

Bankruptcy & Restructuring Department

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Delaware Becomes Sixth State To Adopt the Uniform Assignment for Benefit of Creditors Act: What It Means for Distressed Businesses

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The Uniform Law Commission (ULC) approved the Uniform Assignment for Benefit of Creditors Act (Uniform ABC Act) on October 20, 2025. Christopher A. Ward, Office Managing Partner, Wilmington, and a Partner of Lowenstein Sandler's Bankruptcy & Restructuring Department, was an observer of the ULC process.

On June 11, 2026, Delaware Gov. Matt Meyer signed into law SB267: An Act To Amend Title 10 And Title 30 Of The Delaware Code Relating To The Uniform Assignment For Benefit Of Creditors Act (Delaware ABC Act). Delaware becomes the sixth state to enact the Uniform ABC Act, marking a significant modernization of one of the oldest state law restructuring tools available to financially distressed businesses. Because so many U.S. companies are organized under Delaware law, Delaware's adoption is likely to have outsized practical impact on distressed company workouts nationwide.

Background: The ABC as a Bankruptcy Alternative

An assignment for the benefit of creditors (ABC) is a voluntary, company-initiated, state law liquidation procedure in which a financially distressed debtor (the assignor) transfers all its assignable assets to an independent fiduciary (the assignee), who liquidates those assets and distributes the proceeds to creditors pursuant to a priority scheme. ABCs are viewed as a cheaper, faster, and more flexible alternative to a federal bankruptcy case or a creditor-initiated state receivership. Historically, however, ABC law has varied dramatically from state to state. Until now, Delaware had operated under a statute that was enacted in 1875.

What Changes Under the Uniform ABC Act

The Uniform ABC Act is designed to displace common law and outdated statutory ABC procedures with a streamlined, predictable framework while preserving flexibility and permitting, but not mandating, court involvement. The key features of the Uniform ABC Act are highlighted below and the revisions specific to the Delaware ABC Act follow.

Clear jurisdictional anchors. The Uniform ABC Act applies to assignors whose principal place of business is in the enacting state; whose internal affairs are governed by that state's law, i.e., entities formed in Delaware; or certain controlled affiliates of such entities.

Independent, qualified assignee. The assignee must not be a creditor, an insider, or an affiliate of the assignor; must not hold a material financial interest in the outcome beyond agreed-upon fees; and must not hold equity in the assignor, which is subject to a narrow carveout. This independence is foundational to creditor confidence and cooperation on cash collateral, sales, and continued trade.

Defined duties. The assignor must turn over assets; provide verified lists of all assets—including intellectual property and relevant insurance—employees, and creditors; and designate a representative to assist the assignee. The assignee owes fiduciary duties of loyalty, good faith, and reasonable care to the assignment estate to maximize distributions and to wind up the estate in the best interests of creditors.

Broad statutory powers, including avoidance rights. Unless limited by the assignment agreement, the assignee may operate the business, incur secured or unsecured debt, hire professionals, sell encumbered or unencumbered assets, settle claims, and prosecute or defend litigation. Notably, the assignee may exercise creditor-style avoidance powers, subject to the federal safe harbors for swaps, repurchase agreements, and other qualified financial contracts.

Structured claims process. The assignee must establish a single proof-of-claim bar date between 90 and 210 days after the effective date of the assignment agreement. A compliant proof of claim is prima facie evidence of validity and, importantly, constitutes consent to the court’s jurisdiction and an assignment to the assignee of the creditor’s voidable transaction rights.

Clear distribution waterfall. Distributions follow a defined priority scheme: protected secured creditors, paid from their collateral, less reasonable preservation/disposition expenses; administrative costs, including assignee and professional fees, post-assignment taxes, rent, and wind-up expenses; federal priority claims, including 31 U.S.C. § 3713; employee wage and commission claims earned within 180 days, capped by the Bankruptcy Code priority cap or other applicable non-bankruptcy law; priority unsecured claims; general unsecured claims pro rata; and finally, late-filed claims and any surplus per the assignment agreement.

Protection of good faith transferees. A good faith purchaser from the assignee takes ownership free of the assignee’s lien and subordinate liens, even if the assignee fails to comply with procedural requirements—a result conceptually like Uniform Commercial Code Article 9 dispositions.

Interstate recognition and ancillary administration. ABCs commenced in another enacting state must be recognized if the result on a given issue would be “substantially similar,” and a Delaware court may appoint an ancillary assignee to administer Delaware-situs assets in an out-of-state ABC.

Delaware-Specific Distinctions From the Uniform ABC Act

Mandatory Court of Chancery filing. Delaware requires the assignee to file a petition with the Court of Chancery within **14 days** of entering into an assignment agreement.

Court of Chancery rulemaking and notice presumption. Delaware grants the Court of Chancery authority to adopt rules to administer the Delaware ABC Act and creates a rebuttable presumption that notice provided in compliance with court rules was received. Neither provision exists in the Uniform ABC Act.

Exclusion of banks and insurers. Delaware expressly prohibits banks and insurers from serving as assignors. The Uniform ABC Act contains no such exclusion.

Proof-of-claim bar date. Delaware sets a floor of **90 days** with no statutory ceiling for the claims bar date.

Periodic reporting schedule. Delaware delegates the timing of creditor reporting to the Court of Chancery’s rules or orders, while the Uniform ABC Act fixes the reporting interval at least every six months.

Enhanced creditor notification. Delaware’s notification provision specifically requires notice to holders of **disputed, contingent, or unliquidated claims** and employees and contract counterparties within 90 days of the assignment. The Uniform ABC Act requires notice only to “each creditor known to the assignee” without this level of specificity.

Choice-of-law provision. Delaware adds a provision stating that an assignment agreement selecting Delaware law shall be governed by Delaware law in accordance with its terms.

Court-to-court communication. Delaware expressly authorizes the Court of Chancery to communicate directly with courts in other states overseeing affiliate assignment proceedings. The Uniform ABC Act addresses this concept only in its comments.

Broader assignee liability limitation. Delaware’s variability-by-agreement provision allows the assignment agreement to limit the assignee’s liability “including to creditors or for derivative claims” except for an act or omission committed in bad faith or with reckless indifference to the purposes of the assignment or the interests of the creditors of the assignment estate. The Uniform ABC Act does not include this additional language.

Explicit sale procedures authority. Delaware adds “auction or sale procedures in connection with a contemplated asset disposition” to the types of orders the court may issue, giving explicit statutory authority for court-approved sale processes. The Uniform ABC Act’s corresponding sale provision is significantly narrower.

Transfer tax exemption. Delaware directly amends its realty transfer tax statute to exempt conveyances made under the Uniform ABC Act.

Interpretive authority of Uniform ABC Act comments. Delaware’s synopsis states that the comments to the Uniform ABC Act may be deemed “persuasive authority,” but it modifies the comment to Section 2 to replace references to “counterparty” consent with broader language covering “any person whose consent is required.”

Practical Impact on Distressed Delaware Businesses

For Delaware-organized companies and businesses with significant Delaware operations or other nexus to Delaware, enactment of the Delaware ABC Act is a considerable upgrade. Delaware’s historical ABC regime was often viewed as cumbersome relative to ABC practice in jurisdictions such as California, and in the past Mr. Ward may have referred to the Delaware ABC practice as the “Wild West of bankruptcy law.” The Delaware ABC Act changes the game and largely removes the requirement of routine court supervision while preserving access to the highly regarded Delaware courts for disputed matters, instructions, sale approval orders, and assignee removal.

That structure will make ABCs a more attractive option for small to midmarket distressed Delaware companies that lack the liquidity to fund a Chapter 11 case, do not require the broad protections of the automatic stay, and are not facing mass tort liabilities or other highly contentious capital structure disputes that demand the availability of cramdown mechanisms or other potentially favorable but costly provisions of the Bankruptcy Code. The defined duties, fiduciary independence requirements, and statutory distribution waterfall should also reduce the “black box” criticism that has long attached to out-of-court liquidations and increase the willingness of secured lenders, customers, and trade vendors to cooperate with the process.

Equally important, because Delaware is the state of incorporation for a substantial share of U.S. operating companies, its adoption—joining Alabama, Arizona, Iowa, Nebraska, and Utah—materially advances the prospects for nationwide uniformity. Distressed enterprises with multistate footprints stand to benefit most; the act’s interstate recognition and ancillary assignee mechanisms are designed to eliminate the jurisdictional gymnastics, duplicative proceedings, and litigation risk that have historically plagued multistate ABCs.

Considerations and Limitations

Despite its advantages, neither the Uniform ABC Act nor the Delaware ABC Act is a substitute for bankruptcy in every scenario. Neither provides an automatic stay or is well suited to companies facing immediate, broad-based litigation pressure or mass tort exposure. Likewise, a purchaser seeking a free and clear order can still find that only via a bankruptcy sale. Secured creditor cooperation, particularly on the use of cash collateral and consensual sales, will in most cases remain essential to a successful ABC under either act. In addition, assignees and their counsel should be mindful that both acts preserve state voidable transactions law and other applicable creditor remedies and do not displace federal tax, Employee Retirement Income Security Act, or other regulatory requirements.

For now, the passage of the Delaware ABC Act significantly changes the regime in Delaware. Given its long-standing national practice and presence in Delaware, Lowenstein's Bankruptcy & Restructuring Department is well positioned to advise distressed borrowers and liquidity-constrained companies and other parties-in-interest regarding the Uniform ABC Act and the Delaware ABC Act.

Contacts

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