

Your Customer Just Assigned: A Trade Creditor's Guide to the New Delaware ABC Act

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Abstract

Imagine this scenario: One morning, your credit team flags an alert: a key customer, organized in Delaware and owing you \$400,000, has executed an assignment for the benefit of creditors. There is inventory sitting in warehouses across three states and an open purchase order. What just happened, what do you do, how much of that receivable will you ever see, and when are you likely to see it?

On June 11, 2026, Delaware Governor Matt Meyer signed SB 267 into law, making Delaware the sixth state to adopt the Uniform Assignment for Benefit of Creditors Act.¹ Because more than 60 percent of publicly traded U.S. companies are organized in Delaware, this law has outsized practical impact for trade creditors nationwide. If you extend credit to any Delaware-organized entity (which you likely do) you will need to understand how this statute works in order to maximize your potential recovery.

What Is an ABC, and Why the Need for a New Statute?

An assignment for the benefit of creditors is a voluntary, company-initiated, state-law liquidation. The distressed company (the “**Assignor**”) transfers all of its assignable assets to an independent fiduciary (the “**Assignee**”), who collects, liquidates, and sometimes temporarily operates the business before distributing proceeds to creditors under a defined priority scheme. ABCs have long been viewed as cheaper, faster, and more flexible than Chapter 11 bankruptcy or a creditor-initiated receivership.

Under the old ABC regime, the primary issue was inconsistency. ABC laws varied dramatically from state to state. Illinois and California relied heavily on common law, while Delaware operated under a statute first enacted in 1875 that imposed a rigid, in-court process. Delaware’s historical regime was so cumbersome for would-be Assignors and Assignees that the more nebulous California regime was almost universally favored by debtors.

The Uniform Law Commission set out to change that dynamic under a proposed model law. On October 20, 2025, the ULC approved the Uniform Assignment for Benefit of Creditors Act. Alabama, Arizona, Iowa, Nebraska, and Utah adopted the Act before Delaware. The Act has also been introduced in the state legislatures of Colorado, Oklahoma, and West Virginia as of the time of this writing. In Delaware, the new Act replaces the outdated procedures with a streamlined, predictable framework while preserving flexibility and allowing, but not mandating, routine court supervision.

The End of the Black Box

A persistent criticism of non-bankruptcy liquidations has been the “black box” problem: creditors hand over their claims and hope for the best, with limited visibility into how assets are managed or proceeds distributed. The new Delaware Act addresses this issue head-on, primarily through three structural reforms that matter most to trade creditors.

¹ SB 267, An Act To Amend Title 10 And Title 30 Of The Delaware Code Relating To The Uniform Assignment For Benefit Of Creditors Act, signed by Gov. Matt Meyer, June 11, 2026; codified at 10 Del. C. §§ 7301A–7324A (the “**Act**”).

A Mandatory Distribution Waterfall

Under the old regime, the assignment agreement itself could set payment priorities, which sometimes meant that the parties who negotiated the deal controlled who got paid first. The new Act imposes a mandatory distribution waterfall. The table below shows the six priority tiers and where general unsecured trade claims fall.

Priority Tier	Description
1	Protected secured creditors: paid from collateral up to the value of the security interest, less the assignee's reasonable preservation/disposition expenses incurred with the creditor's consent or acquiescence.
2	Costs of administration: assignee and professional fees, post-assignment taxes, rent, personal property lease payments, and wind-up expenses.
3	Claims entitled to priority under federal law (including federal government claims).
4	Employee wage, salary, and commission claims earned within 180 days before the earlier of the effective date or cessation of business, subject to a statutory cap.
5.1	Unsecured claims with priority under other law (e.g., state and county taxes).
5.2	General unsecured claims (<i>trade creditors are here</i>).
6	Residue/surplus: allowed late-filed claims first, then any remaining surplus per the assignment agreement or other applicable law.

For most trade creditors, the critical takeaway is that general unsecured claims sit at Tier 5.2. Claims of equal priority share pro rata if assets are insufficient. Interim distributions are also permitted, subject to reserves for future expenses and disputed claims.

Defined Fiduciary Duties

The assignee now owes express, statutory fiduciary duties to the assignment estate for the benefit of creditors: loyalty, good faith management, reasonable care to maximize distributions, and winding up in the best interests of the estate and creditors. These core duties cannot be disclaimed or contractually narrowed to the point of non-existence.

True Independence

The Assignee must not be a creditor, affiliate, or insider of the Assignor, nor an affiliate or insider of any creditor.² While secured lender input on Assignee selection remains typical, that input is now constrained by the independence criteria. The result is a process that, at least on paper, is designed to serve all creditors rather than just the secured lender that negotiated the deal.

The First 30/90 Days

Speed matters in an ABC. Once the assignment agreement is signed, events move quickly, and the statute imposes hard deadlines that define the creditor's window of action.

Notice within 30 days. Unless a creditor waives notice, the Assignee must send notification to each known creditor within a reasonable time not to exceed 30 days after the effective date.³ The notification must include the Assignee's contact information, instructions for submitting a proof of claim, and the bar date.

Bar date no earlier than 90 days. The single bar date may not be set earlier than 90 days after the effective date. After the bar date passes, a creditor that failed to timely file its claim may receive nothing unless assets remain after all timely claims are satisfied.

14-day objection window. Recent Court of Chancery practice provides further structure. Standard case management orders entered shortly after the Assignee's petition is filed with the Court of Chancery typically establish notice and motion procedures, including a minimum 14-day objection period for parties in interest, and require periodic estate reporting.

² "Affiliate" primarily turns on direct or indirect ownership or control of 20 percent or more of outstanding voting interests. See 10 Del. C. § 7302A(1).

³ "Known creditors" includes holders of disputed, contingent, or unliquidated claims; employees within 90 days of the assignment; and contract counterparties. See 10 Del. C. §§ 7302A(9), (11).

FIRST 30 DAYS CHECKLIST FOR CREDIT MANAGERS

- ☐ Confirm the effective date of the assignment agreement.
- ☐ Identify the assignee and its contact information.
- ☐ Assemble all documentation: invoices, contracts, purchase orders, proof of delivery, lien filings, and consignment agreements, to the extent applicable.
- ☐ Calculate the total outstanding balance, including any disputed amounts, interest, or other fees.
- ☐ Determine whether you hold a security interest, consignment right, or reclamation claim, and confirm perfection.
- ☐ Identify assets of the assignor in your possession or subject to your control (setoff, consigned goods, deposits).
- ☐ Calendar the bar date and set an internal deadline at least 14 days before it.
- ☐ Prepare your proof of claim with supporting records and submit by the bar date using the assignee's prescribed method.
- ☐ Monitor for Chancery case management orders and note any objection deadlines.

The Fine Print on Filing a Claim

Filing a proof of claim under the new Act is not just a formality. It carries real benefits and real consequences that every credit manager should weigh carefully.

The benefit. A conforming proof of claim constitutes prima facie evidence of the validity and amount of the claim. That shifts the initial burden such that the Assignee must challenge your claim rather than requiring you to prove every aspect from scratch.

The tradeoffs. Submitting a proof of claim also constitutes consent to the jurisdiction of the Court of Chancery and assigns to the Assignee any right the creditor would have had to bring a voidable transaction action (such as a fraudulent transfer claim). The avoidance power becomes exclusive to the Assignee.

In practical terms, if you believe the Assignor(s) transferred assets at less than fair value or paid a favored creditor ahead of you, you lose the ability to pursue those claims yourself once you file a claim as the Assignee steps into your shoes. Any recoveries go to the estate, not to individual creditors.

Practical advice. The proof of claim must state the creditor's contact information and claim amount, describe the nature of the claim, identify any collateral, be signed under penalty of

perjury, include supporting records, and be submitted by the bar date. Treat the filing with the same care you would bring to a bankruptcy proof of claim.

Who Is the Assignee, and Can You Push Back?

The Assignee is typically a turnaround professional, accountant, or lawyer. The Assignor selects the Assignee, but the independence tests are rigorous: no creditor, affiliate, insider, equity holder (other than a holder of a noncontrolling interest in a publicly traded company), or anyone with a material financial interest in the outcome beyond fees may serve. Once appointed, the Assignee must maintain a separate deposit account for assignment funds, examine the validity and priority of claims, and provide periodic summaries of assets, liabilities, and expenses (typically on a quarterly basis). A final accounting is required on completion, and creditors may request the claims list after the bar date.

The right to push back. A creditor may ask the Court of Chancery to remove the Assignee for cause, including fraud, dishonesty, incompetence, or gross mismanagement. The court may also act on its own initiative. As the Court of Chancery has noted, because many ABC proceedings are handled *ex parte* with little to no creditor challenges, counsel for the Assignee has a heightened obligation to provide information to the court.

Multistate Customers

Mid-market and larger companies commonly hold assets in multiple states, and under the old patchwork of state laws a creditor could face duplicative proceedings and inconsistent rulings. The new Act addresses this through interstate recognition. Specifically, assignments made under another state's law must be recognized and enforced if the result would be "substantially similar" under that state's ABC law.⁴ Courts may appoint ancillary Assignees to obtain, control, or turn over assets located in another state, and the Delaware Court of Chancery may communicate directly with courts in other states overseeing affiliate assignment proceedings.

For example, if an ABC is underway in State X and the Assignor holds assets in State Y, a decision in State X affecting the sale of State Y assets controls unless State Y's law provides a significantly dissimilar result. For trade creditors, this means less inter-state litigation risk when a customer's footprint crosses state lines.

⁴ 10 Del. C. § 7320A.

Delaware-Specific Wrinkles

While Delaware adopted the Uniform Act, it added several state-specific provisions that credit professionals should be aware of:

Mandatory Court of Chancery filing. The Assignee must file a petition with the Court of Chancery within 14 days of entering into the assignment agreement. Acceptance of the assignment constitutes consent to the court's jurisdiction.

Court-approved sale procedures. Delaware expressly authorizes the court to approve auction or sale procedures for asset dispositions, which matters because it has become routine to use a Delaware ABC to sell substantially all assets.

Enhanced creditor notice. Delaware specifically requires notice to holders of disputed, contingent, or unliquidated claims, plus employees and contract counterparties, going beyond the Uniform Act's requirement to notify only "each creditor known to the assignee."

Other Delaware-specific provisions include a rebuttable presumption that notice complying with court rules was received; the exclusion of banks and insurers as assignors; a minimum six-month reporting interval; and broader Assignee liability limitations (except for bad faith or reckless indifference).

What the Act Does Not Do

The new Delaware ABC Act does not provide an automatic stay. Filing does not halt lawsuits, foreclosures, or collection actions the way a bankruptcy petition does. For a company facing aggressive litigation, that is a significant gap.

The Act provides no cramdown mechanism and is not suited to companies that need to resolve capital structure disputes over creditor objections or that face mass-tort exposure.

The Act does not require creditor consent, and a company may use the process even if no distribution to unsecured creditors is likely. The Act also eliminated the bond, surety, and appraisal requirements that existed under prior Delaware law.

Practical Takeaways for Credit Departments

ABCs are expected to keep rising in popularity as the costs of bankruptcy and other alternatives continue to climb. Professionals who previously hesitated to recommend an ABC because of unfamiliarity or statutory inconsistency can now treat it as a reliable, well-defined tool.

For credit departments, the action items are clear. Update your customer-distress playbooks to include a Delaware ABC track. Note the key dates: 30 days for notice, 90 days minimum for the bar date, 14 days for objections under the standard Court of Chancery case management orders. And treat a Delaware ABC as an ordinary course outcome rather than an exotic one. The new Act brings structure, transparency, and predictability to a process that creditors have long viewed with suspicion.

About the Authors

Christopher Ward represents companies facing stress and distress, guiding them through financial restructurings, litigation, business divorces, fiduciary investigations, and asset sales with a business-minded, client-driven approach. He has over twenty-five years of experience working with clients in corporate bankruptcy and restructurings, bet-the-company litigation, and distressed asset sales—both in Delaware and nationally.

Michael DiPietro counsels clients on corporate restructuring, distressed asset sales and other insolvency matters, both in and out of court. Michael represents distressed businesses, acquirers of distressed businesses, and primary lender constituencies in Chapter 11 cases, Article 9 foreclosure sales, “friendly” foreclosures, and assignments for the benefit of creditors. During law school, Michael served as legal extern to the Honorable Richard A. Lloret, U.S. District Court for the Eastern District of Pennsylvania through Temple University’s Federal Judicial Clerkship Honors Program.