

CREATION OF UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT

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**House Bills 4470 and 4471 as enacted
Public Acts 15 and 16 of 2018
Sponsor: Rep. Brandt Iden
House Committee: Judiciary
Senate Committee: Judiciary
Complete to 6-19-18**

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 4471 creates the Uniform Commercial Real Estate Receivership Act, as recommended by the national Uniform Law Commission (ULC), to standardize state laws in regard to receivership. The Act applies to a receivership for an interest in real property and any personal property related to or used in operating the real property and does the following:

- Provides for the appointment, removal, and discharge of a receiver, who would have the status as a lien creditor.
- Provides for the various duties and powers of a receiver pertaining to the receivership property.
- Requires notice and provides for distribution of receivership property to creditors.
- Sets forth the duties of an owner of receivership property.
- Provides that a receivership order would operate as a stay against an act, action, or proceeding to obtain possession of, exercise control over, or enforce a judgment against receivership property, or to enforce a lien against receivership property in certain circumstances.
- Includes various other provisions, as explained in more detail below.

House Bill 4470 amends the Revised Judicature Act (RJA) to specify that an action or proceeding for the appointment of a receiver would not be the same as an action or proceeding to recover a debt.

The bills are tie-barred to one another, which means that neither can take effect unless both are enacted.

FISCAL IMPACT: House Bills 4470 and 4471 would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on the extent to which the bills affected court caseloads and related administrative costs.

THE APPARENT PROBLEM:

Before 2014, the ability to appoint a receiver and the receiver's role in the court process were tedious and piecemealed together because there were no specific court rules for appointing and overseeing receivers. As a result, the Michigan Supreme Court adopted amendments to the Michigan Court Rules in MCR 2.621 and 2.622, which became effective May 1, 2014. The new rules addressed the procedures for appointing and selecting, qualifications of, order of appointment for, duties and powers of, compensation and expenses for, bond requirements for,

and intervention and removal of receivers. The proposed Uniform Commercial Real Estate Receivership Act would expand and codify the court rules in statute.

BACKGROUND INFORMATION:

According to the ULC's website, the ULC, also known as the National Conference of Commissioners on Uniform State Laws, provides states with nonpartisan legislation to bring clarity and stability to critical areas of state law.¹ As stated by the ULC, "*receivership* is an equitable remedy allowing a court to oversee the orderly management and disposition of property subject to a lawsuit. Although the remedy is not new, there is no standard set of receivership rules, and the courts of different states have applied widely varying standards."²

The ULC provides standard statutes that can be adopted by any state in order to unify areas of the law. The ULC drafted a Uniform Commercial Real Estate Receivership Act, which was adopted by the commission in 2015. As recommended, the Act would apply to receiverships involving commercial real estate, and provides a standard set of rules for courts to apply. The ULC suggests that state adoption of the Act will provide for greater predictability for litigants, lenders, and other parties doing business with a company subject to receivership. Thus far, three states have enacted the Uniform Commercial Real Estate Receivership Act, and three more have introduced bills to do so this session.³

THE CONTENT OF THE BILLS:

House Bill 4471 proposes the Uniform Commercial Real Estate Receivership Act, described in detail below.

Section 2 – Definitions

The Act contains 22 definitions that are specific to it, including the following:

- “Affiliate” would mean all of the following:
 - With respect to an individual, any of the following:
 - A companion of the individual
 - A lineal ancestor or descendant, whether by blood or adoption, of either the individual or a companion of the individual
 - A companion of a lineal ancestor or descendant
 - A sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew of the individual, whether related by the whole or the half blood or adoption, or a companion of any of them
 - Any other individual occupying the residence of the individual
 - With respect to a person other than an individual, any of the following:
 - Another person that directly or indirectly controls, is controlled by, or is under common control with the person
 - An officer, director, manager, member, partner, employee, or trustee or other fiduciary of the person

¹ <http://www.uniformlaws.org/Default.aspx>, accessed October 25, 2017.

² <http://www.uniformlaws.org/Act.aspx?title=Commercial%20Real%20Estate%20Receivership%20Act>, accessed October 16, 2017.

³ <http://www.uniformlaws.org/LegislativeMap.aspx?title=Commercial%20Real%20Estate%20Receivership%20Act>, accessed October 16, 2017.

- A companion of, or an individual occupying the residence of, an individual or lineal ancestor or descendant, as described above
- “Companion” would mean the spouse of an individual, the domestic partner of an individual, or another individual in a civil union with an individual.
- “Executory contract” would mean a contract, including a lease, under which each party has an unperformed obligation and the failure of a party to complete performance would constitute a material breach.
- “Receiver” would mean a person appointed by the court as the court’s agent, and subject to the court’s direction, to take possession of, manage, and, if authorized by the Act or court order, transfer, sell, lease, license, exchange, collect, or otherwise dispose of receivership property.
- “Receivership” would mean a proceeding in which a receiver is appointed.
- “Receivership property” would mean the property of an owner that is described in the order appointing a receiver or a subsequent order. The term would include any proceeds, products, offspring, rents, or profits of or from the property.

Section 3 – Court Notice

A court could issue an order under the Act only after notice had been given and the parties were given an opportunity for a hearing. However, a court could issue an order without prior notice if the circumstances required issuance of an order before notice was given. A court also could issue an order after notice but without a prior hearing if the circumstances required issuance of an order before a hearing could be held or if no interested party timely requested a hearing.

Section 4 – Receivership Under the Act

The Act would apply to a receivership for an interest in real property and any personal property related to or used in operating the real property. (According to Black’s Law Dictionary, real property is land and anything growing on, attached to, or erected on it, including buildings or easements. Real property does not include anything that can be severed without injuring the land. Personal property is any movable or intangible thing that is subject to ownership and not classified as real property.)

The Act would not apply to a receivership for an interest in real property improved by one to four dwelling units unless one or more of the following apply:

- The interest is used for agricultural, commercial, industrial, or mineral-extraction purposes, other than incidental uses by an owner occupying the property as the owner’s primary residence
- The interest secures an obligation incurred at a time when the property was used or planned for use for agricultural, commercial, industrial, or mineral-extraction purposes
- The owner planned or is planning to develop the property into one or more dwelling units to be sold or leased in the ordinary course of the owner’s business
- The owner is collecting or has the right to collect rents or other income from the property from a person other than an affiliate of the owner

For receiverships authorized under other state laws in which the receiver is a governmental unit or individual acting in an official capacity on behalf of the unit, the Act would apply only to the extent allowed in the other laws. According to the ULC, “the provisions of this Act do not apply to appointment of a receiver under an existing statutory regime, except to the extent

that the other statutory regime or other law so provides.”⁴ As such, a court would still be able to appoint a receiver under a different law, other than the Act, and the principles of law and equity could supplement the Act, unless otherwise specified.

Sections 5 and 6 – Court Authority and Receivership Conditions

The procedure for the selection, appointment, removal, and compensation of a receiver under the Act is as established by Michigan Supreme Court rule. The court that appoints a receiver under the Act would have exclusive jurisdiction over the receiver as well as any controversy related to the receivership or receivership property that may arise.

The Act also sets forth the conditions under which a court may appoint a receiver as follows:

- Before judgment, to protect a party that demonstrates an apparent right, title, or interest in real property that is the subject of the action, if either of the following apply:
 - The property or its revenue-producing potential is being subjected to or is in danger of waste, loss, dissipation, or impairment.
 - The property or its revenue-producing potential has been or is about to be the subject of a voidable transaction.
- After judgment, for any of the following reasons:
 - To carry the judgment into effect.
 - To preserve nonexempt real property pending appeal or when an execution has been returned unsatisfied and the owner refuses to apply the property in satisfaction of the judgment.
- In an action in which a receiver for real property may be appointed on equitable grounds.
- In connection with a foreclosure or other enforcement of a mortgage, under any of the following circumstances:
 - During the time allowed for redemption, to preserve real property sold in an execution or foreclosure sale and secure its rents to the person entitled to the rents.
 - Appointment is necessary to protect the property from waste, loss, transfer, dissipation, or impairment.
 - The mortgagor agreed in a signed record to appointment of a receiver on default, before or after default.
 - The property and any other collateral held by the mortgagee are not sufficient to satisfy the secured obligation.
 - The owner fails to turn over the mortgagee proceeds or rents the mortgagee was entitled to collect.
 - The holder of a subordinate lien obtains appointment of a receiver for the property.

The court may condition appointment of a receiver without prior notice or without a prior hearing, under the provisions of Section 3, on the giving of security by the person seeking the appointment for the payment of damages, reasonable attorney fees, and costs incurred or suffered by any person if the court later concludes that the appointment was not justified. If the court later concludes that the appointment was justified, the court would release the security.

⁴ Uniform Commercial Real Estate Receivership Act, § 4(c) (2015):
http://www.uniformlaws.org/shared/docs/appointment%20and%20powers%20of%20real%20estate%20receivers/UCRERA_Final%20Act_2016jul29.pdf.

Section 7 – Eligible Receivers

The Act specifies who could be appointed as a receiver. A person seeking appointment of a receiver may nominate a person to serve as receiver, but the court would not be bound by the nomination. The court would not be able to appoint a person as receiver unless the person submits to the court a statement under penalty of perjury that the person is not disqualified. A person would be disqualified from appointment as receiver if one or more of the following apply to the person:

- The person is an affiliate of a party.
- The person has an interest materially adverse to an interest of a party.
- The person has a material financial interest in the outcome of the action, other than compensation the court may allow the receiver.
- The person has a debtor-creditor relationship with a party.
- The person holds an equity interest in a party, other than a noncontrolling interest in a publicly traded company.

However, a person would not be disqualified from appointment as receiver solely because one or more of the following apply to the person:

- The person was appointed receiver or is owed compensation in an unrelated matter involving a party or was engaged by a party in a matter unrelated to the receivership.
- The person is an individual obligated to a party on a debt that is not in default and was incurred primarily for personal, family, or household purposes.
- The person maintains with a party a deposit account as defined in Section 9102 of the Uniform Commercial Code (MCL 440.9102). Deposit account means a demand, time, savings, passbook, or similar account maintained with a bank and does not include investment property or accounts evidenced by an instrument.

Section 8 – Receiver Bond or Alternative Security

The Act would require a receiver to post a bond with the court. The bond would have to meet all of the following requirements:

- Be conditioned on the faithful discharge of the receiver's duties.
- Have one or more sureties approved by the court.
- Be in an amount the court specifies.
- Be effective as of the date of the receiver's appointment.

The court also may approve the posting by a receiver with alternative security, such as a letter of credit or deposit funds, but the receivership property may not be used as alternative security. Interest that accrues on deposited funds would have to be paid to the receiver on the receiver's discharge.

The court could authorize a receiver to act before the receiver posts the bond or alternative security. If there is a claim against a receiver's bond or alternative security, it would have to be made before one year after the date the receiver is discharged.

Section 9 – Receiver is Lien Creditor

The Act would provide that upon appointment of a receiver, the receiver would have the status of a lien creditor under both Article 9 of the Uniform Commercial Code as to receivership property that is personal property or fixtures, and the recording statutes of this state as to receivership property that is real property.

Section 10 –Property Subject to Previous Security Agreements

The Act also would specify that property that a receiver or owner acquires after appointment of the receiver is subject to any security agreement that was entered into before the appointment.

Section 11 – Debt that is, or Liens on, Receivership Property

The Act states that a person would have to do both of the following, if applicable and if demanded by a receiver:

- If the person owes a debt that is receivership property and is matured or payable on demand or on order, pay the debt to or on the order of the receiver, except to the extent the debt is subject to setoff or recoupment.
- If the person has possession, custody, or control of receivership property, turn the property over to the receiver. However, if a creditor has possession, custody, or control of receivership property and the validity, perfection, or priority of the creditor's lien on the property depends on the creditor's possession, custody, or control, then the creditor may retain possession, custody, or control until the court orders adequate protection of the creditor's lien.

A person with notice of the appointment of a receiver and who owes a debt that is receivership property would not be able to satisfy the debt by payment to the owner. According to the ULC, payment would be required to go to the receiver in order to discharge the debt.⁵

The court could sanction as civil contempt a person's failure to turn the receivership property over when required, unless a bona fide dispute exists about a receiver's right to possession, custody, or control of the property.

Section 12 – Receiver Powers and Duties

The Act would provide for the powers and duties of a receiver, which could be expanded, modified, or limited by court order. *Unless limited by court order or another Michigan statute*, a receiver could do all of the following:

- Collect, control, manage, conserve, and protect receivership property.
- Operate a business constituting receivership property, including preservation, use, sale, lease, license, exchange, collection, or disposition of the property in the ordinary course of business.
- In the ordinary course of business, incur unsecured debt and pay expenses incidental to the receiver's preservation, use, sale, lease, license, exchange, collection, or disposition of receivership property.
- Assert a right, claim, cause of action, or defense of the owner that relates to receivership property.
- Seek and obtain instruction from the court concerning receivership property, exercise of the receiver's powers, and performance of the receiver's duties.
- On subpoena, compel a person to submit to examination under oath, or to produce and permit inspection and copying of designated records or tangible things, with respect to receivership property or any other matter that may affect administration of the receivership.
- Engage a professional as provided in Section 15, below.

⁵ See *id.* § 11(b).

- Apply to a court of another state for appointment as ancillary receiver with respect to receivership property located in that state.
- Exercise any power conferred by court order, the Act, or another law of this state.

A receiver also would be allowed to do the following *with court approval*:

- Incur debt for the use or benefit of receivership property other than in the ordinary course of business.
- Make improvements to receivership property.
- Use or transfer receivership property other than in the ordinary course of business as provided in Section 16, below.
- Adopt or reject an executory contract of the owner as provided in Section 17, below.
- Pay compensation to the receiver as provided in Section 21, below, and to each professional engaged by the receiver as provided in Section 15.
- Recommend allowance or disallowance of a claim of a creditor, or make a distribution of receivership property, as provided in Section 20, below.

The Act would *require* a receiver to do all of the following:

- Prepare and retain appropriate business records, including a record of each receipt, disbursement, and disposition of receivership property.
- Account for receivership property, including the proceeds of a sale, lease, license, exchange, collection, or other disposition of the property.
- File with the appropriate real property recording office a copy of the order appointing the receiver and, if a legal description of the real property is not included in the order, the legal description.
- Disclose to the court any fact arising during the receivership that would disqualify the receiver as described under Section 7, above.
- Perform any duty imposed by court order, the Act, or another law of this state.

Section 13 – Owner Responsibilities

The Act would provide for the required duties of an owner. If an owner is a person other than the individual, this section would apply to each officer, director, manager, member, partner, trustee, or other person exercising or with the power to exercise control over the affairs of the owner. An owner must do all of the following:

- Assist and cooperate with the receiver in the administration of the receivership and the discharge of the receiver's duties.
- Preserve and turn over to the receiver all receivership property in the owner's possession, custody, or control.
- Identify all records and other information relating to the receivership property, including a password, authorization, or other information needed to obtain or maintain access to or control of the receivership property, and make available to the receiver the records and information in the owner's possession, custody, or control.
- Upon subpoena, submit to examination under oath by the receiver concerning the acts, conduct, property, liabilities, and financial condition of the owner or any matter relating to the receivership property or the receivership.
- Perform any duty imposed by court order, the Act, or another law of this state.

If a person knowingly fails to perform any of the duties listed above, the court may either award the receiver actual damages caused by the person's failure, including reasonable attorney fees and costs, or sanction the failure as a civil contempt, or both.

Section 14 – Appointing a Receiver as a Stay or Injunction

The Act provides that, unless specified, an order appointing a receiver would operate as a stay against an act, action, or proceeding to obtain possession of, exercise control over, or enforce a judgment against receivership property, or to enforce a lien against receivership property to the extent the lien secures a claim against the owner that arose before entry of the order, or both. The court also could enjoin an act, action, or proceeding against or relating to receivership property if the injunction would be necessary to protect the property or facilitate administration of the receivership. A person whose act, action, or proceeding is stayed or enjoined could apply for relief from the stay or injunction for cause.

However, an order would not operate as a stay or injunction to any of the following:

- An act, action, or proceeding to foreclose or otherwise enforce a mortgage by the person seeking appointment of the receiver.
- An act, action, or proceeding to perfect, or maintain or continue the perfection of, an interest in receivership property.
- Commencement or continuation of a criminal proceeding.
- Commencement or continuation of an action or proceeding, or enforcement of a judgment other than a money judgment in an action or proceeding, by a governmental unit to enforce its police or regulatory power.
- Establishment by a governmental unit of a tax liability against the owner or receivership property or an appeal of the liability.

The court may void an act that violates a stay or injunction under this section, as well as award actual damages, reasonable attorney fees, and costs or sanction as civil contempt, or both if a person knowingly violates a stay or injunction.

Section 15 – Receiver May Hire Certain Professionals

The Act would allow a receiver to engage an attorney accountant, appraiser, auctioneer, broker, or other professional to assist the receiver in performing a duty or exercising a power of the receiver, but only with court approval. For approval, the receiver would be required to disclose all of the following:

- The identity and qualifications of the professional.
- The scope and nature of the proposed engagement.
- Any potential conflict of interest.
- The proposed compensation.

The court would have discretion to approve the engagement of a professional where the presence of existing relationships might be insignificant conflicts of interest, including if the professional is also the receiver. However, this would apply only if the receiver would be serving in the receivership as an attorney, accountant, auctioneer, or broker when authorized by law. According to the ULC, “appraiser” is intentionally omitted “because dual service as both a receiver and appraiser involves an inappropriate conflict of interest.”⁶

⁶ See *id.* § 15(b).

A receiver or professional would have to file with the court an itemized statement of the time spent, work performed, and billing rate of each person that performed the work, as well as an itemized list of expenses. The receiver would then be required to pay the amount approved by the court.

Section 16 – Sale or Transfer of Receivership Property

With court approval, a receiver could use and transfer receivership property other than in the ordinary course of business. A transfer of receivership property could occur by sale, lease, license, exchange, or other disposition and by means other than a public auction sale.

Unless the agreement of sale provides otherwise, a sale under this section would be free and clear of a lien of the person that obtained appointment of the receiver, any subordinate lien, and any right of redemption, but still would be subject to a senior lien. An extinguished lien would attach to the proceeds of the transfer with the same validity, perfection, and priority as it did before the transfer, even if the proceeds would not satisfy all obligations secured by the lien. A creditor holding a valid lien on the property to be transferred could purchase the property and offset against the purchase price part or all of the allowed amount secured by the lien, but only if the creditor tenders funds sufficient to satisfy in full the reasonable expenses of transfer and the obligation secured by any senior lien extinguished by the transfer.

A reversal or modification of an order approving a transfer would not affect the validity of the transfer to a person that acquired the property in good faith or revive against the person any lien extinguished by the transfer, even if the person knew before the transfer of the request for reversal or modification, unless the court stayed the order before the transfer.

Section 17 – Executory Contracts

A receiver, with court approval, could adopt or reject an executory contract of the owner relating to receivership property. The court could condition adoption and continued performance of the contract on terms appropriate under the circumstances. If the receiver does not request court approval within a reasonable time after the receiver's appointment, the receiver would be deemed to have rejected the contract. Even if a receiver performs an executory contract before court approval, it would not be an adoption of the contract and the receiver could still seek court approval to reject the contract.

A provision in an executory contract that requires or permits a forfeiture, modification, or termination of the contract because of the appointment of a receiver or the financial condition of the owner does not affect a receiver's power to adopt the contract.

A receiver's right to possess or use receivership property pursuant to an executory contract would terminate on rejection of the contract, as rejection is a breach of the contract effective immediately before appointment of the receiver. A claim for damages for rejection of the contract would have to be submitted by the later of the following:

- The time set for submitting a claim in the receivership.
- Thirty days after the court approves the rejection.

If, at the time a receiver is appointed, the owner has the right to assign an executory contract relating to receivership property under a different law, the receiver could assign the contract as long as there is court approval.

Additionally, if a receiver rejects an executory contract for the sale of receivership property that is real property in possession of the purchaser or a real-property timeshare interest, the purchaser may do either of the following:

- Treat the rejection as a termination of the contract.
 - If the purchaser chooses this option, then the purchaser would have a lien on the property for the recovery of any part of the purchase price the purchaser paid.
- Retain the purchaser's right to possession under the contract.
 - If the purchaser chooses this option, then the purchaser would continue to perform all obligations arising under the contract and could offset any damages caused by nonperformance of an obligation of the owner after the date of the rejection. However, the purchaser would have no right or claim against other receivership property or the receiver on account of the damages.

A receiver could not reject an unexpired lease of real property where the owner is the landlord if one or more of the following apply:

- The tenant occupies the leased premises as the tenant's primary residence.
- The receiver was appointed at the request of a person other than a mortgagee.
- The receiver was appointed at the request of a mortgagee and one or more of the following apply:
 - The lease is superior to the lien of the mortgage.
 - The tenant has an enforceable agreement with the mortgagee or the holder of a senior lien under which the tenant's occupancy will not be disturbed as long as the tenant performs its obligations under the lease.
 - The mortgagee has consented to the lease, either in a signed record or by its failure to timely object that the lease violated the mortgage.
 - The terms of the lease were commercially reasonable at the time the lease was agreed to, and the tenant did not know or have reason to know that the lease violated the mortgage.

Section 18 – Receiver Immunity Unless Approved by Appointing Court

The Act would entitle a receiver to all defenses and immunities provided under law in this state for an act or omission within the scope of the receiver's appointment. However, a receiver still may be sued personally for an act or omission in administering receivership property, but only with approval of the court that appointed the receiver.

Section 19 – Receiver Interim Report

A receiver *could* file (but, if ordered by the court, would be *required* to file) an interim report. The report would have to include all of the following:

- The activities of the receiver since appointment or a previous report.
- Receipts and disbursements, including a payment made or proposed to be made to a professional engaged by the receiver.
- Receipts and dispositions of receivership property.
- Fees and expenses of the receiver and, if not filed separately, a request for approval of payment of the fees and expenses.
- Any other information required by the court.

Section 20 – Notice of Appointment and Distribution of Receivership Property to Creditors

The Act would require a receiver to give notice of appointment to creditors of the owner by *both* deposit for delivery through first-class mail (or other commercially reasonable delivery method) to the last known address of each creditor *and* by publication (as directed by the court). The notice would have to specify the date by which each creditor would be required to submit the claim to the receiver. This date would have to be at least 90 days after the later of notice or last publication, and the court still could extend the period for submitting the claim. Unless the court orders otherwise, a claim that is not submitted timely would not be entitled to a distribution from the receivership.

If a creditor submits a claim, the claim would have to include all of the following:

- The name and address of the creditor.
- The amount and basis of the claim.
- Identification of any property securing the claim.
- Signature of the creditor under penalty of perjury.
- A copy of any record on which the claim is based.

While the Act would not prohibit the assignment of claims against the receivership, an assignment would be effective against the receiver only if the assignee gives the receiver timely notice of the assignment in a signed record. However, a court could disallow a timely filed claim, to the extent that the claim is not enforceable under other applicable laws, if a receiver files an objection with the court before entry of an order approving a receiver's final report.

If the court concludes that receivership property is likely to be insufficient to satisfy claims of each creditor holding a perfected lien on the property, the court could order both of the following:

- That the receiver need not give notice, as required above in this section, of the appointment to all creditors of the owner, but only such creditors as the court directs.
- That unsecured creditors need not submit claims under this section.

Unless otherwise specified in Section 21, below, both of the following would apply to a distribution of receivership property:

- If the distribution is to a creditor holding a perfected lien on the property, then the distribution would have to be made in accordance with the creditor's priority under law of this state other than the Act.
- If the distribution is to a creditor with an allowed unsecured claim, then the distribution must be made as the court directs according to law of this state other than the Act.

Section 21 – Receiver Fees and Expenses

A court could allow the receiver to recover reasonable and necessary fees and expenses for performing their own duties of the receiver and exercising the powers of the receiver. A court could order one or both of the following to pay these fees:

- A person that requested the appointment of the receiver, if the receivership does not produce sufficient funds to pay the fees and expenses.
- A person whose conduct justified, or would have justified, the appointment of the receiver under Section 6(1)(a).

Section 22 – Removal and Replacement of Receiver

A court could remove a receiver for cause. The court also would have to replace a receiver that dies, resigns, or is removed. The replaced receiver would be discharged if the court finds that a resigned, deceased, or removed receiver has accounted fully for and turned over to the successor receiver all receivership property and has filed a report of all receipts and disbursements during their own service.

The court also could discharge a receiver and terminate the court's administration of the receivership property if the court finds that appointment of the receiver was careless or that the circumstances no longer warrant continuation of the receivership. If the court finds that the appointment was sought wrongfully or in bad faith, the court could assess both of the following against the person that sought the appointment:

- The fees and expenses of the receivership, including reasonable attorney fees and costs.
- Actual damages caused by the appointment, including reasonable attorney fees and costs.

Section 23 – Termination and Discharge of Receiver upon Completion of Duties

The Act would provide for the termination of the receivership and discharge of the receiver if the court approves a final report. Upon completion of a receiver's duties, the receiver would have to file a final report, which would include all of the following:

- A description of the activities of the receiver in the conduct of the receivership.
- A list of receivership property at the commencement of the receivership and any receivership property received during the receivership.
- A list of disbursements, including payments to professionals engaged by the receiver.
- A list of dispositions of receivership property
- A list of distributions made or proposed to be made from the receivership for creditor claims.
- If not filed separately, a request for approval of the payment of fees and expenses of the receiver.
- Any other information required by the court.

Section 24 – Receivers from Other States

The Act would allow for the appointment of a receiver from another state. The court could appoint a receiver appointed in another state, or that person's nominee, as an ancillary receiver with respect to property located in this state or subject to the jurisdiction of the court for which a receiver could be appointed under the Act. Unless stated otherwise, an ancillary receiver would have the rights, powers, and duties of a receiver appointed under the Act. However, an ancillary receiver could be appointed only if both of the following apply:

- The person or nominee would be eligible to serve as receiver under Section 7.
- The appointment furthers the person's possession, custody, control, or disposition of property subject to the receivership in the other state.

A court also could issue an order, which would give effect to an order of another state, appointing a receiver or directing the receiver's conduct.

Section 25 – Effect on Mortgagee

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

- Make the mortgagee a mortgagee in possession of the real property.
- Make the mortgagee an agent of the owner.
- Constitute an election of remedies that precludes a later action to enforce the secured obligation.
- Make the secured obligation unenforceable.
- Limit any right available to the mortgagee with respect to the secured obligation.
- Constitute an action within the meaning of section 3204(1)(b) of the RJA (MCL 600.3204, “An action or proceeding has not been instituted, at law, to recover the debt secured by the mortgage or any part of the mortgage or, if an action or proceeding has been instituted, either the action or proceeding has been discontinued or an execution on a judgment rendered in the action or proceeding has been returned unsatisfied, in whole or in part.”).

Applicability of the Act

In applying and construing the Act, consideration would have to be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

The Act would modify, limit, or supersede the Electronic Signatures in Global and National Commerce Act (15 USC 7001-7031), except for 15 USC 7001(c). The Act also would not authorize electronic delivery of any of the notices described in 15 USC 7003(b).

The Act would not be applied retroactively. That is, it would not apply to a receivership where the receiver was appointed before the effective date of the Act.

House Bill 4471 would take effect 90 days after enactment.

House Bill 4470

HB 4470 would amend the Revised Judicature Act (RJA) to specify the distinction between an action or proceeding for an appointment of a receiver and an action or proceeding to recover a debt. For the purposes of foreclosing a mortgage by advertisement, a foreclosure would still be able to go forward in a separate action from the appointment of a receiver for the foreclosed property.

The bill would also make several stylistic and linguistic updates throughout the RJA pertaining to foreclosures.

MCL 600.3204 and 600.5807

ARGUMENTS:

For:

Supporters of the bills argue that, although the Michigan Supreme Court attempted to streamline the receivership process, the current court rules are still not adequate for all aspects of a receivership. The proposed rules would give all judges in Michigan a place to look to for

guidance on the procedures for receiverships, while still allowing them to apply specific facts of their case.

Against:

Critics of the bills voiced concern that the Michigan Supreme Court would no longer be able to make court rules regarding receiverships, especially if their rules conflicted with language in HB 4471. Because the bills would effectively prohibit the Michigan Supreme Court from promulgating other receivership rules, the bills would encroach on the powers of the judiciary.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.