

SB 216 -- MISSOURI RECEIVERSHIP ACT

SPONSOR: Keaveny (Jones)

COMMITTEE ACTIONS: Voted "Do Pass" by the Standing Committee on Civil and Criminal Proceedings by a vote of 10 to 0. Voted "Do Pass" by the Select Committee on Judiciary by the vote of 10 to 0.

This bill establishes the Missouri Commercial Receivership Act. The court is granted authority to appoint a receiver whenever the court deems necessary. A receiver must have the duty to keep and preserve any money deposited with the court, and any property and business or business interests entrusted to the receiver pending any legal or equitable action concerning the money, property, or business interest.

The appointment of a receiver may be sought as an independent claim and remedy, and does not need to be in addition to another legal claim. A debtor and all parties to the action must receive seven days notice of any application for the appointment of a receiver. Notice must also be given to all other parties in interest.

Where a receiver has been appointed in a foreign jurisdiction with respect to the debtor's property and upon the application by the receiver appointed in the foreign jurisdiction or any party to that foreign action, the court must appoint as receiver of the debtor's property located in this state the same person. Following the appointment, the court must give effect to orders or judgments of the court in the foreign jurisdiction affecting the property in this state unless to do so would be manifestly unjust or inequitable.

The order appointing a receiver must describe the property by category, individual items, or both if the receiver is to take charge of less than substantially all of the debtor's property. The receiver will be deemed a general receiver with authority to take charge over all of the debtor's property unless expressly stated otherwise in the order.

A receiver is either a general receiver or a limited receiver depending on how much possession and control over the debtor's property the court grants the receiver. Within 10 business days of the appointment of a receiver or the conversion of a limited receiver to a general receiver, the receiver must give notice of the appointment or conversion to all interested parties including the Secretary of State or state and federal taxing authorities. The bill specifies the content of the notice and states that the notice must be sent by first class mail. A general receiver must publish notice of the receivership in a newspaper of general

circulation in the county in which estate property is located once a week for three weeks. A debtor must cooperate with all reasonable requests for information by the receiver in order to assist in satisfying the notice requirements.

Any individual may serve as a receiver unless he or she has been found guilty of a felony, is party to the action, is related to the debtor or is a partner, director, attorney, employee, or creditor of the debtor, has an interest materially adverse to the interests of individuals affected by the receivership, or is a sheriff of any county. A receiver must execute a bond with one or more sureties approved by the court and in an amount specified by the court. As of the time of appointment, a receiver has the same powers and priority as a creditor that obtained a judicial lien on all of the debtor's property that is subject to the receivership, but must satisfy real property recording requirements as established in the bill.

The court has exclusive authority over the receiver, and exclusive possession and control of all real property and all tangible and intangible personal property in which the receiver has been appointed to keep and preserve. The court also has exclusive authority to determine all controversies relating to the collection, preservation, application and distribution of all property, and all claims against the receiver arising out of the exercise of the receiver's performance of duties.

The bill specifies the powers and authority of a receiver which include paying expenses incidental to the preservation and use of estate property, performing all duties associated with operating a business in the ordinary course of operation, intervening in any action in which a claim is asserted against the debtor, seeking advice from the court about a course of action, and obtaining appraisals of estate property. Additional powers may be granted to the receiver by statute, court rule, or by the court.

A receiver may demand that an individual must turn over any estate property that is within his or her possession or control. A receiver may seek to compel turnover of estate property, and unless a bona fide dispute over the receiver's right to possession of the estate property exists failure to relinquish possession of the property is punishable as contempt.

A debtor must make available for inspection by a general receiver all information and data as established by the bill, and must cooperate fully with the receiver in the administration of the estate and discharge of the receiver's duties. After the appointment of a general receiver, the debtor must file with the court and submit to the receiver certain information including a

list of all known creditors and a true list of all estate property. A general receiver must file with the court a monthly report of the receiver's operations and financial affairs, and a limited receiver must file all reports as the court requires.

The order of appointing a general receiver must operate as a stay of certain actions as specified in the bill, but must not operate as a stay of criminal proceedings against the debtor; actions establishing paternity, or actions modifying or enforcing alimony, maintenance or support orders; any act to perfect or to maintain the perfection of an interest in estate property; an action by a governmental unit to enforce its police or regulatory power; the enforcement of a judgment obtained in an action by a governmental unit to enforce its police or regulatory power; the exercise of a right of setoff; or any action pending in another court.

A utility providing service to estate property must provide 15 days notice before altering or discontinuing service to the estate property. The court may prohibit the alteration or cessation of utility service if the receiver can furnish adequate assurance of payment for service. Any utility regulated by the Public Service Commission which does not provide notice or comply with the court's order is subject to the appropriate remedial measures by the commission. A receiver may bring an action to enforce compliance with the provisions of the bill against any utility not regulated by the Public Service Commission which does not provide notice or comply with the court's order.

A receiver may assume or reject any executory contract or unexpired lease of the debtor upon order of the court following notice and a hearing. Any obligation or liability incurred by a general receiver on account of the receiver's assumption of the executory contract or unexpired lease must be treated as an expense of the receivership, and rejection of a contract or lease is to be treated as a breach of contract or lease occurring immediately prior to the receiver's appointment.

If a receiver is authorized to operate the debtor's business or manage the debtor's property, the receiver may obtain unsecured credit and incur unsecured debt in the ordinary course of business as an administrative expense. The receiver may obtain credit or incur debt other than in the ordinary course of business with the authorization of the court and following notice and a hearing. The bill grants a receiver the right to sue and be sued without leave of court in all circumstances necessary for the receivership. A judgment against a general receiver or the debtor is not a lien on estate property and no executions must be issued on the property.

A receiver and the agents, attorneys, and employees of the

receivership must have absolute judicial immunity and be immune from claims against them personally for acts or omissions conducted while acting in the performance of their receivership functions and duties. An individual may bring an action against a receiver or the agents, attorneys, and employees of the receivership only after filing an application with the court and the court granting the application after notice and hearing.

With the court's approval, the receiver may employ attorneys, accountants, appraisers, auctioneers, or other professionals to assist the receiver. The receiver and any professionals employed must maintain itemized billing records.

Creditors and parties of interest and other individuals submitting written claims in the receivership are bound by the acts of the receiver and court orders relating to the receivership regardless of whether the individual is a party to the receivership action. The receiver must maintain a master mailing list of all parties and parties in interest that file and serve a notice of appearance in the receivership. All individuals on the master list must be given 30 days notice prior to certain hearings and other proceedings specified in the bill.

Certain claims must be in the form as specified in the bill, served on the receiver, and filed with the court. The claims administration process must be administered by a general receiver and may be administered by a limited receiver when ordered by the court.

Prior to the entry of an order approving the general receiver's final report, the receiver or any party in interest may file with the court an objection to a claim. A copy of the objection must be mailed to the creditor who has 30 days to file with the court suggestions in support of the claim. The bill establishes the order of priority on a pro rata basis for the distribution of claims not disallowed by the court.

The court must remove or replace the receiver if the receiver fails to preform the duties prescribed under the bill or ordered by the court.

Upon distribution of all property of the estate or completion of the receiver's duties, the receiver must file a motion with the court to be discharged. The receiver's final report and accounting which includes all receipts and disbursements of the estate must be included in the petition for discharge and filed with the court.

**PROPONENTS:** Supporters say that Missouri needs a statute to address debtor estates that get settled through receivership. The

bill was drafted by specialist attorneys with the Missouri Bar who engaged in a deliberative and well thought out process.

Testifying for the bill were Senator Keaveny and Eric Johnson, Norman Lampton, and Eric Peterson, Board of Governors of The Missouri Bar.

OPPONENTS: There was no opposition voiced to the committee.