

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 15-0721.02 Thomas Morris x4218

SENATE BILL 15-181

SENATE SPONSORSHIP

Woods, Holbert, Marble, Neville T., Cooke, Baumgardner, Grantham

HOUSE SPONSORSHIP

Saine and Joshi, Van Winkle

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE APPOINTMENT OF RECEIVERS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill specifies that, notwithstanding any other provision of law or court rule, and unless otherwise provided for by contract:

! A court order granting or denying a motion or complaint for the appointment, removal, replacement, or retention of a receiver:

! Can be granted for the appointment or retention of a receiver only upon a showing of clear and convincing evidence, and, if granted, expires in the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
April 16, 2015

SENATE
Amended 2nd Reading
April 15, 2015

absence of the required showing from a proponent of the receivership, and must require the receiver to post a bond and to submit periodic reporting to the court and parties no less frequently than annually; and

! May be appealed on an interlocutory basis to the court of appeals, which must review the matter de novo on an expedited basis. The receivership estate must pay the costs and fees associated with the appeal.

! A receiver is not immune from liability for gross negligence or willful breach of duty.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, add 13-1-109.5 as
3 follows:

4 **13-1-109.5. Receivers. (1) NOTWITHSTANDING ANY OTHER**
5 **PROVISION OF LAW OR COURT RULE, AND UNLESS THE RIGHT TO HAVE A**
6 **RECEIVER APPOINTED IS PROVIDED BY CONTRACT:**

7 **(a) A COURT ORDER GRANTING OR DENYING A MOTION OR**
8 **COMPLAINT FOR THE APPOINTMENT, REMOVAL, REPLACEMENT, OR**
9 **RETENTION OF A RECEIVER:**

10 **(I) SHALL BE DETERMINED WITHIN NINETY-ONE DAYS AFTER THE**
11 **FILING OF THE COMPLAINT OR MOTION. A COURT'S FAILURE TO RULE ON**
12 **THE FILING WITHIN NINETY-ONE DAYS AFTER SUBMISSION RESULTS IN THE**
13 **IMMEDIATE DISCHARGE OF THE RECEIVER IF ONE HAS PREVIOUSLY BEEN**
14 **APPOINTED. NOTHING IN THIS SUBPARAGRAPH (I) PREVENTS THE COURT**
15 **FROM SUBSEQUENTLY ENTERING AN ORDER THAT APPOINTS A RECEIVER.**

16 **(II) IF MADE FOR THE APPOINTMENT OR RETENTION OF A RECEIVER:**

17 **(A) MUST REQUIRE THE RECEIVER TO POST A BOND AND TO SUBMIT**
18 **PERIODIC REPORTING TO THE COURT AND PARTIES NO LESS FREQUENTLY**
19 **THAN ANNUALLY. THE REPORT MUST ADDRESS WHETHER THE REASONS**

1 FOR APPOINTING OR RETAINING THE RECEIVER, AS SET FORTH IN THE
2 ORIGINAL OR SUBSEQUENT ORDER, CONTINUE TO APPLY.

3 (B) CAN BE GRANTED ONLY UPON A SHOWING OF CLEAR AND
4 CONVINCING EVIDENCE BY WRITTEN EVIDENTIARY SUBMISSION, A
5 HEARING, OR BOTH; AND

6 (C) EXPIRES UNLESS THE COURT FINDS THAT A PROPONENT OF THE
7 RECEIVERSHIP HAS MET THE EVIDENTIARY STANDARD SPECIFIED IN
8 SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (II); AND

9 (III) ___ MAY BE APPEALED ON AN INTERLOCUTORY BASIS TO THE
10 COURT OF APPEALS, WHICH SHALL REVIEW THE MATTER ON AN EXPEDITED
11 BASIS.

12 ___

13 (b) A RECEIVER IS NOT IMMUNE FROM LIABILITY FOR GROSS
14 NEGLIGENCE OR WILLFUL BREACH OF DUTY.

15 (2) THIS SECTION APPLIES TO ALL RECEIVERSHIPS, WHETHER
16 APPOINTED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS SECTION;
17 EXCEPT THAT THIS SECTION DOES NOT APPLY TO:

18 (a) A RECEIVER OR RECEIVERSHIP PROCEEDING SOUGHT PURSUANT
19 TO THE MOTION OR COMPLAINT OF A COMMON INTEREST COMMUNITY, AS
20 THAT TERM IS DEFINED IN SECTION 38-33.3-103 (8), C.R.S.;

21 (b) A RECEIVER OR RECEIVERSHIP PROCEEDING THAT IS SOUGHT IN
22 COUNTY COURT;

23 (c) A RECEIVER OR RECEIVERSHIP PROCEEDING THAT IS SOUGHT
24 FOR PROPERTY WORTH LESS THAN FIFTEEN THOUSAND DOLLARS;

25 (d) A RECEIVER OR RECEIVERSHIP PROCEEDING THAT IS SOUGHT BY
26 A CREDITOR HOLDING A SECURITY INTEREST, MORTGAGE, DEED OF TRUST,
27 OR JUDGMENT LIEN ON ANY PROPERTY, REAL OR PERSONAL, THAT IS

1 SOUGHT TO BE PLACED IN RECEIVERSHIP;

2 (e) A RECEIVER OR RECEIVERSHIP PROCEEDING THAT IS SOUGHT BY
3 ANY DIVISION OR OFFICIAL OF THE DEPARTMENT OF REGULATORY
4 AGENCIES, INCLUDING THE SECURITIES COMMISSIONER, BANKING BOARD,
5 OR COMMISSIONER OF BANKING; OR

6 (f) A RECEIVER OR RECEIVERSHIP PROCEEDING SOUGHT BY THE
7 COLORADO ATTORNEY GENERAL.

8 **SECTION 2. Applicability.** This act applies to conduct occurring
9 on or after the effective date of this act.

10 **SECTION 3. Safety clause.** The general assembly hereby finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, and safety.