



SENATE BILL 364: NC Commercial Receivership Act Revisions.

2019-2020 General Assembly

Committee:		Date:	June 25, 2020
Introduced by:	Sen. Bishop	Prepared by:	Bill Patterson
Analysis of:	Fourth Edition		Staff Attorney

OVERVIEW: *Senate Bill 364 would enact the North Carolina Commercial Receivership Act, repeal corresponding statutory provisions governing receiverships and assignments for the benefit of creditors, and require any action seeking appointment of a general receiver for an entity debtor with assets worth at least \$5 million to be designated a mandatory complex business case.*

CURRENT LAW: Article 38 of Chapter 1 of the General Statutes governs the appointment and duties of receivers. A receiver is appointed by the court to take control of a debtor's property to preserve and manage it before judgment or in aid of execution after judgment, or when the debtor is a corporation that is insolvent or in imminent danger of insolvency, to liquidate the corporate assets as part of a creditor's action.

Articles 1 and 2 of Chapter 23 of the General Statutes govern the procedure by which debtors can make an assignment of their assets for the benefit of their creditors. By this method the assets of the debtor are assigned to a trustee charged with determining the amounts owed to each creditor and liquidating the property of the debtor to distribute to the creditors.

BILL ANALYSIS: **Section 1** of the bill would enact the North Carolina Receivership Act as new Article 38A of Chapter 1 of the General Statutes. The Act would govern a receiver appointed for an entity or an individual business debtor, defined as an individual owing consumer debt (incurred primarily for a personal, family, or household purpose) totaling less than half of the individual's total debt. The new Article would establish two types of receiverships: limited receiverships, which would be based on the enforcement of a security interest or liens; and general receiverships, which would be any other type.

District court or superior court judges could appoint a receiver for a debtor who is an individual business debtor. Only a superior court judge could appoint a receiver for a debtor that is not a natural person.

Any person would be eligible to be appointed as a receiver, whether or not a resident of the State, if the court finds the person to be qualified to serve and to be independent of any party in interest and the underlying dispute. The Act would set forth criteria to be considered by the court in determining whether a person is sufficiently qualified and independent.

General receiverships would reach all the debtor's property, except that for an individual business debtor, the general receivership would not reach the debtor's principal residence or any consumer good if its value is less than the combined amount of all liens, rights of redemption, and allowed claims of exemptions to which it is subject. A limited receivership would control only the property identified in the court order appointing the receiver or subsequent orders of the court. All receivers would have the power to take possession of, control, and protect receivership property, pay expenses incurred in exercising the receiver's powers, assert claims or defenses relating to receivership property. In addition, general receivers would

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have specified additional powers, including the power to manage and operate any business constituting receivership property in the ordinary course of business. All receivers would have the duty to avoid conflicts of interest, not accept anything of value from receivership property without approval of the court, and act in the best interests of the receivership and its property. The new Article would not prevent an individual business debtor or an entity for which a limited receiver has been appointed from filing a case under Title 11 (Bankruptcy) of the United States Code.

As required by the court, the receiver would submit interim reports addressing the receiver's activities, receipts and disbursements, distributions of money and property of the receivership estate, fees and expenses, and any other information required by the court. Upon disposition of all receivership property the receiver would submit a final report to the court.

Section 2 would repeal Articles 1 and 2 of Chapter 23 of the General Statutes governing assignments for the benefit of creditors, and Part 2 of Article 38 of Chapter 1 of the General Statutes governing receivers of corporations.

Section 3.(a) would provide that an action seeking the appointment of a general receiver for an entity debtor having assets with a fair market value of at least \$5,000,000, must be designated as a mandatory complex business case either by the debtor or by a creditor or representative of a creditor asserting a noncontingent and undisputed claim or claims totaling more than \$25,000 against the debtor.

Section 3.(b) would make conforming changes to statutory provisions governing cessation of membership in a limited liability company.

Section 3.(c) would make conforming changes to statutory provisions governing the effect of an order of discharge of a debtor.

Section 3.(d) would make the superior court division the proper division, without regard to the amount in controversy, for a receivership proceeding of a debtor that is not a natural person and for proceedings under the North Carolina Limited Liability Company Act.

Section 3.(e) would make a conforming change to a statutory cross-reference relating to the partition of real property.

EFFECTIVE DATE: The act becomes effective January 1, 2021 and applies to receiverships commenced on or after that date.