

CYBERSECURITY LAW & STRATEGY

Delaware Enacts Uniform Assignment for the Benefit of Creditors Act with Minor Modifications

Delaware recently became the sixth state to enact the Uniform Act, with minor modifications (the Delaware Act). Part One of this article included background regarding assignments for the benefit of creditors, including historical shortcomings that the Uniform Act is intended to address. Part Two discusses the Uniform and Delaware Acts in more detail, including the uniformity, clarity, flexibility, and efficiency provided by the Uniform Act, and the specific refinements incorporated into the Delaware Act.

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JULY 31, 2026

Part Two of a Two-Part Article

Delaware recently became the sixth state to enact the Uniform Law Commission's (ULC) Uniform Assignment for the Benefit of Creditors Act (Uniform Act), with minor modifications (the Delaware Act). This two-part article describes the innovations, certainty and paradigm provided by the Uniform Act and Delaware's revisions to the Uniform Act. Part One included background regarding assignments for the benefit of creditors, including historical shortcomings that the Uniform Act is intended to address. Part Two discusses the Uniform and Delaware Acts in more detail, including the uniformity, clarity, flexibility, and efficiency provided by the Uniform Act, and the specific refinements incorporated into the Delaware Act. Given that the majority of business entities are formed under Delaware Law, Delaware's enactment will be welcome news to practitioners. Specifically,



because the Uniform Act allows entities to commence an ABC in their state of incorporation, it will provide all Delaware entities the ability to access the Uniform Act's paradigm.

The Uniform Act and the Delaware Act

As described in Part One of this article, the Uniform Act is "intended to provide greater clarity, consistency and uniformity to the assignment process across the fifty states, in the hope that

assignment will, where appropriate, become a robust tool for debtors throughout the country.” Uniform Act, *supra*, at 2 (Prefatory Note).

The Uniform Act is a significant improvement over the previous ABC landscape. The act increases uniformity, promotes clarity, maintains and increases flexibility, and makes the ABC process more efficient. The Delaware Act adds additional elements which further improve the ABC process in what is regarded as a key state for all aspects of business law, including insolvency.

Uniformity

As set forth above, the ABC process has historically varied significantly from state to state, with states adopting different legal frameworks and requiring varying levels of court involvement. Commentators have observed that the Uniform Act will offer “higher certainty and predictability to creditors and counterparties compared to the existing hodgepodge of state law ABC processes.” Emil P. Khatchatourian and Joseph S. Harper, “Modernizing ABCs with the Uniform Assignment for Benefit of Creditors Act,” 41 Rev. of Banking & Financial Services 167, 172 (2025). Accordingly, the Uniform Act will “provide clarity to the process, improve access to ABCs, reduce their transaction costs, promote comity, and reduce the incentive to forum shop.” *Id.* at 169.

Clarity

The Uniform Act provides clarity in areas that were ambiguous under previous statutes or common law schemes. Among other things, the Uniform Act clarifies: 1) where assignors may commence ABC proceedings; 2) the powers of the assignee; and 3) the powers of the court. The Uniform Act also borrows certain concepts heavily from the Bankruptcy Code, which provides additional clarity for practitioners and parties who are often familiar with the Bankruptcy Code and the cases interpreting it.

The Uniform Act clarifies what assignors are eligible to commence ABC proceedings in a given jurisdiction. Critically, the Uniform Act makes clear that an entity and its subsidiaries may all commence ABCs in the assignor-parent entity’s state of incorporation. Uniform Act, *supra*, at §3. (The Official Comment to the Uniform Act clarifies that an ABC cannot be commenced solely based on the state of incorporation of the *assignee*; it is the *assignor’s* or its parent’s state of incorporation that matters. See, Uniform Act, *supra*, §3 (Official Comment).) This resolves an open question in Delaware and other states and makes clear that if an assignor is a Delaware corporation, limited liability company, or other entity, the assignor and all of its subsidiaries may conduct assignments in Delaware. This is an especially important development for Delaware, which is the home of the majority of large businesses and over 2.1 million business entities. See, Delaware Division of Corporations, Annual Report Statistics.

The Uniform Act also clarifies the powers of the Assignee, which expressly include: operating an existing business, obtaining post-assignment financing, engaging professionals, and using and selling assets. 10 Del. C. §7310A. While assignees undertook certain of these actions previously, they were doing so without specific statutory authority (at least in Delaware) and with exceedingly sparse common law. The Uniform Act makes clear that these actions are permitted. The Uniform Act also goes further by implementing a mechanism for the court to approve certain actions undertaken by assignees, but only if the assignee or a creditor asks the court to do so. This includes key actions such as asset sales, which courts previously questioned their authority to approve. See, 10 Del. C. §7321A. The Delaware Act adapts the standard provisions of the Uniform Act to further provide that the court may approve bidding procedures and post-assignment financing, among

other things, if the assignee or a creditor asks it to do so. *Id.*

The Uniform Act further promotes clarity by mirroring certain provisions of the Bankruptcy Code. For example, the following portions of the Uniform Act are based on or similar to Bankruptcy Code provisions: 1) the disinterestedness requirements for retained professionals (see, 10 Del. C. § 7304A, mirroring 11 U.S.C. § 327 and related definitions); 2) claim priority provisions (see, 10 Del. C. § 7315A, mirroring 11 U.S.C. § 507(a)), (3) claim objection provisions (see, 10 Del. C. § 7313A, mirroring 11 U.S.C. § 502 and Fed R. Bankr. P. 3001-02); and 4) many definitions (see, e.g., 10 Del. C. § 7302(1), mirroring 11 U.S.C. § 101(2)). (Importantly, the borrowed concepts do not include court filings, schedules and statements, which would bog ABCs down with extra tasks, fees and costs.) This will make the Uniform Act easier to understand and apply for parties in interest who are more familiar with the Bankruptcy Code. These developments are expected to resolve the uncertainty that previously made companies and practitioners wary of ABCs.

Flexibility

Insolvent entities come in a variety of shapes and sizes. The Uniform Act addresses the different needs assignors may have in a number of ways. Perhaps most notable is its flexible approach to Court involvement. Under the Delaware version of the act, assignees are required to file a petition with the Court of Chancery within 14 days of their general assignment. See, 10 Del. C. § 7321A(a)(1). This opens a court case, so that if and when the assignee or a creditor needs relief from the Court, its jurisdiction already will have been invoked, and a Vice Chancellor or Magistrate will have been assigned.

It appears likely that many such cases might be assigned to newly sworn in Magistrate in Chancery Timothy J. Fox, a former trial attorney

with the office of the United States Trustee (which focuses on bankruptcy cases). In the press release announcing Magistrate Fox's appointment, Chancellor Kathaleen St. J. McCormick stated that Magistrate Fox's "experience in insolvency proceedings brings a helpful skillset to the court and will enhance the court's ability to handle ... petitions for the assignment for the benefit of creditors." See, Press Release, "Delaware Administrative Office of the Courts, The Honorable Timothy J. Fox Jr. Joins the Court of Chancery as a Magistrate in Chancery" (Apr. 27, 2026).

Critically, while an assignee may seek court approval of the actions described above, the assignee is not required to do so. See, 10 Del. C. § 7321A(b). Accordingly, the assignee and other parties may choose when court orders are desirable. For example, when the assignee needs to sell assets of modest value fairly quickly, it may elect not to seek court approval of such sale. When it wishes to sell more significant assets and a buyer requests the certainty of a court order, perhaps because it wants a finding that the process was fair and the bid was for reasonably equivalent value (to avoid later fraudulent transfer litigation), the assignee may request approval from the court. In this way, the Uniform Act preserves and enhances the flexibility that makes ABCs attractive, providing options of both the quick and streamlined sale or a mechanism for court approval when desirable.

Efficiency

In addition to promoting efficiency through uniformity and flexibility in court involvement, the Uniform Act promotes efficiency by removing the archaic procedural requirements of the 1875 Delaware statute. For example, the Uniform Act has no requirement to appoint appraisers to assess the value of the assignor's assets. It also removes the requirement for the assignee to post a bond. This eliminates the costs to assignment

estates of appraiser fees and, bonding costs, as well as the attorneys' fees and costs associated with preparing and filing associated Court documents. The removal of the appraisal and bonding requirements does not mean creditors will be unprotected. Because the assignee owes fiduciary duties to the estate and its creditors, the interests of creditors will be protected, and creditors can pursue claims against the assignee for breach of fiduciary duty even in the absence of a bond. See, Delaware Act, Synopsys ("An ABC . . . provides assurance to creditors by imposing fiduciary duties on the assignee"); Jonathan Friedland and Laura Coordes, "Brought to you by the Makers of the UCC: The Uniform Assignment for Benefit of Creditors Act," *The National Law Review* (Oct. 22, 2025) ("The Uniform ABC Act clearly establishes the assignee as a fiduciary to the assignment estate for the benefit of creditors.")

Accordingly, the Uniform Act is expected to be more cost-effective than many old ABC systems.

Significance of the Delaware Act

Collectively, the uniformity, clarity, flexibility and efficiency of the Uniform Act are expected to make ABCs a more attractive option for insolvent entities. Delaware was among the first states to adopt the Uniform Act. Now that the act is in place, all Delaware entities and their subsidiaries may take advantage of these improvements.

As described above, the Delaware Act includes a few variations from the Uniform Act that make the Delaware Act especially appealing to assignors. These include, among other things: 1) opening a case in the Court of Chancery upon the commencement of the ABC so the court is available

should the parties request court approval of certain actions; and 2) authorizing the court to approve bidding procedures and post-assignment financing, as well as claims estimation. These adaptations are intended to provide assignors and other parties with the ability to obtain similar relief to that often requested in bankruptcy cases, further solidifying ABCs as an attractive alternative to bankruptcy.

Another factor that makes Delaware an attractive venue for ABCs is the Court of Chancery, which is known as one of the nation's leading business courts. Moreover, the recent appointment of Magistrate Fox adds an insolvency expert to the court who is well suited to take on the court's ABC docket.

Now that the Uniform Act has been enacted in Delaware, the majority of business entities and their subsidiaries may take advantage of the act's innovations.

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