

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 8, 2015
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

SB15-181 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

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

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

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

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

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

18 (A) MUST REQUIRE THE RECEIVER TO POST A BOND AND TO SUBMIT
19 PERIODIC REPORTING TO THE COURT AND PARTIES NO LESS FREQUENTLY
20 THAN ANNUALLY. THE REPORT MUST ADDRESS WHETHER THE REASONS
21 FOR APPOINTING OR RETAINING THE RECEIVER, AS SET FORTH IN THE
22 ORIGINAL OR SUBSEQUENT ORDER, CONTINUE TO APPLY.

23 (B) CAN BE GRANTED ONLY UPON A SHOWING OF CLEAR AND

1 CONVINCING EVIDENCE BY WRITTEN EVIDENTIARY SUBMISSION, A
2 HEARING, OR BOTH; AND

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

6 (III) (A) MAY BE APPEALED ON AN INTERLOCUTORY BASIS TO THE
7 COURT OF APPEALS, WHICH SHALL REVIEW THE MATTER ON AN EXPEDITED
8 BASIS.

9 (B) THE COURT OF APPEALS SHALL DECIDE THE APPEAL BY A
10 WRITTEN ORDER WITH FINDINGS STATING THE GROUNDS FOR THE
11 APPOINTMENT, REMOVAL, REPLACEMENT, OR RETENTION.

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

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

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

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

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

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

28 (e) A RECEIVER OR RECEIVERSHIP PROCEEDING THAT IS SOUGHT BY
29 ANY DIVISION OR OFFICIAL OF THE DEPARTMENT OF REGULATORY
30 AGENCIES, INCLUDING THE SECURITIES COMMISSIONER, BANKING BOARD,
31 OR COMMISSIONER OF BANKING; OR

32 (f) A RECEIVER OR RECEIVERSHIP PROCEEDING SOUGHT BY THE
33 COLORADO ATTORNEY GENERAL.

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

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

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