



SENATE BILL 364: NC Receivership Act Revisions.

This Bill Analysis reflects the contents of the bill as it was presented in committee.

2019-2020 General Assembly

Committee:	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	Date:	April 9, 2019
Introduced by:	Sen. Bishop	Prepared by:	Bill Patterson
Analysis of:	First Edition		Committee Co-Counsel

OVERVIEW: *Senate Bill 364 would enact the North Carolina Receivership Act, repeal existing statutory provisions governing receiverships and assignments for the benefit of creditors, and permit any action seeking appointment of a general receiver for a debtor entity with assets worth at least \$1 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 a new Article 38A of Chapter 1 of the General Statutes. The Act would govern receivers appointed for both entities and natural persons and 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 judges could appoint a receiver for a debtor who is a natural person. Only a superior court judge could appoint a receiver for a debtor that is not a natural person. Any proceeding seeking appointment of a general receiver for a debtor entity having assets worth more than \$1,000,000 could be designated as a mandatory complex business case.

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, whereas 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 have specified additional powers, including the power to operate any business constituting receivership property in the ordinary course of business. All receivers

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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.

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

Section 3.(a) of the bill would provide that any party to an action seeking the appointment of a general receiver for a debtor that is not an individual having assets with a fair market value of at least \$1,000,000, may designate the action as a mandatory complex business case.

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.

EFFECTIVE DATE: The act becomes effective January 1, 2020, and applies to receiverships commenced on or after that date.