

**THE UNIFORM ASSIGNMENT FOR
BENEFIT OF CREDITORS LAW
WHERE DOES IT STAND NOW and WILL
IT OR WON'T IT BECOME LAW IN EVERY
STATE?**

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SUMMARY

- In July 2025, the Uniform Law Commission promulgated the Uniform Assignment for Benefit of Creditors Act (the “Act”).
- The intent of the Act is to harmonize the various state statutes on ABCs so there is more consistency between the various states and modernize the process.

WHO MAY BE AN ASSIGNOR AND ITS DUTIES

- The term “Assignor” is defined at Act §§2(8) and (18). See also Act §3 and Act at §5(b).
- While not specifically defined, an Assignor can be any organization or business which is in financial distress and needs to liquidate.
- The Act also contemplates that an individual can be an Assignor.
- §8(a)(1)-(9) of the Act outlines the duties of an Assignor, which include (i) the preserving and turning over of the assigned assets to the assignee, (ii) identifying and providing to the assignee the information reasonably necessary to administer the assignment and the assigned assets; and (iii) providing to the assignee the contact information of the representative of the assignor which the assignor believes will be reasonably necessary to assist in the administration of the estate.

WHO MAY BE AN ASSIGNEE AND ITS DUTIES

- The term “Assignee” is defined in the Act §2(4) as “a person to which assets are transferred under an assignment.” It can include an individual or an organization.
- Other than the broad definition above, an assignee cannot be a creditor, an affiliate, or insider of the Assignor. See Act at §4(a), (b).
- Among other requirements outlined in §9 of the Act, the Act makes clear that the assignee has a fiduciary duty to the assignment estate for the benefit of creditors, which include (i) a duty of loyalty, including the duty to manage the assignment in good faith; (ii), a duty to use reasonable care to maximize distribution to the creditors; and (iii) a duty to wind up the assignment “compatible with the best interests of the assignment estate and creditors.” Act at §9.
- The powers of the assignee are outlined in the Act at §10, which include, among other things, the assignee’s ability to operate the assignor as an existing business pending a sale of the assets; engage professionals on behalf of the estate; and collect, sell, lease or otherwise dispose of the assigned assets.

ASSETS WHICH MAY BE ASSIGNED

- All of the assignor's assets are deemed to be assigned, even if the representation in in the assignment agreement is inaccurate so long as the assignee relied on the assignor's representation in good faith under the Act. See Act at §§4(c)(6) and (d).

JURISDICTION

- If an organization, the assignment must be in the state where the organization has its principal place of business
- If an individual, the assignment must be in the state of the principal's residence
- Act at §3.

THE ASSIGNMENT AGREEMENT

The Act clarifies what needs to be included in the assignment agreement. The assignment agreement must contain:

- (1) The name and address of the assignor and the assignee;
- (2) Transfer or provide for the transfer of all of the assignor's assets;
- (3) Describe the assigned assets with sufficient detail;
- (4) Provide for the distribution of the assignment estate;
- (5) Describe the fees to be paid to the assignee; and
- (6) Include a representation by the assignor under penalty of perjury that all of the property of the assignor has been assigned.

See Act at §4(c).

EFFECT OF AN ABC

- The assignee obtains the rights, title and interests of the assignor in the assigned assets.
- The assignee takes each assigned asset subject to the existing interest in the asset held by another person.
- See Act at §5.

CREDITOR NOTIFICATION

With limited exceptions, the assignee must send a notification of the assignment to each creditor of the assignment estate “within a reasonable period of time not to exceed [30] days after the effective date of the assignment agreement. Act at §7.



ESTATE ADMINISTRATION

ASSIGNEE POWERS

- The Act authorizes the assignee to engage in many activities, including, operating the assignor's business, engaging professionals, disposing of assets and collecting assets for the estate. See generally Act at §10.
- The assignee also has the authority to set aside certain transfers. Subject to certain exceptions described in the Act, an assignee has the exclusive power to avoid a transfer a creditor that had filed a proof of claim could have avoided under other law if the assignment had not occurred. Act at §10(b)(12).
- The assignee's recovery, however, is limited to what the creditor could obtain by the avoidance. Act at §10(c).

PROOFS OF CLAIM

- §13(a) outlines the required contents of a proof of claim to be filed in an ABC.
 - The proof of claim must, among other things, include the name and address of the party, the amount and nature of the claim, and identify which asset of the assignment estate secures the claim.
 - The claim must be signed by the creditor under penalty of perjury. Act at §13(a).
 - A claim submitted in compliance with §13 is “prima facie evidence of the validity and amount of the claim.” §13(b).
- A party submitting a proof of claim in the ABC proceeding is deemed to have consented to the jurisdiction of the proceeding. Act at §13(c)(1).

CLAIMS MOTION

- The Act provides that an undisputed proof of claim by the assignee must be treated as an allowed claim. Act at §11(a).
- If an assignee chooses to dispute a claim, however, §12 provides the mechanism by which an assignee may challenge the claim.
 - First, the assignee must send a notice to the creditor stating the nature of the assignee's dispute. §12(a).
 - If the claim cannot be resolved consensually, the assignee may bring a proceeding before a court of competent jurisdiction to dispute the claim. See Act at §§12(b), 21.

DISTRIBUTION AND PRIORITY SCHEME

- §15 provides more clarity regarding the distribution scheme in an ABC under the Act, which essentially sets forth a schedule of priorities as follows (in order of priority):
 - Secured claims (referred to as a “protected secured creditor”). Act §15(a).
 - Administrative expenses (including post-assignment taxes and leases). Act §15(d).
 - Priority federal claims (31 U.S.C. 3713). Act §15(e).
 - Wages, salaries or commissions earned within 180 days of the “earlier of the effective date of the assignment agreement or the cessation of the assignor’s business.” Act §15(f).
 - Priority unsecured claims. Act §15(g).
 - General unsecured claims (not entitled to priority). Act §15(h).
 - Late filed claims. Act §15(i).

WINDING UP

- §19 of the Act provides that at the conclusion of the assignee's duties, the assignee shall send a final accounting to the creditors describing, among other things, the actions which were undertaken during the course of the proceeding, the assets which were collected and the disbursements made. Once the final accounting is sent and the assets are distributed, the assignee is discharged.

MULTISTATE ABC'S

- Addressing the issue of potential multistate assignors, §20 of the Act provides that for states which enacted the Act, if an ABC is also pending in a non-ABC Act state, the enacting ABC Act state must recognize the state law of the other state's ABC law “if the result of the issue would be substantially similar to the result for the issue if the assignment had been made under this [act].”