145 (17) RECEIVERSHIP. A proceeding in which a receiver is
146 appointed.

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

151 (19) RECORD. When used as a noun, information that is
152 inscribed on a tangible medium or that is stored on an
153 electronic or other medium and is retrievable in perceivable
154 form.

155 (20) RENTS. Any of the following:

156 a. Sums payable for the right to possess or occupy, or
157 for the actual possession or occupation of, real property of
158 another person.

159 b. Sums payable to a mortgagor under a policy of
160 rental-interruption insurance covering real property.

161 c. Claims arising out of a default in the payment of
162 sums payable for the right to possess or occupy real property
163 of another person.

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

166 e. Sums payable to a mortgagor for payment or
167 reimbursement of expenses incurred in owning, operating, and
168 maintaining real property or incurred in constructing or



HB350 INTRODUCED

169 installing improvements on real property.

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

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

175 (22) SECURITY AGREEMENT. An agreement that creates or
176 provides for a lien.

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

179 a. To execute or adopt a tangible symbol.

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

182 (24) STATE. A state of the United States, the District
183 of Columbia, Puerto Rico, the United States Virgin Islands, or
184 any territory or insular possession subject to the
185 jurisdiction of the United States.

186 Section 3. Notice and opportunity for hearing.

187 (a) Except as otherwise provided in subsection (b), the
188 court may issue an order under this act only after notice and
189 opportunity for a hearing appropriate in the circumstances.

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

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

194 (2) After notice and without a prior hearing if the
195 circumstances require issuance of an order before a hearing is
196 held.



HB350 INTRODUCED

197 (3) After notice and without a hearing, provided the
198 court finds that the administration of justice will be
199 preserved without a hearing.

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

204 Section 4. Scope; exclusions.

205 (a) Except as otherwise provided in subsection (b) or
206 (c), this act applies to a receivership for an interest in
207 real property and any personal property related to or used in
208 operating the real property.

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

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

216 (2) The interest secures an obligation incurred at a
217 time when the property was used or planned for use for
218 agricultural, commercial, industrial, or mineral extraction
219 purposes;

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

223 (4) The owner is collecting or has the right to collect
224 rents or other income from the property from a person other



HB350 INTRODUCED

225 than an affiliate of the owner.

226 (c) This act does not apply to a receivership
227 authorized by the law of this state other than this act in
228 which the receiver is a governmental unit or an individual
229 acting in an official capacity on behalf of the unit, except
230 to the extent provided by other law.

231 (d) This act does not limit the authority of a court to
232 appoint a receiver under the law of this state other than this
233 act.

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

236 Section 5. Jurisdiction and venue.

237 (a) The court that appoints a receiver under this act
238 has statewide exclusive original jurisdiction, pursuant to
239 Section 12-11-30, Code of Alabama 1975, to direct the receiver
240 and determine any controversy related to the receivership or
241 receivership property.

242 (b) Venue for any actions filed pursuant to this act
243 shall be proper in any county where a substantial portion of
244 the receivership property is located.

245 Section 6. Appointment of receiver.

246 (a) The court may appoint a receiver:

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

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



HB350 INTRODUCED

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

255 (2) After judgment:

256 a. To carry the judgment into effect; or

257 b. To preserve nonexempt real property pending appeal
258 or when an execution has been returned unsatisfied and the
259 owner refuses to apply the property in satisfaction of the
260 judgment; or

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

263 (b) In connection with the foreclosure or other
264 enforcement of a mortgage, the court may appoint a receiver
265 for the mortgaged property. The court shall consider all of
266 the following facts and circumstances, together with any other
267 relevant facts in deciding whether to appoint a receiver for
268 the mortgaged property:

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

271 (2) The mortgagor agreed in a signed record to
272 appointment of a receiver on default.

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

275 (4) The property and any other collateral held by the
276 mortgagee are not sufficient to satisfy the secured
277 obligation.

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

280 (6) The holder of a subordinate lien obtains



HB350 INTRODUCED

281 appointment of a receiver for the property.

282 (c) The court may condition appointment of a receiver
283 without prior notice or hearing under Section 3(b)(1) or
284 3(b)(2) on the giving of security by the person seeking the
285 appointment for the payment of damages, reasonable attorney
286 fees, and costs incurred or suffered by any person if the
287 court later concludes that the appointment was not justified.
288 If the court later concludes that the appointment was
289 justified, the court shall release the security. Provided,
290 however, no security shall be required of this state or of an
291 officer or agency of this state.

292 Section 7. Disqualification from appointment as
293 receiver; disclosure of interest.

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

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

300 (1) Is an affiliate of a party.

301 (2) Has an interest materially adverse to an interest
302 of a party.

303 (3) Has a material financial interest in the outcome of
304 the action, other than compensation the court may allow the
305 receiver.

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

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



HB350 INTRODUCED

309 (c) A person is not disqualified from appointment as
310 receiver solely because the person satisfies any of the
311 following:

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

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

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

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

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

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

327 (1) Is conditioned on the faithful undertaking of the
328 receiver's duties.

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

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

331 (4) Is effective as of the date of the receiver's
332 appointment.

333 (b) The court may approve the posting by a receiver
334 with the court of alternative security, such as a letter of
335 credit or deposit of funds. The receiver may not use
336 receivership property as alternative security. Interest that



HB350 INTRODUCED

337 accrues on deposited funds must be paid to the receiver on the
338 receiver's discharge.

339 (c) The court may authorize a receiver to act before
340 the receiver posts the bond or alternative security required
341 by this section.

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

345 Section 9. Status of receiver.

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

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

354 Section 10. Security agreement covering after-acquired
355 property.

356 Except as otherwise provided by the law of this state
357 other than this act, property that a receiver or owner
358 acquires after appointment of the receiver is subject to a
359 security agreement entered into before the appointment to the
360 same extent as if the court had not appointed the receiver.

361 Section 11. Collection and turnover of receivership
362 property.

363 (a) Unless the court orders otherwise, on demand by a
364 receiver:



HB350 INTRODUCED

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

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

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

375 (c) If a creditor has possession, custody, or control
376 of receivership property and the validity, perfection, or
377 priority of the creditor's lien on the property depends on the
378 creditor's possession, custody, or control, the creditor may
379 retain possession, custody, or control until the court orders
380 adequate protection of the creditor's lien.

381 (d) Unless a bona fide dispute exists about a
382 receiver's right to possession, custody, or control of
383 receivership property, the court may sanction as civil
384 contempt a person's failure to turn the property over when
385 required by this section.

386 Section 12. Powers and duties of receiver.

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

390 (1) Collect, control, manage, conserve, and protect
391 receivership property.

392 (2) Operate a business constituting receivership



HB350 INTRODUCED

393 property, including preservation, use, sale, lease, license,
394 exchange, collection, or disposition of the property in the
395 ordinary course of business.

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

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

402 (5) Seek and obtain instruction from the court
403 concerning receivership property, exercise of the receiver's
404 powers, and performance of the receiver's duties.

405 (6) Upon subpoena, compel a person to submit to
406 examination under oath, or to produce and permit inspection
407 and copying of designated records or tangible things, with
408 respect to receivership property or any other matter that may
409 affect administration of the receivership.

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

411 (8) Apply to a court of another state for appointment
412 as ancillary receiver with respect to receivership property
413 located in that state.

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

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

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

420 (2) Make improvements to receivership property.



HB350 INTRODUCED

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

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

425 (5) Pay compensation to the receiver as provided in
426 Section 21, and to each professional engaged by the receiver
427 as provided in Section 15.

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

430 (7) Make a distribution of receivership property as
431 provided in Section 20.

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

433 (1) Prepare and retain appropriate business records,
434 including a record of each receipt, disbursement, and
435 disposition of receivership property.

436 (2) Account for receivership property, including the
437 proceeds of a sale, lease, license, exchange, collection, or
438 other disposition of the property.

439 (3) File with the appropriate probate court for
440 recording a copy of the order appointing the receiver and, if
441 a legal description of the real property is not included in
442 the order, the legal description.

443 (4) Disclose to the court any fact arising during the
444 receivership which would disqualify the receiver under Section
445 7.

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

448 (d) The powers and duties of a receiver may be



HB350 INTRODUCED

449 expanded, modified, or limited by court order.

450 Section 13. Duties of owner and mortgagor.

451 (a) An owner and a mortgagor shall do all of the
452 following:

453 (1) Preserve and turn over to the receiver all
454 receivership property in the owner's possession, custody, or
455 control.

456 (2) Identify all records and other information relating
457 to the receivership property, including a password,
458 authorization, or other information needed to obtain or
459 maintain access to or control of the receivership property,
460 and make available to the receiver the records and information
461 in the owner's possession, custody, or control.

462 (3) On subpoena, submit to examination under oath by
463 the receiver concerning the acts, conduct, property,
464 liabilities, and financial condition of the owner or any
465 matter relating to the receivership property or the
466 receivership.

467 (4) Perform any duty imposed by court order, this act,
468 or law of this state other than this act.

469 (5) Assist and cooperate with the receiver in the
470 administration of the receivership and the undertaking of the
471 receiver's duties in accordance with the intent of this
472 subsection.

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



HB350 INTRODUCED

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

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

482 (2) Sanction the failure as civil contempt.

483 Section 14. Stay; injunction.

484 (a) Except as otherwise provided in subsection (d) or
485 ordered by the court, upon the earlier of: (1) recording of
486 the receivership order pursuant to Section 12(c)(3); or (2)
487 receipt of actual knowledge of the appointment of a receiver,
488 an order appointing a receiver operates as a stay, applicable
489 to all persons, of an act, action, or proceeding:

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

492 b. To enforce a lien against receivership property to
493 the extent the lien secures a claim against the owner which
494 arose before entry of the order.

495 (b) Except as otherwise provided in subsection (d), the
496 court may enjoin an act, action, or proceeding against or
497 relating to receivership property if the injunction is
498 necessary to protect the property or facilitate administration
499 of the receivership.

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

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



HB350 INTRODUCED

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

508 (2) An act, action, or proceeding to foreclose or
509 otherwise enforce a mortgage by the person seeking appointment
510 of the receiver.

511 (3) An act, action, or proceeding to perfect, or
512 maintain or continue the perfection of, an interest in
513 receivership property.

514 (4) Commencement or continuation of a criminal
515 proceeding.

516 (5) Commencement or continuation of an action or
517 proceeding, or enforcement of a judgment other than a money
518 judgment in an action or proceeding, by a governmental unit to
519 enforce its police or regulatory power.

520 (6) Establishment by a governmental unit of a tax
521 liability against the owner or receivership property or an
522 appeal of the liability.

523 (e) The court may void any act that violates a stay or
524 injunction under this section.

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

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

529 (2) Sanction the violation as civil contempt.

530 Section 15. Engagement and compensation of
531 professional.

532 (a) With court approval, a receiver may engage an



HB350 INTRODUCED

533 attorney, accountant, appraiser, auctioneer, broker, or other
534 professional to assist the receiver in performing a duty or
535 exercising a power of the receiver. The receiver shall
536 disclose to the court all of the following:

537 (1) The identity and qualifications of the
538 professional.

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

540 (3) Any potential conflict of interest.

541 (4) The proposed compensation.

542 (b) A person is not disqualified from engagement under
543 this section solely because of the person's engagement by,
544 representation of, or other relationship with the receiver, a
545 creditor, or a party. This act does not prevent the receiver
546 from serving in the receivership as an attorney, accountant,
547 auctioneer, or broker when authorized by law.

548 (c) A receiver or professional engaged under subsection
549 (a) shall file with the court an itemized statement of the
550 time spent, work performed, and billing rate of each person
551 that performed the work and an itemized list of expenses. The
552 receiver shall pay the amount approved by the court or pay
553 amounts otherwise allowed by the court.

554 Section 16. Use or transfer of receivership property
555 not in ordinary course of business.

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

558 (b) With court approval, a receiver may use
559 receivership property other than in the ordinary course of
560 business.



HB350 INTRODUCED

561 (c) With court approval, a receiver may transfer
562 receivership property other than in the ordinary course of
563 business by sale, lease, license, exchange, or other
564 disposition. Unless the agreement of sale provides otherwise,
565 a sale under this section is free and clear of a lien of the
566 person that obtained appointment of the receiver, any
567 subordinate lien, and any right of redemption but is subject
568 to a senior lien.

569 (d) A lien on receivership property which is
570 extinguished by a transfer under subsection (c) attaches to
571 the proceeds of the transfer with the same validity,
572 perfection, and priority the lien had on the property
573 immediately before the transfer, even if the proceeds are not
574 sufficient to satisfy all obligations secured by the lien.

575 (e) A transfer under subsection (c) may occur by means
576 other than a public auction sale. A creditor holding a valid
577 lien on the property to be transferred may purchase the
578 property and offset against the purchase price part or all of
579 the allowed amount secured by the lien, if the creditor
580 tenders funds sufficient to satisfy in full the reasonable
581 expenses of transfer and the obligation secured by any senior
582 lien extinguished by the transfer.

583 (f) A reversal or modification of an order approving a
584 transfer under subsection (c) does not affect the validity of
585 the transfer to a person that acquired the property in good
586 faith nor revive against the person any lien extinguished by
587 the transfer, whether the person knew before the transfer of
588 the request for reversal or modification, unless the court



HB350 INTRODUCED

589 stayed the order before the transfer.

590 Section 17. Executory contract.

591 (a) In this section, "timeshare interest" means an
592 interest having a duration of more than three years which
593 grants its holder the right to use and occupy an
594 accommodation, facility, or recreational site, whether
595 improved or not, for a specific period less than a full year
596 during any given year.

597 (b) Except as otherwise provided in subsection (h),
598 with court approval, a receiver may adopt or reject an
599 executory contract of the owner relating to receivership
600 property. The court may condition the receiver's adoption and
601 continued performance of the contract on terms appropriate
602 under the circumstances. If the receiver does not request
603 court approval to adopt or reject the contract within a
604 reasonable time after the receiver's appointment or discovery
605 of the executory contract, the receiver is deemed to have not
606 rejected the contract.

607 (c) A receiver's performance of an executory contract
608 before court rejection under subsection (b) of its adoption or
609 rejection is not an adoption of the contract and does not
610 preclude the receiver from seeking approval to reject the
611 contract.

612 (d) A provision in an executory contract which requires
613 or permits a forfeiture, modification, or termination of the
614 contract because of the appointment of a receiver or the
615 financial condition of the owner does not affect a receiver's
616 power under subsection (b) to adopt the contract.



HB350 INTRODUCED

617 (e) A receiver's right to possess or use receivership
618 property pursuant to an executory contract terminates on
619 rejection of the contract under subsection (b). Rejection is a
620 breach of the contract effective immediately before
621 appointment of the receiver. A claim for damages for rejection
622 of the contract must be submitted by the later of:

623 (1) The time set for submitting a claim in the
624 receivership; or

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

626 (f) If at the time a receiver is appointed, the owner
627 has the right to assign an executory contract relating to
628 receivership property under the law of this state other than
629 this act, the receiver may assign the contract with court
630 approval.

631 (g) If a receiver rejects under subsection (b) an
632 executory contract for the sale of receivership property that
633 is real property in possession of the purchaser or a real
634 property timeshare interest, the purchaser may do either of
635 the following:

636 (1) Treat the rejection as a termination of the
637 contract, and in that case the purchaser has a lien on the
638 property for the recovery of any part of the purchase price
639 the purchaser paid.

640 (2) Retain the purchaser's right to possession under
641 the contract, and in that case the purchaser shall continue to
642 perform all obligations arising under the contract and may
643 offset any damages caused by nonperformance of an obligation
644 of the owner after the date of the rejection, but the



HB350 INTRODUCED

645 purchaser has no right or claim against other receivership
646 property or the receiver on account of the damages.

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

649 (1) The tenant occupies the leased premises as the
650 tenant's primary residence;

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

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

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

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

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

663 d. The terms of the lease were commercially reasonable
664 at the time the lease was agreed to and the tenant did not
665 know or have reason to know that the lease violated the
666 mortgage.

667 Section 18. Defenses and immunities of the receiver.

668 (a) A receiver is entitled to all defenses and
669 immunities provided by the law of this state other than this
670 act for an act or omission within the scope of the receiver's
671 appointment.

672 (b) A receiver may be sued personally for an act or



HB350 INTRODUCED

673 omission in administering receivership property only with the
674 approval of the court that appointed the receiver.

675 Section 19. Interim report of receiver.

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

678 (1) The activities of the receiver since appointment or
679 a previous report.

680 (2) Receipts and disbursements, including a payment
681 made or proposed to be made to a professional engaged by the
682 receiver.

683 (3) Receipts and dispositions of receivership property.

684 (4) A request for, or demand for, payment of fees and
685 expenses of the receiver and, if not filed separately, a
686 request for approval of payment of the fees and expenses.

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

688 Section 20. Notice of appointment; claim against
689 receivership; distribution to creditors.

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

693 (1) First-class mail addressed to the last known
694 address of the creditor, or by other mechanism reasonably
695 calculated to provide actual notice, to all creditors with
696 claims against the receivership property who are known or
697 reasonably ascertainable by the receiver within 30 days after
698 appointment.

699 (2) Publishing a notice once a week for three
700 successive weeks in a newspaper of general circulation



HB350 INTRODUCED

701 published in the county in which the receiver was appointed,
702 or if none is published in the county, in the one published
703 nearest to the courthouse thereof or in an adjoining county.

704 (b) Except as otherwise provided in subsection (f), the
705 notice required by subsection (a) must specify the date by
706 which each creditor holding a claim against the owner which
707 arose before appointment of the receiver must submit the claim
708 to the receiver. The date specified must be at least 90 days
709 after the later of notice under subdivision (a)(1) or last
710 publication under subdivision (a)(2). The court may extend the
711 period for submitting the claim. Unless the court orders
712 otherwise, a claim that is not submitted timely is not
713 entitled to a distribution from the receivership.

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

- 716 (1) State the name and address of the creditor.
- 717 (2) State the amount and basis of the claim.
- 718 (3) Identify any property securing the claim.
- 719 (4) Be signed by the creditor under penalty of perjury.
- 720 (5) Include a copy of any record on which the claim is
721 based.

722 (d) An assignment by a creditor of a claim against the
723 owner is effective against the receiver only if the assignee
724 gives timely notice of the assignment to the receiver in a
725 signed record.

726 (e) At any time before entry of an order approving a
727 receiver's final report, the receiver or any interested party
728 may file with the court an objection to a claim of a creditor



HB350 INTRODUCED

729 stating the basis for the objection. The court shall allow or
730 disallow the claim according to the law of this state other
731 than this act.

732 (f) If the court concludes that receivership property
733 is likely to be insufficient to satisfy claims of each
734 creditor holding a perfected lien on the property, the court
735 may order both of the following:

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

739 (2) That unsecured creditors need not submit claims
740 under this section.

741 (g) Subject to Section 21:

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

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

750 Section 21. Fees and expenses.

751 (a) The court may award a receiver from receivership
752 property the reasonable and necessary fees and expenses of
753 performing the duties of the receiver and exercising the
754 powers of the receiver.

755 (b) The court may order one or more of the following to
756 pay the reasonable and necessary fees and expenses of the



HB350 INTRODUCED

757 receivership, including reasonable attorney fees and costs:

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

761 (2) A person whose conduct justified or would have
762 justified the appointment of the receiver under Section
763 6(a)(1).

764 Section 22. Removal of receiver; replacement;
765 termination of receivership.

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

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

769 (c) If the court finds that a receiver that resigns or
770 is removed or the representative of a receiver that is
771 deceased has accounted fully for and turned over to the
772 successor receiver all receivership property and has filed a
773 report of all receipts and disbursements during the service of
774 the replaced receiver, the replaced receiver is discharged.

775 (d) The court may discharge a receiver and terminate
776 the court's administration of the receivership property if the
777 court finds that appointment of the receiver was improvident
778 or that the circumstances no longer warrant continuation of
779 the receivership. If the court finds that the appointment was
780 sought in bad faith, the court may assess both of the
781 following against the person that sought the appointment:

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

784 (2) Actual damages caused by the appointment, including



HB350 INTRODUCED

785 reasonable attorney fees and costs.

786 Section 23. Final report of receiver; discharge.

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

790 (1) A description of the activities of the receiver in
791 the conduct of the receivership.

792 (2) A list of receivership property at the commencement
793 of the receivership and any receivership property received
794 during the receivership.

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

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

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

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

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

803 (b) If the court requires a final report, the receiver
804 is discharged when the court approves the final report filed
805 under subsection (a) and the receiver distributes all
806 receivership property.

807 (c) If the court does not require a final report, the
808 receiver is discharged upon distribution of all receivership
809 property.

810 Section 24. Receivership in another state; ancillary
811 proceeding.

812 (a) The court may appoint a receiver appointed in



HB350 INTRODUCED

813 another state, or that person's nominee, as an ancillary
814 receiver with respect to property located in this state or
815 subject to the jurisdiction of the court for which a receiver
816 could be appointed under this act, if:

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

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

822 (b) The court may issue an order that gives effect to
823 an order entered in another state appointing or directing a
824 receiver.

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

828 Section 25. Effect of enforcement by mortgagee.

829 A request by a mortgagee for appointment of a receiver,
830 the appointment of a receiver, or application by a mortgagee
831 of receivership property or proceeds to the secured obligation
832 does not do any of the following:

833 (1) Make the mortgagee a mortgagee in possession of the
834 real property.

835 (2) Make:

836 a. The mortgagee an agent of the owner, receiver, or
837 mortgagor;

838 b. The owner an agent of the mortgagee, receiver, or
839 mortgagor;

840 c. The receiver an agent of the mortgagee, owner, or



HB350 INTRODUCED

841 mortgagor; or

842 d. The mortgagor an agent of the owner, mortgagee, or
843 receiver.

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

846 (4) Make the secured obligation unenforceable.

847 (5) Limit any right available to the mortgagee with
848 respect to the secured obligation.

849 Section 26. Uniformity of application and construction.

850 In applying and construing this uniform act,
851 consideration must be given to the need to promote uniformity
852 of the law with respect to its subject matter among states
853 that enact it.

854 Section 27. Relation to Electronic Signatures in Global
855 and National Commerce Act.

856 This act modifies, limits, or supersedes the Electronic
857 Signatures in Global and National Commerce Act, 15 U.S.C.
858 §7001 et seq., but does not modify, limit, or supersede
859 Section 101(c) of that act, 15 U.S.C. §7001(c), or authorize
860 electronic delivery of any of the notices described in Section
861 103(b) of that act, 15 U.S.C. Section 7003(b).

862 Section 28. Transition.

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

865 Section 29. This act shall become effective on January
866 1, 2025.