CLIENT ALERTS & INSIGHTS

Delaware Adopts Uniform Assignment for the Benefit of Creditors Act, Expanding Bankruptcy Alternative for Distressed Companies

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Featured Practices: Restructuring & Bankruptcy, Bankruptcy Reorganizations, Debt Restructurings

Key Takeaways

- **Delaware has modernized its assignment for the benefit of creditors process.** The new Uniform Assignment for the Benefit of Creditors Act replaces Delaware's 1875 statute and creates a clearer framework for distressed companies seeking to wind down outside of federal bankruptcy.
- **The law gives distressed businesses another potentially faster, lower-cost restructuring option.** By adding more predictability to the ABC process while preserving flexibility, the Uniform Act may make Delaware a more attractive forum for middle-market companies that need an orderly liquidation but want to avoid the expense and delay of Chapter 7 bankruptcy.
- **Companies and creditors should evaluate ABCs as part of distress planning.** While the new law provides added structure, ABCs still differ significantly from bankruptcy and may not offer the same protections, including an automatic stay or the ability to sell assets free and clear of liens. Distressed companies, secured lenders and creditors should assess early whether an ABC is the right tool for a particular situation.

Background

On June 10, 2026, Delaware Governor Matt Meyer signed into law Senate Bill No. 267, the Uniform Assignment for the Benefit of Creditors Act (the "Uniform Act"). In adopting the Uniform Act, Delaware repealed its existing statute regarding assignments for the benefit of creditors, enacted in 1875. Delaware is now the sixth state to adopt a version of the Uniform Act, marking a significant step toward a more consistent nationwide alternative to the traditional bankruptcy process.

ABCs Overview

An Assignment for the Benefit of Creditors, commonly known as an "ABC," is a common-law and statutory device by which an insolvent entity (the "Assignor") voluntarily transfers all or substantially all of its right, title, interest in, and custody and control of its non-exempt assets to a neutral third-party fiduciary (the "Assignee"), creating an "assignment estate." The Assignee then holds those assets in trust for the benefit of the Assignor's creditors and proceeds to liquidate the Assignor's assets and distribute the resulting proceeds to creditors according to an established order of priority. An ABC is best understood as a state-law alternative to Chapter 7 liquidation: it accomplishes the same objective without involving the federal bankruptcy system.

ABCs: Benefits and Drawbacks

An ABC differs from a traditional Chapter 7 bankruptcy in several, important respects. There are several practical advantages that the ABC process offers over a Chapter 7 filing.

First, in an ABC, the Assignee is typically a professional insolvency practitioner selected by the Assignor entity itself. In contrast, the debtor's bankruptcy estate is administered by a Chapter 7 trustee in a Chapter 7 liquidation. Where the Assignee is hand-selected by the distressed entity, Chapter 7 trustees are appointed by the United States Trustee to serve on a panel in each judicial district. Once appointed, the panel of Chapter 7 trustees are assigned Chapter 7 cases via a blind rotation process. In this respect, an ABC proceeding provides a distressed company with more certainty and control over the wind-down process.

Additionally, the administrative costs are also substantially lower in an ABC, because the ABC process eliminates court fees, U.S. Trustee fees, and other overhead associated with a formally supervised proceeding. This allows the Assignee to move directly to liquidating assets without the procedural delays of a federal bankruptcy case. While a Chapter 7 bankruptcy provides for an orderly liquidation of a debtor's assets, the process of appointing a trustee, liquidating assets, and making distributions can take many months or even years and is governed by detailed statutory requirements. On the other hand, ABCs are governed by state law and, depending on the state, the ABC process may not be as developed, making ABCs an unreliable alternative to bankruptcies in some cases.

Further, an Assignee has broad latitude to structure the sale process in the manner best suited to realizing value from the Assignor's assets. That said, ABCs generally do not provide the same protections provided by the Bankruptcy Code. Unlike bankruptcies, ABCs do not provide an Assignee with the ability to sell free and clear of liens, nor can an Assignee freely assign executory contracts and leases without the consent of the counterparty, and there is no automatic stay to prevent secured creditors from foreclosing on their collateral if they do not support the ABC.

ABCs have been viewed as an option for middle-market distressed companies that are too complex for a bare workout but cannot handle the time and expense required for bankruptcy. However, ABCs have been underutilized due to the inconsistent state laws that limit the efficiency and reliability of the ABC process.

The Uniform Act

Most states that have codified some version of the ABC process have done so through relatively bare and inconsistent statutory frameworks. Due to the various, contradictory state systems for ABCs, this valuable restructuring system has been largely unused, in favor of the consistency provided by the Bankruptcy Code.

In 2022, the Uniform Law Commission launched a study analyzing the feasibility of a uniform act to establish guidelines for ABCs. This study culminated in the Uniform Act, which provides a comprehensive modernization of the ABC framework and clarifies the common-law concept of ABCs as an out-of-court complement to judicial processes such as receiverships and bankruptcy.

The Uniform Act pursues three primary goals. First, it reduces state-to-state variation by establishing a consistent procedural baseline that simplifies multi-state wind-downs. Second, it codifies modern ABC practice. While ABC practice is limited, there have been decades of ABC administrations and practitioners filling in statutory gaps by drawing on the Bankruptcy Code. The Uniform Act gives these informal practices a proper statutory foundation. Lastly, the Uniform Act preserves the speed and flexibility that make ABCs attractive in the first place, adding rigor and consistency without importing the procedural barriers of a federal bankruptcy.

Changes to Delaware's ABC Act

Delaware's prior ABC Act consisted of seven broad operative sections, with the primary focus on establishing the basic fiduciary infrastructure of the assignment relationship. These provisions aimed to ensure that the Assignee is accountable and that creditors have a basic level of visibility into the administration of the estate. Among other things, Delaware's prior ABC Act required the trustee to render an account of the trusteeship at least once every year until the assignment was closed and provided that the Assignee may be removed "for cause."

The Uniform Act builds upon Delaware's prior act and further clarifies the duties, liabilities, and protections of the parties involved.

For example, the Uniform Act establishes which entities and individuals are eligible to be Assignors and Assignees. *See* §§ 7303A, 7304A. Specifically, Assignees are limited to those who are not a creditor, affiliate, or insider of an Assignor and who otherwise do not have (1) a material financial interest in the outcome of the assignment, (2) a claim against the assets of the Assignor, or (3) an equity interest in the Assignor (other than a noncontrolling interest in a publicly traded company). *See* § 7304A(a).

The Uniform Act also outlines the duties, liabilities and protections of the Assignor and assigning, including restrictions on disclaimer of such duties by agreement. *See* §§ 7308A, 7309A. Key duties of the Assignor include (i) a duty to preserve and turnover all assigned assets; (ii) provide the Assignee with information reasonably necessary to administer the assignment; (iii) sign records necessary to transfer assigned assets; and (iv) provide assistance to the Assignee as required under the parties' assignment agreement. *See* § 7308A. Likewise, the Uniform Act provides that an Assignee has a fiduciary duty to the assignment estate for the benefit of creditors: (i) of loyalty; (ii) to use reasonable care to maximize distributions; and (iii) to wind up the assignment in a manner compatible with the best interests of the assignment estate and creditors. *See*

§ 7309A(a)(1)-(3). To carry out its duties, the Assignee is also granted the powers necessary to perform its duties (unless the assignment specifies otherwise), including, among other things, (i) operating the Assignor's existing business; (ii) incur secured or unsecured debt; (iii) assert a right, claim, cause of action or defense that the Assignor could have asserted that relates to the assignment estate; (iv) engage professionals; and (v) sell, lease, or otherwise dispose of, an asset of the assignment estate. *See* § 7310A.

Notably, Delaware's adoption of the Uniform Act included state specific additions. For example, the Delaware version of the Uniform Act requires Assignees to file a petition with the Delaware Court of Chancery within 14 days of the assignment. However, the Uniform Act leaves open the possibility that the ABC process may largely unfold outside of court. Assignees are provided with the option, but not a requirement, to seek court approval of key issues such as sale of assets. *See* § 7321A. Assignees also have the option, but not the requirement, to seek approval of bidding procedures, any new debt incurred by the Assignee, and estimation of claims. *See id.*

Additionally, the Delaware Act specifically requires that Assignees provide notice of the assignment not only to creditors but also specifically holders of "disputed, contingent, or unliquidated claims," as well as employees and contract counterparties. *See* § 7307A.(a).

Delaware's new Uniform Act also eliminates the requirement that the Assignee must conduct two appraisals of the estate or post bond.

Practical Implications

The Uniform Act represents a significant step forward for ABC practice: improving the utility of ABCs to provide distressed entities with an additional, dependable option. The Uniform Act aims to make the ABC process more reliable, predictable, and accessible to the companies and creditors who need it.

Because the Uniform Act is still a fairly new model statute - with Delaware being the sixth state to adopt it - there is still much to learn about how courts will implement and interpret the statute's provisions in practice. However, there is speculation that the Uniform Act will continue to receive favor across more states and provide an attractive alternative to distressed businesses looking for a low-cost, efficient wind-up option.

Benesch will continue to monitor developments as the Uniform Act is implemented and stands ready to advise clients navigating ABCs and other restructuring alternatives.