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## MODERNIZING ABCs WITH THE UNIFORM ASSIGNMENT FOR BENEFIT OF CREDITORS ACT

*This article examines the evolving landscape of Assignments for the Benefit of Creditors as a state-law alternative to federal bankruptcy proceedings. It explores the increasing appeal of ABCs for distressed businesses seeking a faster, more flexible, and less stigmatized liquidation process. In light of the Uniform Law Commission's July 2025 approval of the Uniform Assignment for Benefit of Creditors Act ("ABC Act"), this article provides a comprehensive overview of the ABC process, compares its advantages and limitations relative to bankruptcy, and analyzes the ABC Act's key features — including fiduciary duties, claims procedures, and limited court involvement. The authors assess the anticipated impact of the ABC Act on state practices, highlighting its potential to harmonize disparate legal frameworks, expand access for multi-state debtors, and enhance predictability for creditors. Ultimately, the article argues that the ABC Act offers a modernized, business-friendly restructuring tool that may reshape the future of non-bankruptcy liquidations across the United States.*

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Assignments for the Benefit of Creditors ("ABCs") are state-law governed alternatives to federal bankruptcy relief, designed to facilitate the orderly liquidation of a distressed business's assets and the distribution of proceeds to creditors. Unlike bankruptcy, which is governed by federal law (title 11 of the United States Code, 11 U.S.C. sections 101-1532), ABCs are creatures of common law or state statutes, depending on the jurisdiction.

ABCs have become increasingly appealing to distressed companies seeking a quicker, less expensive, and often less public process to wind down operations and liquidate assets. While ABCs share similarities with bankruptcy — such as the involvement of a fiduciary to liquidate assets and distribute proceeds — the process is typically more flexible, with fewer formalities and less court oversight.

In July 2025, the Uniform Law Commission ("ULC") approved the final draft of its Uniform Assignment for

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Benefit of Creditors Act (“ABC Act”).<sup>1</sup> This uniform legislation provides states with a framework to modernize and streamline their assignment statutes and codify aspects of common law. This article offers: (1) a brief description of the ABC process; (2) a comparison of the relative advantages and disadvantages of ABCs and federal bankruptcy proceedings; (3) an overview of the ABC Act; and (4) analysis of how the ABC Act may impact ABC practice if adopted by states.

## THE ABC PROCESS

An ABC begins when a distressed company (the “Assignor”) voluntarily transfers all of its assets to an independent third party (the “Assignee”), which liquidates the assets for the benefit of creditors. The Assignee is typically selected by the Assignor, though secured lenders may influence the choice.

Initiating documents include a lender consent agreement and an assignment agreement. If the Assignor’s assets are encumbered, lender consent is often required to transfer collateral to the Assignee. The general assignment document transfers all rights, title, and interest in the assets to the Assignee, creating an assignment estate that houses all assets received from the Assignor (the “Assignment Estate”).

The administration of the Assignment Estate includes features that are similar to a bankruptcy process, with varying degrees of court oversight, including the following:

- *Assignee as Fiduciary.* The Assignee assumes fiduciary duties akin to a bankruptcy trustee, including inventorying assets, notifying creditors, conducting sales, and distributing proceeds according to priorities specified by statute or other applicable law.
- *Notice and Claims Process.* Creditors receive notice of the assignment and a deadline to submit claims. Requirements vary by state, with statutory mandates

in some (e.g., New York)<sup>2</sup> and local practices or customs in others (e.g., Illinois).<sup>3</sup>

- *Asset Sales.* The Assignee liquidates assets to maximize value. In “prepackaged ABCs,” going-concern sales may occur shortly after assignment, based on pre-negotiated sale documents, with the Assignee being involved prior to the assignment taking place. Sales can be conducted through auctions or other private or public methods.
- *Distribution of Proceeds.* Secured creditors are paid first from collateral proceeds, with remaining funds distributed pro rata to unsecured creditors.

## ABCS VS. BANKRUPTCY PROCEEDINGS

ABCs offer several potential advantages over formal bankruptcy proceedings, including the following:

- *Lower Costs.* ABCs (especially non-judicial ABC processes) avoid many formalities of bankruptcy, reducing administrative expenses.
- *Speed.* ABCs can conclude more quickly than chapter 7 or chapter 11 proceedings.
- *Confidentiality.* In many states, ABCs are less public, preserving asset value and protecting reputational interests.
- *Flexibility.* Asset sales and negotiations typically occur without the need for court approval and procedures, unless required by applicable state law.
- *Reduced Stigma.* ABCs are sometimes viewed as more cooperative and business-friendly, avoiding the stigma that may attach to a bankruptcy filing.

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<sup>1</sup> Available on the Uniform Law Commission website (the “ULC Website”) (available at <https://www.uniformlaws.org/home> (last accessed Oct. 11, 2025)).

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<sup>2</sup> N.Y. Debt. & Cred. Law § 5.

<sup>3</sup> See, e.g., *Strategic Alternatives for and Against Distressed Businesses*, Vol. 1, Jonathan Friedland, et al., § 26:4 (2025) (“Friedland”) (observing that “[f]iling a notice of the assignment with a local court is not required as there is no court oversight of the assignment process in Illinois”).

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While ABCs offer many benefits, they also come with notable limitations when compared to bankruptcy proceedings:

- *No Automatic Stay.* Unlike bankruptcy proceedings, ABCs do not impose an automatic stay of creditor actions. Creditors may continue to pursue litigation, enforce judgments, or take other collection actions against the company or its assets unless separate agreements are reached.
- *Risk of Involuntary Bankruptcy.* The initiation of an ABC does not prevent creditors from filing an involuntary bankruptcy petition against the company, which could disrupt or supersede the ABC process.<sup>4</sup>
- *Contractual Rights Remain Intact.* ABCs do not invalidate contractual provisions that allow counterparties to terminate or modify contracts upon assignment or insolvency (commonly known as “ipso facto” clauses). Consents required under leases, licenses, and other agreements generally must be obtained, and anti-assignment provisions remain enforceable.
- *Limited Free and Clear Sales.* Unlike trustees conducting section 363 sales in bankruptcy, Assignees in ABCs cannot sell assets free and clear of liens and security interests unless the secured party is paid in full or consents to the release of its liens. This can complicate asset sales and reduce the perceived value to buyers.
- *Reduced Judicial Certainty.* Without the procedural safeguards and finality of bankruptcy court orders, parties may face uncertainty regarding the treatment of claims, liens, and contracts in an ABC process.

The ULC’s ABC Act aims to increase the availability and attractiveness of ABCs, enabling businesses and their restructuring advisors to select the restructuring tool that is most appropriate for the distressed situation.

## CREATION OF THE ABC ACT AND ITS KEY FEATURES

The ULC is a non-profit association of state commissions on uniform laws from each state, the

District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.<sup>5</sup> Its purpose is to “promote uniformity in the law among the several States on subjects as to which uniformity is desirable and practicable.”<sup>6</sup>

In 2023, a ULC study committee issued a report recommending the formation of a committee to draft the ABC Act, observing that a uniform law on ABCs would bring greater acceptance of the use of ABCs across all states.<sup>7</sup> Among other perceived benefits (discussed in greater detail below), the ULC study committee identified that a uniform law would provide clarity to the process (which is presently governed by a patchwork of statutes and common law across jurisdictions), improve access to ABCs, reduce their transaction costs, promote comity, and reduce the incentive to forum shop.<sup>8</sup>

The ULC drafting committee met regularly over the next two years and issued the approved ABC Act on July 21, 2025.<sup>9</sup> The ABC Act preserves the historical nature of ABCs while introducing uniform procedures

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<sup>5</sup> See ULC Website, “About Us” page (last accessed Oct. 11, 2025).

<sup>6</sup> Uniform Law Commission Constitution, Article 1, § 1.02 (available on ULC Website (last accessed Oct. 11, 2025)).

<sup>7</sup> *Updated Report and Recommendation*, Study Committee on Assignments for the Benefit of Creditors, February 28, 2023, p.20 (available on ULC Website (last accessed Oct. 11, 2025)). The ULC Study committee suggested that the drafting committee “consider or develop provisions that address (1) the act’s interaction with bankruptcy law and other state and federal laws; (2) choice of law rules, including whether an ABC should be treated as a security interest; (3) court involvement in the ABC process; and (4) transparency, due process, conflict of interest, and adequate notice procedures, particularly with respect to assignees.” *Id.* at p.1.

<sup>8</sup> The drafting committee determined that the Assignor’s location (e.g., state of incorporation, place of business, etc.) should form the basis for the jurisdiction of an ABC. Acknowledging forum-shopping concerns and addressing the risk of “manufacturing” an ABC jurisdiction, the drafting committee tied jurisdiction under the ABC Act to the Assignor’s location. The drafting committee specifically highlighted the criticized practice of conducting an ABC in the state where the Assignee is located, even though the Assignor lacks contacts with the state. 2024 *Annual Meeting Draft and Issues Memorandum* (the “2024 Issue Memorandum”), Drafting Committee on Assignments for the Benefit of Creditors Act, June 26, 2024 (available on ULC Website (last accessed Oct. 11, 2025)). See also *In re Vernon Hills Serv. Co.*, 2024 Del. Ch. LEXIS 102).

<sup>9</sup> Available on the ULC website (last accessed Oct. 11, 2025).

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<sup>4</sup> However, under section 305(a)(1) of the United States Bankruptcy Code, a bankruptcy court “may dismiss” a bankruptcy case or “may suspend all proceedings” if “the interests of creditors and the debtor would be better served by such dismissal or suspension.” 11 U.S.C. § 305(a)(1).

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and safeguards. Several key features of the ABC Act include the following:

### ***Clearly Defined Duties and Powers***

The ABC Act specifies eligibility criteria for Assignees. Among other limitations, Assignees may only be persons who are not creditors, affiliates, or insiders of the Assignor; not affiliates or insiders of a creditor of the Assignor; and not holders of equity interests in the Assignor, except for non-controlling interests in a public company.<sup>10</sup>

Assignees owe fiduciary duties<sup>11</sup> to the Assignment Estate, including broad duties of loyalty, care, and winding up the Assignment Estate in a manner compatible with the best interests of the Assignment Estate and its creditors,<sup>12</sup> as well as specific administrative duties relating to accounting, record keeping, and claims review, among other actions.<sup>13</sup> Assignees may be held personally liable for certain types of breaches,<sup>14</sup> though liability may be limited by indemnification provisions contained in the Assignment Agreement,<sup>15</sup> except in cases of bad faith or reckless indifference.<sup>16</sup> The ABC Act also provides for removal of an Assignee at the request of the Assignor or a creditor pursuant to a judicial proceeding.<sup>17</sup>

An Assignee is also conferred with specific default powers, which may be modified by the express terms of an Assignment Agreement.<sup>18</sup> These powers include, among others, the power to operate an existing business using assigned assets; incur secured or unsecured debt; engage professionals (including professionals previously engaged by the Assignor) to provide legal services;

collect on or sell, lease, license, or otherwise dispose of an asset of the Assignment Estate whether or not subject to a lien or other encumbrance; prosecute or defend litigation previously being prosecuted or defended by the Assignor; settle claims against the Assignment Estate; and avoid pre-assignment transfers.<sup>19</sup>

The ABC Act also prescribes duties to the Assignor, including “to take all reasonable actions necessary for the assignee to administer the assignment, the assigned assets, and the assignment estate.”<sup>20</sup>

### ***Clearly Defined Claims Management Procedure***

The ABC Act also establishes a clear procedure to administer claims against the Assignment Estate. Creditors must submit a valid proof of claim to the Assignee to be paid from the Assignment Estate. The Assignee is to provide creditors notice of the assignment within 30 days of the effective date of the Assignment Agreement,<sup>21</sup> and proofs of claim must be submitted within a specified period after such notice.<sup>22</sup> Proofs of claim must identify the amount and nature of the claim and provide supporting documentation.<sup>23</sup> The Assignee then reviews claims and can object, request additional information, or disallow claims.<sup>24</sup>

After the Assignee has received all claims and the required and requested information to substantiate them, the Assignee will create a list setting forth the amount of each creditor’s claim, whether it is secured or unsecured, and a description of the collateral.<sup>25</sup> This list of claims must then be made available to creditors upon request, subject to privacy laws, and reasonable privacy restrictions determined by the Assignee.<sup>26</sup> If a dispute over a disallowed claim cannot be resolved

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<sup>10</sup> ABC Act, § 4(a).

<sup>11</sup> The drafting committee agreed that the Assignee has a duty to optimize value for all of the Assignor’s creditors. At the same time, the drafting committee has sought to clarify that an Assignee’s duty to “maximize” value should not come at all costs; rather, the Assignee should undertake a cost-benefit analysis when exercising this duty. *2024 Issues Memorandum*, at p.3.

<sup>12</sup> ABC Act, § 9(a).

<sup>13</sup> *Id.*, § 9(b).

<sup>14</sup> *Id.*, § 17(e).

<sup>15</sup> *Id.*, § 23(c).

<sup>16</sup> *Id.*, § 17(d).

<sup>17</sup> *Id.*, § 18.

<sup>18</sup> *Id.*, § 10(b).

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*, § 8(a).

<sup>21</sup> *Id.*, § 7(a).

<sup>22</sup> Drafters of the ABC Act suggest that this period of time should be between 90 and 180 days, fixed by the state enacting this legislation in consideration of local practice, including local practice under state receivership laws. ABC Act, § 9(b)(6) and Legislative Note.

<sup>23</sup> ABC Act, § 13.

<sup>24</sup> *Id.*, §§ 10, 11, 12.

<sup>25</sup> *Id.*, § 11(e).

<sup>26</sup> *Id.*, § 11(g).

consensually, the Assignee may commence a judicial proceeding to disallow the claim.<sup>27</sup>

### **Limited Court Involvement and Additional Provisions**

The ABC Act preserves the typical non-judicial nature of most ABC statutes but allows court involvement in limited circumstances, such as claim disputes, Assignee removal, and declaratory actions.<sup>28</sup> The drafting committee engaged in robust discussions regarding the topic of judicial supervision and ultimately sought to conserve judicial resources, especially in states where ABC laws do not provide for judicial oversight.<sup>29</sup>

The ABC Act also establishes rights of transferees (Section 14), distribution procedures (Section 15), comity principles (Section 20), and a protocol for the appointment of ancillary Assignees who are serving as Assignees in other states (Section 22). It promotes recognition and enforcement of other states' assignment laws when outcomes on any given issue would be substantially similar.<sup>30</sup>

## **ANTICIPATED IMPACTS OF THE ABC ACT**

As the individual ULC commissioners now work toward enactment of the ABC Act in their respective jurisdictions, potential benefits may include the following:

### **Providing Clearer Structure and Process**

ABCs are presently governed by a patchwork of state statutes and common law that vary considerably from one state to the next. In some states, including Florida, New Jersey, and New York, ABCs are governed by

statutes and involve detailed court proceedings,<sup>31</sup> while in other states, including Illinois, ABCs are predominantly a product of common law.<sup>32</sup> In certain states, including Arkansas, Washington, and Wisconsin, they are functionally no different from receiverships.<sup>33</sup> And in still other states, such as Connecticut, ABCs lack a defined process and are functionally unavailable.<sup>34</sup> The ABC Act allows states to draw upon shared principles that seek to provide baseline protections and preserve process. Even if certain states do not expressly adopt the ABC Act, the model law is likely to provide a touchstone to practitioners that are seeking to resolve ambiguities where their jurisdictions are governed by less well-defined processes.

### **Providing Greater Access**

ABCs are often unavailable to debtors with assets located in multiple states, due to inconsistencies in ABC laws in different jurisdictions. To the extent states adopt the ABC Act, an increasing uniformity in ABC law and process across jurisdictions would make ABCs more accessible to multi-state debtors and more predictable for creditors. It would also reduce transaction costs by limiting resource-intensive choice-of-law disputes. Further, in states with significant barriers to the use of ABCs, either because they lack defined ABC processes (e.g., Connecticut)<sup>35</sup> or because their processes are governed by outdated statutes (e.g., Alabama),<sup>36</sup> adoption of the ABC Act would remove those barriers

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<sup>27</sup> *Id.*, § 12(b). A legislative note provided in the ABC Act suggests that “a state may wish to specify a business court, or a court with a business docket, if one is *available* . . . or use the more general language of ‘a court of competent jurisdiction in this state.’” *Id.*, § 18, Legislative Note.

<sup>28</sup> *Id.*, § 21.

<sup>29</sup> 2024 *Issues Memorandum*, at p.5 (“In a Legislative Note following Section 18, the draft also currently provides that states with existing judicial procedures may wish to incorporate those procedures into the act; however, committee members have expressed concerns with this idea, on the grounds that it may ultimately undermine the act’s simplicity and workability if states import too many additional requirements.”).

<sup>30</sup> *Id.*, § 20(a).

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<sup>31</sup> See, e.g., Fla. Stat. §§ 727.101, *et seq.*; N.J. Stat. §§ 2A:19-1, *et seq.*; N.Y. Debt. & Cred. Law §§ 2, *et seq.* (McKinney).

<sup>32</sup> See, e.g., *In re Stainless Sales Corp.*, 583 B.R. 717, 722 (Bankr. N.D. Ill. 2018) (“In Illinois, an assignment for the benefit of creditors is a voluntary insolvency proceeding that functions similarly to bankruptcy, however, it is a product of state common law and is an alternative to bankruptcy.”).

<sup>33</sup> See, e.g., Ark. Code §§ 16-117-401, *et seq.* (receivership statute subchapter on ABCs); Wash. Rev. Code §§ 7.60.025, *et seq.* (statute providing for ABCs as a special type of receivership); Wis. Stat. §§ 128.001, *et seq.* (statute governing both ABCs and receiverships, with the principal difference being that an ABC is debtor-initiated and a receivership is creditor-initiated (*compare* § 128.02 *with* § 128.08)).

<sup>34</sup> *Friedland*, § 45:1.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*, § 20:1 (observing that the Alabama statutes on ABCs “date back to 1886 and . . . because this statute’s antiquated procedures have not been modernized and because there is a general lack of familiarity with the process, ABCs in Alabama have not been widely employed for many years”).

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and could drive higher use of ABCs as an efficient and appealing non-bankruptcy alternative.

### ***Providing Better Coordination with Other Laws***

The ABC Act distinguishes ABCs from receiverships, ensuring both procedures — each with its own advantages and disadvantages as a restructuring tool — remain available to distressed companies as alternatives to bankruptcy and reducing the incentive to forum shop in an effort to seek out one restructuring tool rather than the other.<sup>37</sup> The ABC Act may also foster comity between jurisdictions, because creditors will be treated the same in all states that have adopted the ABC Act.

## **CONCLUSION**

ABCs are valuable alternatives to bankruptcy for distressed companies, offering a streamlined, flexible, and efficient alternative to bankruptcy for distressed

companies. The adoption of the ABC Act by states may enhance the appeal and effectiveness of ABCs, offering a streamlined, flexible, and efficient option for liquidation and creditor recovery. This uniformity would particularly benefit repeat players such as banks, asset-based lenders, and venture capital and private equity firms — especially those in the middle market space — offering higher certainty and predictability to creditors and counterparties compared to the existing hodgepodge of state law ABC processes.

The ABC Act's modernized procedures and limited court involvement ensure that the process remains business-friendly and less stigmatic than bankruptcy. As states move towards adopting the ABC Act, stakeholders, including restructuring advisors and legal practitioners, should familiarize themselves with the new framework to better navigate the evolving landscape of distressed asset liquidation and maximize the benefits of ABCs as viable alternatives to bankruptcy proceedings. ■

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<sup>37</sup> 2024 *Issues Memorandum*, at p.3 (observing that “[a]s a debtor-commenced process, an ABC can sometimes exhibit differences from a receivership, which can be more of a creditor-led process” and noting that “in a receivership, the creditor generally recommends the receiver, who is appointed by the court, whereas in an ABC, the debtor, often with the assent of its secured creditor, often chooses the assignee”). The drafting committee was mindful that “in recent years several states have effectively blurred the line between ABCs and receiverships” and believed that “[a] uniform ABC act would clarify the line between ABCs and receiverships (as well as other remedies) . . . and may encourage states to clarify the line between ABCs and receiverships to recognize the distinct benefits and drawbacks to both procedures.” *Id.* at p.11.