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House Bill 4799 (Substitute H-2 as passed by the House)
House Bill 4800 (as passed by the House)
Sponsor: Representative Graham Filler (H.B. 4799)
Representative Kyra Harris Bolden (H.B. 4800)
House Committee: Judiciary
Senate Committee: Judiciary and Public Safety

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CONTENT

House Bill 4799 (H-2) would enact the "Michigan Uniform Assignment of Rents Act" to do the following:

- Create an assignment of rents by an assignment in either an enforceable security instrument that granted a security interest in rents or a document that granted a security interest in rents.
- Specify that the Act would not apply to an assignment of rent regarding an interest in real property improved by one to four dwelling units unless certain conditions applied.
- Allow a document creating an assignment of rents to be submitted for recording to the register of deeds in the same manner as any other document evidencing a conveyance of an interest in real property.
- Specify that a security interest in rents created by an assignment of rents would be fully perfected.
- Require a person to give a notification or a copy of a notification as prescribed in the Act.
- Allow an assignee to enforce an assignment of rents using one or more of the methods specified in the Act or any method sufficient to enforce the assignment.
- Specify that an assignee or receiver, as applicable, would be entitled to collect, from the first date of enforcement, rents that had accrued by remained unpaid on that date and rents that accrued on or after that date, as those rents accrued.
- Specify that an assignee would be entitled to the appointment of a receiver for the real property subject to the assignment of rents under certain circumstances.
- Allow an assignee to file a petition for the appointment of a receiver under certain circumstances.
- Prescribe rules that would govern priority among receivers.
- Allow an assignee to give an assignor a notice demanding that the assignor pay over the proceeds of any rents that the assignee was entitled to collect upon the assignor's default.
- Allow an assignee to give to a tenant of real property a notification demanding that the tenant pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrued upon the assignor's default.
- Require an assignee that collected rents under the Act or collected upon a judgment in a civil action under the Act to apply the sums collected in the order prescribed in the Act.

- **Specify that unless otherwise agreed by the assignee, an assignee that collected rents following enforcement would not need to apply them to the payment of expenses of protecting or maintaining the real property subject to the assignment.**
- **Specify that if an assignor collected rents that the assignee was entitled to collect under the Act, certain requirements would apply.**
- **Prescribe how an assignee's security interest in identifiable cash proceeds would be perfected.**
- **Prescribe the Act's applicability.**

The bill would repeal Public (PA) 228 of 1925, which governs the assignment of rents and profits of property mortgaged under a trust mortgage or deed of trust, and PA 210 of 1953, which governs the assignment of rents accruing from existing leases as additional security to mortgage obligations

House Bill 4800 would amend the Chapter 32 (Foreclosure of Mortgages by Advertisement) of the Revised Judicature Act (RJA) to specify that, for the purposes of foreclosure by advertisement, an action or proceeding under the Michigan Uniform Assignment of Rents Act to enforce an assignment of rents would not be an action or proceeding to recover debt.

The bills are tie-barred. Each bill would take effect 90 days after its enactment.

House Bill 4799 (H-2) is defined in greater detail below.

Definitions

The proposed Act would define "assignee" as a person entitled to enforce an assignment of rents. The term would include the purchaser at a foreclosure sale by operation of law. "Assignment of rents" would mean a transfer of an interest in rents in connection with an obligation secured by real property located in Michigan and from which the rents arise. "Rents" would mean any of the following:

- Sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person.
- Sums payable to an assignor under a policy of rental interruption insurance covering real property.
- Claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person.
- Sums payable to terminate an agreement to possess or occupy real property of another person.
- Sums payable to an assignor for payment or reimbursement of expenses incurred in owning, operating, and maintaining, or constructing or installing improvements on, real property.
- Fees, charges, accounts, or other payments for the use or occupancy of rooms and other facilities in hotels, motels, or other lodging properties.
- Any other sums payable under an agreement relating to the real property of another person that constitute rents under Michigan law other than the Act.

"Assignor" would mean a person that makes an assignment of rents or the successor owner of the real property from which the rents arise.

"Cash proceeds" would mean proceeds that are money, checks, deposit accounts, or the like.

"Proceeds" would mean personal property that is received or collected on account of a tenant's

obligation to pay rents. "Deposit account" would mean a demand, time, savings, passbook, or similar account maintained with a bank, savings bank, savings and loan association, credit union, or trust company.

"Document" would mean information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form.

"Notification" would mean a document containing information that the Act requires a person to provide to another, signed by the person required to provide the information.

"Person" would mean an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Purchase" would mean to take by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

"Rental agreement" would mean an agreement by which a person is obligated to pay rents to the assignor.

"Secured obligation" would mean an obligation the performance of which is secured by an assignment of rents.

"Security instrument" would mean a document, however denominated, that creates or provides for a security interest in real property, including a land contract, whether it also creates or provides for a security interest in personal property. "Security interest" would mean an interest in property that arises by agreement and secures performance of an obligation.

"Sign" would mean, with present intent to authenticate or adopt a document, to do either of the following:

- Execute or adopt a tangible symbol.
- Attach to or logically associate with the document an electronic sound, symbol, or process.

"State" would mean a state of the United States, the District of Columbia, Puerto Rico, the US Virgin Islands, or any territory or insular possession subject to the jurisdiction of the US.

"Submit for recording" would mean to submit a document complying with applicable legal standards, with required fees and taxes, to the register of deeds for the county in which the real property is located.

"Tenant" would mean a person that has an obligation to pay sums for the right to possess or occupy, or for possessing or occupying, the real property of another person.

Assignment of Rents

The proposed Act would create an assignment of rents by an assignment in either an enforceable security instrument that granted a security interest in rents or a document that granted a security interest in rents that was signed in connection with an enforceable security instrument as to any real property described in the document creating the assignment of rents.

An assignment of rents would create a presently effective security interest in all accrued and unaccrued rents arising from the real property described in the document creating the assignment, regardless of whether the document was in the form of an absolute assignment, an absolute assignment conditioned upon default, an assignment as additional security, or any other form. The security interest in rents would be separate and distinct from any security interest held by the assignee in the real property.

A discharge of a security instrument would discharge by operation of law any assignment of rents made in connection with the discharged security instrument.

Upon a foreclosure of the security instrument, both of the following would apply:

- The assignment of rents made in connection with the security instrument would continue to be effective to the extent of the remaining secured obligation and would transfer to the purchaser at the foreclosure sale by operation of law whether or not the foreclosure notice made reference to the assignment of rents; any transfer of the foreclosure deed by the holder of the deed also would transfer the assignment of rents to the transferee by operation of law.
- The assignment of rents made in connection with the security instrument automatically would terminate upon the earlier of the following: a) redemption from the foreclosure sale or b) expiration of the redemption period without redemption; for purposes of this provision, the assignment of rents in connection with any subordinate security instrument would terminate automatically.

The Act would not apply to an assignment of rent regarding an interest in real property improved by one to four dwelling units unless one or more of the following applied:

- The interest was used for agricultural, commercial, industrial, or mineral-extraction purposes, other than incidental uses by an assignor occupying the property as the assignor's primary residence.
- The interest secured an obligation incurred at a time when the property was used or planned for use for agricultural, commercial, industrial, or mineral-extraction purposes.
- The assignor planned or was 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 assignor was collecting or had the right to collect rents or other income from the property from a person other than an affiliate of the assignor.

Recording

Under the proposed Act, a document creating an assignment of rents could be submitted for recording to the register of deeds in the same manner as any other document evidencing a conveyance of an interest in real property.

Upon recording, the security interest in rents created by an assignment of rents would be fully perfected, even if a provision of the document creating the assignment or Michigan law other than the Act would preclude or defer enforcement of the security interest until the occurrence of a subsequent event, including a subsequent default of the assignor, the assignee's obtaining possession of the real property, or the appointment of a receiver.

Except as otherwise provided, a perfected security interest in rents would take priority over the rights of a person that, after the security interest was perfected, did either of the following:

- Purchased an interest in the rents or the real property from which the rents arose.

- Acquired a judicial lien against the rents or the real property from which the rents arose.

If the judicial lien arose out of a construction lien, the priority of the security interests in the rents would have to be determined under the Construction Lien Act.

A perfected security interest in rents would have priority over the rights of a person described above with respect to future advances to the same extent as the assignee's security interest in the real property had priority over the rights of that person with respect to future advances.

Notifications

Under the proposed Act, except as otherwise provided, a person would have to give a notification or a copy of a notification by doing either of the following:

- Depositing it with the US Postal Service or with a commercially reasonable delivery service, properly addressed to the intended recipient's address, with first-class postage or cost of delivery provided for.
- If the recipient agreed to receive notification by facsimile transmission, email, or other electronic transmission, sending it to the recipient in the agreed manner at the address specified in the agreement.

The following rules would determine the proper address for providing notice:

- A person giving a notification to an assignee would have to use the address for notices to the assignee provided in the document creating the assignment of rents, but, if the assignee had provided the person giving the notification with a more recent address for notices, the person giving the notification would have to use that address.
- A person giving a notification to an assignor would have to use the address for notices to the assignor provided in the document creating the assignment of rents, but, if the assignor had provided the person giving the notification with a more recent address for notices, the person giving the notification would have to use that address.
- If a tenant's agreement with an assignor provided an address for notices to the tenant and the person giving notification had received a copy of the agreement or knew the address for notices specified in the agreement, the person giving the notification would have to use that address in giving a notification to the tenant; otherwise, the person would have to use the address of the premises covered by the agreement.

If a person giving a notification and the recipient had agreed to the method for giving a notification, any notification would have to be given by that method. If the recipient received a notification, it would be effective even if it were not given in accordance with the proposed Act.

Notification Form

The proposed Act specifies that no particular phrasing would be required for the notification specified in the Act; however, the form of notification prescribed in the bill, when properly completed, would be sufficient to satisfy the Act's requirements.

Enforcement

The proposed Act would allow an assignee to enforce an assignment of rents using one or more of the methods specified in the Act or any other method sufficient to enforce the assignment under Michigan law other than the Act.

From the first date of enforcement, the assignee or, in the case of enforcement by appointment of a receiver, the receiver, would be entitled to collect both of the following:

- Rents that had accrued but remained unpaid on that date.
- Rents that accrued on or after that date, as those rents accrued.

From the first date of enforcement, a modification of the rental agreement would not be binding on the assignee without the written consent of the assignee.

Appointment of a Receiver

Under the proposed Act, an assignee would be entitled to the appointment of a receiver for the real property subject to the assignment of rents if either of the following applied:

- The assignor was in default and any of the following applied: a) the assignor had agreed in a signed document to the appointment of a receiver in the event of the assignor's default; b) it appeared likely that the real property and any other collateral granted by the assignor to the assignee could not be sufficient to satisfy the secured obligation; c) the assignor had failed to turn over to the assignee proceeds that the assignee was entitled to collect under the Act; or d) a subordinate assignee of rents obtained the appointment of a receiver for the real property.
- Other circumstances existed that would justify the appointment of a receiver under Michigan law other than the Act.

An assignee could file a petition for the appointment of a receiver if any of the following applied:

- The petition were filed in connection with an action to foreclose the security instrument.
- The petition were filed in connection with an action for specific performance of the assignment.
- The petition were filed in connection with an action seeking a remedy on account of waste or threatened waste of the real property subject to the assignment.
- The petition were filed in connection with an action to otherwise enforce the secured obligation or the assignee's remedies arising from the assignment.
- Other circumstances existed that would justify the appointment of a receiver under Michigan law other than the Act.

An assignee that filed a petition for the appointment of a receiver also would have to give a copy of the petition in the manner specified in the Act to any other person that, 10 days before the date the petition was filed, held a recorded assignment of rents arising from the real property.

If an assignee enforced an assignment of rents by seeking the appointment of a receiver, the date of enforcement was the date on which the assignee filed a petition to appoint a receiver as to the assignment of rents if the court entered an order appointing a receiver for the real property subject to the assignment. From the date of its appointment, a receiver would be entitled to collect rents. The receiver also would have the authority provided in the order of appointment and Michigan law other than the Act. The following rules would govern priority among receivers:

- If more than one assignee qualified for the appointment of a receiver, a receivership requested by an assignee entitled to priority in rents under the Act would have priority over a receivership requested by a subordinate assignee, even if a court previously had appointed a receiver for the subordinate assignee.

- If a subordinate assignee obtained the appointment of a receiver, the receiver could collect the rents and apply the proceeds in the manner specified in the order appointing the receiver until a receiver was appointed under a senior assignment of rents.

Default

Under the proposed Act, upon the assignor's default, or as otherwise agreed by the assignor, the assignee could give the assignor a notice demanding that the assignor pay over the proceeds of any rents that the assignee was entitled to collect. The assignee would have to record the notice in the office of the register of deeds in the same manner as the security instrument. The filing of a petition for appointment of a receiver, if it were served in the within 10 days after it was filed, would constitute a recorded notification demanding that the assignor pay over the proceeds of any rents that the assignee was entitled to collect. The assignee also would have to give a copy of the recorded or filed notification to any other person that, 10 days before the notification date, held a recorded assignment of rents arising from the real property.

If an assignee enforced an assignment of rents, the date of enforcement would be the date on which the assignor received a notification. If the notification were served within 10 days after it was recorded, the date of enforcement would be the date of recording.

An assignee's failure to give a notification to any person holding a recorded assignment of rents would not affect the effectiveness of the notification as to the assignor, but the other person would be entitled to any relief permitted under Michigan law other than the Act.

Upon the assignor's default, or as otherwise agreed by the assignor, the assignee could give to a tenant of the real property a notification demanding that the tenant pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrued. The assignee would have to give a copy of the notification to the assignor and to any other person that, 10 days before the notification date, held a recorded assignment of rents arising from the real property. The notification would have to be signed by the assignee and do all of the following:

- Identify the tenant, assignor, assignee, premises covered by the agreement between the tenant and the assignor, and assignment of rents being enforced.
- Provide the recording data for the document creating the assignment or other reasonable proof that the assignment was made.
- State that the assignee would have the right to collect rents in accordance with the assignment.
- Direct the tenant to pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrued.
- Describe the manner in which the provisions described below would affect the tenant's payment obligations.
- Provide the name and telephone number of a contact person and an address to which the tenant could direct payment of rents and any inquiry for additional information about the assignment or the assignee's right to enforce the assignment.
- Contain a statement that the tenant could consult a lawyer if the tenant had questions about its rights and obligations.
- Have attached a copy of the recorded or filed notification to the assignor.

If an assignee enforced an assignment of rents, the date of enforcement as to the tenant would be the date on which the tenant received a notification substantially complying with the Act's requirements.

Subject to provision described below and any other claim or defense that a tenant had under an agreement enforceable against the assignee or under the law of the US or Michigan other than the Act, after receiving a notification substantially complying with the Act's requirements, all of the following would apply:

- A tenant would be obligated to pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue, unless the tenant had previously received a notification from another assignee of rents given by that assignee and the other assignee had not canceled that notification.
- Unless a tenant occupied the premises as the tenant's primary residence, a tenant that paid rents to the assignor would not be discharged from the obligation to pay rents to the assignee.
- A tenant's payment to the assignee of rents then due would satisfy the tenant's obligation under the tenant's rental agreement to the extent of the payment made.
- A tenant's obligation to pay rents to the assignee would continue until the tenant received a court order directing the tenant to pay the rent in a different manner or a signed document from the assignee canceling its notification, whichever occurred first.
- A modification of the rental agreement would not be binding on the assignee without the assignee's written consent.

A tenant that had received a notification would not be in default under its rental agreement for nonpayment of rents accruing within 30 days after the date the notification was received before the earlier of the following:

- Ten days after the date the next regularly scheduled rental payment would be due.
- Thirty days after the date the tenant received the notification.

After receiving a notification from another creditor that was entitled to priority that the other creditor had enforced and was continuing to enforce its interest in rents, an assignee that had given a notification to a tenant immediately would have to give another notification to the tenant canceling the earlier notification.

An assignee's failure to give a notification to any person holding a recorded assignment of rents would not affect the effectiveness of the notification as to the assignor and those tenants receiving the notification. However, the person entitled to the notification would be entitled to any relief permitted by Michigan law of other than the Act.

Enforcement of an Assignment of Rents

Under the proposed Act, the enforcement of an assignment of rents by one or more of the methods identified the Act, the application of proceeds by the assignee after enforcement, the payment of expenses, or a civil action under the Act would not do any of the following:

- Make the assignee a mortgagee in possession of the real property.
- Make the assignee an agent of the assignor.
- Constitute an election of remedies that precludes a later action to enforce the secured obligation or the security instrument.
- Make the secured obligation or the security instrument unenforceable.
- Limit any right available to the assignee with respect to the secured obligation.

Application of Proceeds

The proposed Act specifies that unless otherwise agreed, an assignee that collected rents under the Act or collected upon a judgment in a civil action under the Act would have to apply the sums collected in the following order:

- To the assignee's reasonable expenses of enforcing its assignment of rents, including, to the extent provided for by agreement and not prohibited by Michigan law other than the Act, reasonable attorney fees and costs incurred by the assignee.
- To reimbursement of any expenses incurred by the assignee to protect or maintain the real property subject to the assignment.
- To payment of the secured obligation.
- To payment of any obligation secured by a subordinate security interest or other lien on the rents if, before distribution of the proceeds, the assignor and assignee received a notification from the holder of the interest or lien demanding payment of the proceeds.
- To the assignor.

Payment of Expenses

Under the proposed Act, unless otherwise agreed by the assignee, an assignee that collected rents following enforcement would not need to apply them to the payment of expenses of protecting or maintaining the real property subject to the assignment.

Unless a tenant had made an enforceable agreement not to assert claims or defenses, the right of the assignee to collect rents from the tenant would be subject to the terms of the agreement between the assignor and tenant and any claim or defense arising from the assignor's nonperformance of that agreement.

The Act would not limit the standing or right of a tenant, assignor, or other affected person to request a court to appoint a receiver for the real property subject to the assignment or to seek other relief on the ground that the assignee's nonpayment of expenses of protecting or maintaining the real property had caused or threatened harm to the tenant's, assignor's, or other affected person's interest in the property.

Disposition of Proceeds & Action to Recover

If an assignor collected rents that the assignee was entitled to collect under the proposed Act, both of the following would apply:

- The assignor would have to turn over the proceeds to the assignee, less any amount representing payment of expenses authorized by the assignee.
- The assignee would continue to have a security interest in the proceeds so long as they were identifiable.

For purposes of the Act, cash proceeds would be identifiable if they were maintained in a segregated account or, if commingled with other funds, to the extent the assignee could identify them by a method of tracing, including application of equitable principles, that was permitted under Michigan law other than the Act with respect to commingled funds.

In addition to any other remedy available to the assignee under Michigan law other than the Act, if an assignor failed to turn over proceeds to the assignee, the assignee could recover from the assignor or a person liable under the Uniform Voidable Transactions Act, or both, in a civil action, both of the following:

- The proceeds, or an amount equal to the proceeds, that the assignor was obligated to turn over.
- Reasonable attorney fees and costs incurred by the assignee to the extent provided for by agreement and not prohibited by Michigan law other than the Act.

The assignee could maintain an action without bringing an action to foreclose any security interest that it could have in the real property, and an action would not bar a foreclosure by advertisement under Chapter 32 (Foreclosure of Mortgages by Advertisement) of the Revised Judicature Act. Any sums recovered in the action would have to be applied in the manner specified in the proposed Act.

Unless otherwise agreed, if an assignee entitled to priority enforced its interest in rents after another creditor holding a subordinate security interest in rents had enforced its interest, the creditor holding the subordinate security interest in rents would not be obligated to turn over any proceeds that it collected in good faith before the creditor received notification that the senior assignee had enforced its interest in rents. The creditor would have to turn over to the senior assignee any proceeds that it collected after it received the notification. "Good faith" would mean honesty in fact and the observance of reasonable commercial standards of fair dealing.

Perfection of Security Interest

Under the proposed Act, an assignee's security interest in identifiable cash proceeds would be perfected if its security interest in rents was perfected. An assignee's security interest in identifiable noncash proceeds would be perfected only if the assignee perfected that interest in accordance with Article 9. "Article 9" would mean Article 9 (Secured Transactions) of the Uniform Commercial Code (UCC) or, to the extent applicable to any particular issue, Article 9 of the UCC as adopted by the state whose laws govern that issue under the choice-of-laws rules contained in Article 9 as adopted by Michigan.

Except as otherwise, priority between an assignee's security interest in identifiable proceeds and a conflicting interest would be governed by the priority rules in Article 9. "Conflicting interest" would mean an interest in proceeds, held by a person other than an assignee, that is either of the following:

- A security interest arising under Article 9.
- Any other interest if Article 9 resolves the priority conflict between that person and a secured party with a conflicting security interest in the proceeds.

An assignee's perfected security interest in identifiable cash proceeds would be subordinate to a conflicting interest that was perfected by control under Article 9 but had priority over a conflicting interest that was perfected other than by control.

Applicability

The proposed Act would not preclude subordination by agreement as to rents or proceeds.

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 enacted it.

The Act would modify, limit, or supersede the electronic signatures in Global and National Commerce Act but would not modify, limit, or supersede 15 USC 7001(c), or authorize electronic delivery of any of the notices described in 15 USC 7003(b). (Title 15 USC 7001(c))

generally pertains to consumer disclosures; 15 USC 7003(b) prescribes exceptions to 15 USC 7001.)

Except as otherwise provided, the Act would govern the enforcement of an assignment of rents and the perfection and priority of a security interest in rents, even if the document creating the assignment was signed and delivered before the effective date of this act.

The Act would not affect an action or proceeding commenced before its effective date. The Act also would not affect any of the following:

- The enforceability of an assignee's security interest in rents or proceeds if, immediately before the Act's effective date, that security interest were enforceable.
- The perfection of an assignee's security interest in rents or proceeds if, immediately before the Act's effective date of this act, that security interest were perfected.
- The priority of an assignee's security interest in rents or proceeds with respect to the interest of another person if, immediately before the Act's effective date, the interest of the other person were enforceable and perfected, and that priority was established.

MCL 600.3204 (H.B. 4800)

BACKGROUND

The Uniform Law Commission (ULC), also known as the National Conference of Commissioners on Uniform State Laws, is a nonpartisan nonprofit organization that drafts uniform and model state legislation.

In 2005, the ULC promulgated the Uniform Assignments of Rents Act, which provides a comprehensive framework to govern the creation, perfection, and enforcement of security interests in rents arising from mortgaged real property. According to the ULC, five states have adopted the Uniform Assignments of Rents Act.

Legislative Analyst: Stephen P. Jackson

FISCAL IMPACT

The bills likely would have no substantial fiscal impact on State or local government, and any impact likely would be indirect. The bills would not generate or appropriate revenue. While enactment of the bills could create additional motion filings in local courts, they also could provide procedural clarity for courts, assignees, property owners, and renters, which would reduce motion filings and could help prevent wasteful litigation.

Fiscal Analyst: Michael Siracuse

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.