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FOR DISCUSSION ONLY

Assignment for Benefit of Creditors Act

Uniform Law Commission

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Assignment for Benefit of Creditors Act

The committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this act consists of the following individuals:

Edwin E. Smith	Massachusetts, *Chair*
Thomas J. Buiteweg	Michigan
Thomas A. Edmonds	Virginia
Kyle Evans Gay	Delaware
Patrick A. Guida	Rhode Island
William H. Henning	Alabama
John T. McGarvey	Kentucky
Gail Russell	Kentucky
Donald L. Swanson	Nebraska
Patrick A. Guida	Rhode Island, *Division Chair*
Timothy J. Berg	Arizona, *President*

Other Participants

Laura Coordes	Arizona, *Reporter*
Patricia A. Redmond	Florida, *American Bar Association Advisor*
Thomas J. Buiteweg	Michigan, *Style Liaison*
Eric Weeks	Illinois, *Executive Director*

Copies of this act may be obtained from:

Uniform Law Commission
111 N. Wabash Ave., Suite 1010
Chicago, IL 60602
(312) 450-6600
www.uniformlaws.org

Assignment for Benefit of Creditors Act

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Section 1. Title

This [act] may be cited as the Assignment for Benefit of Creditors Act.

Section 2. Definitions

In this [act]:

(1) "Affiliate" means:

(A) a person that directly or indirectly owns, controls, or holds, with power to vote, 20 percent or more of the outstanding voting interests of another person, other than a person that holds the interests:

(i) in a fiduciary or agency capacity without sole discretionary power to vote the interests; or

(ii) solely to secure a debt, if the person has not in fact exercised the power to vote;

(B) a person with 20 percent or more of the person's outstanding voting interests directly or indirectly owned, controlled, or held, with power to vote, by another person;

(C) a person whose business is operated under a lease or operating agreement by another person, or a person substantially all of whose assets are controlled by the other person; or

(D) a person that operates the business or substantially all the assets of another person under a lease or operating agreement.

(2) "Asset" means a legal or equitable interest in property of an assignor, regardless of the person holding or in possession, custody, or control of the property or where the property is located. The term does not include:

(A) property restricted from assignment if the restriction is effective under other law, unless the other law permits assignment with the consent of another person and the person consents to the assignment in a manner permitted by the other law; or

(B) if the assignor is an individual, property to the extent it is exempt from legal process under other law.

(3) "Assigned asset" means an asset transferred under an assignment.

(4) "Assignee" means a person to which assets are transferred under an assignment.

(5) "Assignment" means a transfer by a person of all the person's assets to another person for the benefit of the transferor's creditors.

(6) "Assignment agreement" means an agreement that transfers or provides for a transfer of all the assignor's assets.

(7) "Assignment estate" means the assets held at a given time by the assignee under an assignment.

(8) "Assignor" means a person whose assets are transferred under an assignment.

(9) "Claim" means a creditor's right to payment or to an equitable remedy, regardless of whether the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(10) "Cohabitant" means each of two individuals not married to each other who live together as a couple after each has reached the age of majority or been emancipated.

(11) "Creditor" means a person that has a claim against an assigned asset or the assignor.

(12) "Electronic" means relating to technology having electrical, digital,

magnetic, wireless, optical, electromagnetic, or similar capabilities.

(13) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(14) "Insider" includes:

(A) in the case of an individual:

(i) a relative of the individual;

(ii) a partnership or limited liability company in which the individual is a general partner or managing member; or

(iii) an organization of which the individual is a director, officer, or person in control;

(B) in the case of an organization:

(i) a director, officer, manager, or other person in control of or with controlling equity interest in the organization;

(ii) a partnership or limited liability company in which the organization is a general partner or managing member;

(iii) a general partner or managing member of the organization; or

(iv) a relative of a general partner, managing member, director, officer, manager, or other person in control of or with controlling equity interest in the organization;

(C) an affiliate; or

(D) a managing agent of an organization.

(15) "Lien" means an interest in an asset that secures payment or performance of an obligation.

(16) "Organization" means a person other than an individual.

(17) "Perfected lien" means:

(A) a lien on real property other than fixtures on which a bona fide purchaser of the property cannot acquire an interest superior to the interest of the lienholder; or

(B) a lien on fixtures or property other than real property on which a creditor cannot acquire a lien by attachment, levy, or the like that is superior to the interest of the lienholder.

(18) "Person" means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity. The term includes a protected series, however denominated, of an entity if the protected series is established under law that limits, or limits if conditions specified under law are satisfied, the ability of a creditor of the entity or of any other protected series of the entity to satisfy a claim from assets of the protected series.

(19) "Proof of claim" means a record a creditor submits to an assignee to evidence the creditor's claim.

(20) "Record" means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

(21) "Relative" means an individual related by affinity or consanguinity within the third degree, or a cohabitant.

(22) "Security interest" means a lien created by an agreement.

(23) "Send", in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time it would have been received if properly sent under subparagraph (A).

(24) "Sign" means, with present intent to authenticate or adopt a record:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol, sound, or process.

(25) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States.

(26) "Transfer" means disposing of or parting with an asset or with an interest in an asset, regardless of whether the disposition or parting is indirect, conditional, or involuntary.

Legislative Note: *A state should enact the definition of "person" that includes a "protected series" regardless of whether the state has enacted the Uniform Protected Series Act or otherwise recognizes a protected series under its law. Inclusion of the sentence does not require the enacting state to recognize a limit on liability of a protected series organized under the law of another state or a limit on liability of the entity that established the protected series. It clarifies the status of a protected series as a "person" under the choice-of-law and substantive law rules of the enacting state's law.*

Comment

The term "asset" has a limited definition. If an asset is not assignable by its terms or under other law, that asset is not part of the assignment estate unless either the counterparty assents or other law overrides the anti-assignment provision. This act does not preclude the assignee from negotiating with a counterparty to obtain its consent for the assignment of an asset.

For the purpose of defining the term "perfected lien" in paragraph (17), the term "property other than real property" includes intangible assets. The phrase "attachment, levy, or the like" in clause (B) of the paragraph is derived from the definition of "lien creditor" in UCC §

9-102(a)(52). The words "and the like" contemplate that a state may provide for other means for a judgment or other involuntary lien to be perfected.

The term "transfer" in paragraph (26) includes a security interest under Article 9 of the Uniform Commercial Code.

Section 3. Scope

This [act] applies to an assignment made by an assignor that is:

(1) an organization whose principal place of business is in this state;

(2) an organization whose internal affairs are governed by the law of this state;

(3) an individual whose principal residence is in this state;

(4) an organization wholly owned, directly or indirectly, by an assignor that satisfies paragraph (1), (2), or (3); or

(5) an organization that:

(A) is partly owned, directly or indirectly, and controlled by an assignor that satisfies paragraph (1), (2), or (3);

(B) has no place of business or employees; and

(C) relies on the services it receives from an assignor that satisfies paragraph (1), (2), or (3).

Comment

This act creates a statutory assignment that displaces common law assignment procedures in the adopting state.

The assignee's jurisdiction of organization or principal place of business is not of itself a basis for jurisdiction for an assignment under this act. *See* In re Vernon Hills Serv. Co., 2024 Del. Ch. C.A. No. 2021-0783 (Mar. 28, 2024) (finding lack of subject matter jurisdiction over an assignment commenced in Delaware Chancery Court where the sole connection with the State of Delaware was that the assignee was a Delaware entity).

Section 4. Requirements for Assignee and Assignment Agreement

(a) An assignee must be a person that:

(1) is not a creditor, affiliate, or insider of the assignor;

(2) is not an affiliate or insider of a creditor of the assignor;

(3) does not have a claim against the assignment estate, other than a claim for fees and expenses to be paid under the assignment agreement;

(4) does not have a material financial interest in the outcome of the assignment, other than fees and expenses to be paid under the assignment agreement;

(5) does not hold an equity interest in the assignor other than a noncontrolling interest in a publicly traded company; and

(6) is not an affiliate of a person that fails to satisfy paragraph (1), (2), (3), (4), or (5).

(b) A person that satisfies subsection (a) is not precluded from being an assignee merely because the person performed work for the assignor before the assignment.

(c) An assignment agreement must be in a record signed by the assignee and the assignor. The record must:

(1) state the name and address of the assignor and of the assignee;

(2) transfer or provide for a transfer of all the assignor's assets;

(3) describe the assigned assets in sufficient detail to identify the assets;

(4) provide for the distribution of the assignment estate;

(5) describe the fees to be charged by the assignee in connection with the assignment, including the basis on which they are to be calculated; and

(6) include a representation by the assignor, under penalty of perjury, that the assignor is assigning all the assignor's assets.

(d) If an assignee relies in good faith on the assignor's representation made under subsection (c)(6), all the assignor's assets are deemed to be assigned, even if the representation is inaccurate.

Comment

The term "equity interest" in subsection (a)(5) refers to an interest in an organization, not a beneficial interest in a trust.

Prior to becoming an assignee, a person may waive any claim to payment from the assignor. Subsection (b) is intended to clarify that a person remains eligible to be an assignee even if the person contracted with, or performed services for, the assignor prior to the assignment, as long as the person is paid for this work, or payment is provided for, prior to the assignment.

A lawyer may act as an assignee. A lawyer acting as an assignee should ensure that funds received as a result of the assignment or any subsequent asset sales are deposited in a bank account separate from the lawyer's client trust accounts. The bank account should be solely for funds received as a result of the assignment and any subsequent collections or asset sales. It should not be part of any operating account or trust account for client funds.

The assignor must assign all assets to the assignee. If the assignor needs funds for the purpose of winding up the business, the assignor may arrange to have the funds paid in advance of the assignment, or the assignor and assignee may agree in the assignment agreement that the assignee may pay the funds from the assigned assets. If the assignor needs to compensate remaining officers or directors, any compensation or payment should be addressed before the assignment is made through a transition services, consulting, or similar agreement that provides for both the services and for payment for the services from the assignment estate. The assignee may also retain former employees of the assignor as independent contractors. In any of these cases, any payments should be only for those services necessary to wind up the business or, if applicable, to operate the business until the assets may be sold. *See* Section 10(b)(1).

The assignment agreement should describe the assignee's fees in sufficient detail so that either the amount of the fees, or the method of computing the amount, is reasonably determinable. A mere reference to a side fee agreement is not sufficient to comply with subsection (c)(5), unless the fee agreement is attached to the assignment agreement.

The assignment agreement should be notarized if other law requires notarization to transfer an asset or if the assignment includes a power of attorney.

Section 5. Effect of Assignment; When Assignment Effective

(a) An assignee obtains the rights, title, and interests of the assignor in the assigned assets.

(b) Unless the assignor is an individual, an assignee obtains the rights, title, and interests of the assignor in assets acquired after the assignment.

(c) Except as provided in Section 10(b)(12), an assignee takes each assigned asset subject to an existing interest in the asset held by another person.

(d) An assignee holds the assigned assets subject to the assignee's duties under Section 9.

(e) An assignment is subject to other law under which the assignment may be fraudulent or otherwise voidable.

(f) An assignment becomes effective on the effective date identified in the assignment agreement. If no effective date is identified in the agreement, the effective date of the assignment agreement is the date the agreement is signed by the last party to the agreement that is required to sign it.

Comment

The transfer of assets from an assignor to an assignee is not intended to be treated as a taxable sale.

This act does not require that a creditor consent to an assignment. As a practical matter, however, the consent of a secured party, mortgagee or lienholder will in most cases be necessary for the use of cash collateral or to avoid immediate foreclosure of the lien.

Subsection (e) makes the assignment subject to state voidable transactions law; this act does not preempt that law. The assignee's obligation to apply the proceeds of liquidating the assignor's assets to the claims of creditors, subject to the priority of such claims, should constitute an exchange for fair or reasonably equivalent value even though the assignor is not discharged from the claims upon assignment.

Proceeds of the assigned assets are included in the assignment estate.

The scope of the assignee's fiduciary duty is delineated in Section 9(a).

Section 6-103(3)(f) of the Uniform Commercial Code exempts an assignment from the scope of Article 6's bulk transfer laws if otherwise applicable.

Although the act does not provide explicit rules for doing so, it is anticipated that the assignor and assignee would negotiate and prepare a budget prior to the assignment to ensure that there are sufficient funds available to accomplish the administration of the assignment.

Section 6. Filing, Recording, and Title Transfer Requirements

(a) In this section, "financing statement" has the meaning in [cite to Uniform Commercial Code Section 9-102(a)(39)].

(b) An assignee of personal property may file a financing statement in the filing office of:

(1) this state established for purposes of [cite to Uniform Commercial Code Section 9-501(a)(2)];

(2) any other state in which:

(A) the assignor would be located under [cite to Uniform Commercial Code Section 9-307] if the assignor were a debtor for the purpose of that section; or

(B) an asset of the assignment estate may be located.

(c) A financing statement filed under subsection (b) must indicate that it is filed in connection with an assignment.

(d) When filing a financing statement under subsection (b), the assignee must:

(1) attach a copy of the assignment agreement to each financing statement filed; or

(2) state on the financing statement that a copy of the assignment agreement is available on request to the assignee.

(e) A financing statement filed under subsection (b) may:

(1) designate the assignor as "debtor" and the assignee as "secured party"; or

(2) use the terms "assignor" and "assignee" or words of similar import.

(f) The filing of a financing statement under subsection (b) is not itself a factor in determining whether an asset secures an obligation. The rights of the assignee under the assignment are not affected if the assignee does not file a financing statement under subsection (b).

(g) An assignee of real property shall record the assignment of the property or notice of the assignment under the real estate recording law of the jurisdiction where the property is located.

(h) An assignee shall comply with other law governing the transfer of title to an asset.

(i) By signing an assignment agreement, the assignor authorizes the assignee to take the actions required by this section.

Comment

This act does not change the status of the assignee as a lien creditor under UCC § 9-102(52)(B), or, to the extent that the assignment constitutes a security interest, change the automatic perfection of the security interest under UCC § 9-309(12) for an assignee or any subsequent transferee.

This act recognizes that the assignee may wish to file a financing statement in the interests of transparency to indicate to searchers of Uniform Commercial Code filing offices that the assignment has occurred. Because Article 9 of the Uniform Commercial Code does not otherwise authorize the filing of a financing statement in these circumstances, the assignee could be subject to penalties for filing an unauthorized financing statement. See UCC § 9-625. This act gives the assignee the necessary authorization to file a financing statement if the assignee chooses to do so. However, the assignee's failure to file a financing statement in accordance with this section does not invalidate the assignment, nor does the assignee's filing of a financing statement perfect any lien.

This section does not displace any rules under other law, including the Uniform Commercial Code and a state's real property recording act. All real property transfers in an assignment must satisfy all the formalities applicable to real property transfers in the state where the real property is located. The filings and recordings made under this section are for transparency purposes only.

For purposes of the filing in subsection (b), the assignee should check "non-UCC filing" in Box 6b on the initial financing statement form, as found in UCC § 9-521(a).

For purposes of complying with subsection (c), the assignee may indicate that the financing statement is filed in connection with an assignment in the collateral description box on the initial financing statement form, as found in UCC § 9-521(a). A financing statement sufficiently indicates that it is filed in connection with an assignment if the financing statement so states and provides an indication that it covers all assets or all personal property of the assignor.

An assignee's duty to comply with the requirements of title transfer laws includes compliance with certificate of title laws, stock transfer laws, and intellectual property laws.

Section 7. Notification to Creditors

(a) Unless a creditor waives the right to notification, an assignee shall send a notification of the assignment to each creditor known to the assignee within a reasonable time not to exceed [30] days after the effective date of the assignment agreement.

(b) The notification must:

(1) be in a record signed by the assignee;

(2) include the assignee's name, address, and other contact information reasonably necessary to communicate with the assignee;

(3) provide reasonable instructions for submitting a proof of claim using the method established by the assignee under Section 9(b)(5); and

(4) identify the date established under Section 9(b)(6) by which each creditor whose claim has not been agreed to by the assignee must submit a proof of claim to the assignee.

(c) An assignee shall use reasonable means to provide the information in subsection (b) to unknown creditors, including by any means the assignor regularly used to:

(1) provide information to the assignor's creditors; or

(2) communicate information about the assignor, other than advertising, to the public.

Comment

The effective date of the assignment agreement referenced in subsection (a) is addressed in Section 5(f).

This act does not preclude the assignee from providing notification of the assignment to the assignor's equityholders, or to other parties, such as governmental authorities or licensing issuers that may have an interest in the assignment. The assignee should determine whether to send such notification in accordance with its duties and the requirements of other law, including Section 9(b)(9).

Significant transactions or transactions outside the ordinary course of the assignor's business may in some circumstances need to be completed quickly to maximize recoveries. If so, notice earlier than 30 days may be reasonably required under subsection (a). The assignee should determine a reasonable period of time for notification of such transactions in accordance with its fiduciary duties.

In the assignment agreement, the assignor may provide the assignee with a description of the type(s) of electronic media the assignor uses for purposes of the assignee's compliance with subsection (c).

The assignee may decide on the content of the notification described in subsection (c) using its reasonable judgment in compliance with any statutory duty.

Section 8. Duties of Assignor

(a) Subject to Section 23, an assignor has a duty to take all reasonable actions necessary for the assignee to administer the assignment, the assigned assets, and the assignment estate.

(b) In furtherance of the duty under subsection (a), the assignor shall:

(1) preserve and turn over to the assignee the assigned assets in the assignor's possession or control;

(2) identify and provide to the assignee information reasonably necessary to administer the assignment and the assigned assets;

(3) sign, and have notarized if necessary under other law, any record reasonably necessary to transfer an assigned asset;

(4) provide the assignee with the name, address and other contact information reasonably necessary to communicate with an appropriate person willing and able to act as a representative on behalf of the assignor as may be reasonably necessary to administer the assignment, the assigned assets, and the assignment estate;

(5) if the assignment includes real property or titled personal property, cooperate with the assignee in taking actions under Section 6;

(6) on or as soon as practicable after the effective date of the assignment agreement, provide the assignee a list of all assets, a list of all the assignor's employees including those whose employment is terminated in connection with the assignment, and a list of all the assignor's known creditors;

(7) verify under penalty of perjury the accuracy of the lists required under paragraph (6);

(8) with respect to property restricted from assignment, cooperate with the assignee to obtain consent from a person whose consent to assign the property is necessary under other law; and

(9) provide assistance to the assignee as required by the assignment agreement.

(c) The duties in this section also apply to a representative identified in subsection (b)(4).

Comment

It is anticipated that the assignment agreement will set forth specific information concerning assignor assistance. The parties can expand, narrow, or otherwise modify by agreement the standards measuring the fulfillment of these duties to the extent set forth in Section 23.

As indicated in subsection (b)(4), the assignor may designate an individual to act on the assignor's behalf and to remain available to the assignee during the assignment. As referenced in Section 17(c), that individual has the same exculpation as provided to directors and officers under state entity law. However, some unincorporated organization statutes permit fiduciary duties to be limited or eliminated. To the extent that the relevant organizational documents of the assignor effectively limit or eliminate an individual's fiduciary duties, this act does not create fiduciary duties for the individual.

For purposes of subsection (b)(4), an "appropriate" person is anyone who may be necessary to assist the assignee in carrying out its responsibilities related to the assignment. If the assignor has not already purchased insurance relating to the person's post-assignment acts before the assignment is made, the assignee may be able to purchase the insurance under the assignee's powers in Section 10.

If a contract is assigned to the assignee, and the contract counterparty is a contingent creditor entitled to notice, the contract counterparty should be included on the list of the assignor's known creditors provided in subsection (b)(6).

The effective date of the assignment agreement referenced in subsection (b)(6) is addressed in Section 5(f).

Section 9. Duties of Assignee

(a) Subject to Section 23, an assignee has a fiduciary duty to the assignment estate for the benefit of creditors:

(1) of loyalty, including the duty to manage the assignment in good faith;

(2) to use reasonable care to maximize distributions under Section 15; and

(3) to wind up the assignment under Section 19 in a manner compatible with the best interests of the assignment estate and creditors.

(b) Without limitation on the duties under subsection (a), and subject to Section 23, the assignee shall also have a duty to:

(1) maintain a separate deposit account for funds related to the assignment;

(2) collect on or dispose of each assigned asset, unless the assignee determines it is more economically efficient to abandon the asset;

(3) prepare and retain appropriate business records, including a record of each receipt, disbursement, and collection on or disposition of an assigned asset;

(4) pay administrative expenses of the assignment estate, to the extent the assignment estate has sufficient unencumbered assets;

(5) establish a method that is reasonably designed to permit a creditor to submit a proof of claim;

(6) establish the date by which each creditor whose claim has not been agreed to by the assignee must submit a proof of claim to the assignee. The date must be [insert a number

in the range of 90 to 180] days after the date provided in Section 7(a).

(7) unless a claim would receive minimal or no distribution without regard to its validity or asserted priority, examine the validity and priority of claims against the assignment estate and, if necessary, consult with the assignor's representative designated under Section 8(b)(4), if any;

(8) at least every six months, provide to each creditor a summary of the assets, liabilities, and expenses of the assignment estate;

(9) comply with all requirements of the Internal Revenue Service and state and local taxing authorities;

(10) send a notification to each creditor of the assignee's compensation and any change in the method of determining the assignee's compensation from the method provided in the assignment agreement;

(11) send a final accounting under Section 19(a); and

(12) comply with the other requirements imposed on the assignee under this [act].

Legislative Note*: In subsection (b)(6), a state should choose a minimum number of days for a creditor to submit a proof of claim. To do so, a state may wish to consider local practice, including the practice under state receiverships.*

Comment

An assignee's fiduciary duty under this act is equivalent to the fiduciary duty of an estate representative in a bankruptcy case. The assignee's fiduciary duties are owed to the assignment estate for the benefit of its creditors.

It is anticipated that the assignment agreement will set forth specific information concerning the assignee's duties. With the exception of the assignee's duties delineated in subsection (a), the parties can expand, narrow, or otherwise modify by agreement the standards measuring the fulfillment of these duties to the extent set forth in Section 23. In addition, any relevant court may require compliance with its local rules and orders that may delete, modify, or provide additional requirements.

It is expected that the assignee will undertake a cost-benefit analysis in exercising its duties under subsection (a). The reference to maximizing distributions in paragraph (a)(2) does not require the assignee to incur unreasonable costs and expenses.

Determination of any other specific duties that constitute the assignee's fiduciary duty is left to other law. The assignee's fiduciary duty may, for example, include preserving and insuring assigned assets, obtaining liability insurance, or making a good faith effort to obtain insurance at a reasonable price. An assignee is empowered to take these actions under Section 10(b)(1) and (2). The assignee also has a fiduciary duty with respect to funds in its custody, consistent with a trustee's fiduciary obligations under the Uniform Trust Code or other applicable trust law.

The reference to a "separate deposit account" in subsection (b)(1) means an account solely for funds related to the assignment.

The act leaves to other law the process of abandonment of an asset under subsection (b)(2); however, abandoning an asset under subsection (b)(2) does not invalidate the assignment or convert the assignment into a partial assignment of assets.

To comply with its duty under subsection (b)(9), the assignee must use the appropriate IRS form, currently IRS Form 56, Notice of Fiduciary Relationship, which must be filed at the IRS office where the assignor filed its tax returns, to notify the IRS of the assignment.

Section 6-103(3)(f) of the Uniform Commercial Code exempts an assignee's disposition of assets from the scope of Article 6's bulk transfer laws if otherwise applicable.

Section 10. Powers of Assignee

(a) An assignee has the powers necessary or appropriate to perform the assignee's duties.

(b) Unless the assignment agreement expressly provides otherwise, the assignee has power to:

(1) operate an existing business that uses an assigned asset, including preservation of the asset and collection on or the sale, lease, license, or other disposition of the asset;

(2) incur secured or unsecured debt and pay expenses incidental to the exercise of the power under paragraph (1);

(3) assert a right, claim, cause of action, or defense the assignor could have asserted that relates to the assignment estate;

(4) engage a professional, including a professional previously engaged by the

assignor, to give advice, to prosecute or defend litigation, or for other purposes as the assignee considers appropriate, and pay the professional a reasonable fee for services from the assignment estate;

(5) 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;

(6) exercise a right to redeem an asset of the assignment estate that is subject to a mortgage, deed of trust, security interest, or other encumbrance;

(7) settle a matter involving a debtor of the assignor;

(8) prosecute or defend a litigation pending on the effective date of the assignment agreement in favor of or against the assignor in the manner and with the same effect as the assignor could have done if an assignment had not been made;

(9) recover an asset in the manner and with the same effect as the assignor might or could have done if an assignment had not been made;

(10) settle claims against the assignment estate;

(11) abandon an assigned asset;

(12) subject to subsection (e), avoid a transfer or the incurrence of an obligation a creditor that has filed a proof of claim could have avoided under other law if the assignment had not occurred; and

(13) invest funds, subject to applicable prudent investor standards under other law.

(c) The power under subsection (b)(12) is exclusive to the assignee with respect to a creditor that submits a proof of claim. A recovery by the assignee in the exercise of this power must be for the benefit of the assignment estate but may not exceed the amount, asset, or other value the creditor could have obtained by the avoidance.

(d) For the purpose of exercising the assignee's power under subsection (b)(12), exercising a voidable-transaction remedy, or otherwise establishing the priority of the assignee's interest, an assignee has a lien on the assignment estate and the status of:

(1) a lien creditor under [cite to Section 9-102(a)(52)(B) of the Uniform Commercial Code] as to an asset that is personal property or fixtures;

(2) a bona fide purchaser under [the recording statute of this state] as to an asset that is non-fixture real property located in this state; and

(3) a bona fide purchaser under the law of another state as to an asset that is non-fixture real property located in the other state.

(e) An assignee's power under subsection (b)(12) to avoid a transfer made before the effective date of the assignment agreement, under or in connection with a swap agreement, securities contract, commodity contract, forward contract, repurchase agreement, or master netting agreement, is limited if a trustee would not have the power to avoid the transfer under the Bankruptcy Code, 11 U.S.C. Section 101 et seq.[, as amended].

(f) An assignee shall exercise the powers under this section consistent with the assignee's fiduciary duty under Section 9(a).

Legislative Note: *It is the intent of this act to incorporate future amendments to the federal law cited in subsection (e), Section 15(e) and (f), and Section 25. A state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law should omit the phrase ", as amended". A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law also should omit the phrase.*

Comment

The exercise of the assignee's power is subject to the assignee's fiduciary duties except as permitted in this act to be modified by the terms of the assignment agreement. See Section 23.

This act takes no position on whether an assignee is authorized to commence a bankruptcy case. However, this act does not preclude such authorization, whether in the assignment agreement or elsewhere, if consistent with the assignor's constituent documents and the statute under which the assignor was formed. *See* In re N2N Commerce, Inc., 405 B.R. 34 (Bankr. D. Mass. 2009) (finding no case in which a court authorized an assignee to commence a bankruptcy case but concluding that authorization could come from assignment agreement).

Because an assignee is an Article 9 "lien creditor," the assignee's interest will ordinarily not be subject to unperfected Article 9 security interests and non-Article 9 unperfected liens. The assignee's lien secures the claims of creditors entitled to distributions from the assignment estate under Section 15.

By submitting a claim against the assignment estate, a creditor agrees not to independently pursue any voidable transaction remedies the creditor may have against any transferee of the assignor or assignee.

An assignment under this act would rarely itself be considered a voidable transaction. A voidable transaction is an act that is detrimental to creditors as a group. An assignment under this act is for the benefit of creditors as a group.

Previously, a "voidable transaction" was known as a fraudulent transfer. This act uses the term "voidable transaction" for consistency with the Uniform Voidable Transactions Act and in accordance with modern usage.

Prudent investor standards, as referenced in subsection (b)(13), have been codified in the Uniform Prudent Investor Act. The assignee may look to the Uniform Prudent Investor Act or other applicable state prudent investor standards for guidance.

An assignee has standing to bring claims of the assignor, or to defend claims against the assignor for which creditors have recourse to the assignment estate, under this section because the assignee becomes the real party in interest on the claims upon the assignment being made. Claims of the assignor are assets included in the assignment estate. Although the assignee does not generally assume liability for claims against the assignor, a claim against the assignor for which the creditor has recourse to an assigned asset risks dilution of distributions to other creditors from the assignment estate.

The effective date of the assignment agreement referenced in subsection (b)(8) and (e) is addressed in Section 5(f).

Section 11. Allowed Claim

(a) An assignee shall allow a creditor's claim if:

(1) the creditor submits a proof of claim in compliance with Section 13; and

(2) the assignee does not dispute the claim under Section 12 before final

distribution.

(b) An assignee may:

(1) allow a claim, pay a known liquidated claim, or accept a timely filed notice of claim even if the creditor does not submit a proof of claim; or

(2) allow and pay a claim evidenced by a late-filed proof of claim, if the assignee determines there is a reasonable basis for excusing the late filing.

(c) The assignee shall value any unsecured portion of an allowed claim as of the effective date of the assignment agreement.

(d) A creditor's claim is allowed if the creditor succeeds in a dispute under Section 12(b).

(e) Subject to subsection (f), after expiration of the time for submitting a proof of claim, the assignee shall create a complete list of creditors that have submitted a proof of claim in compliance with Section 13. For each creditor's claim, the list must:

(1) state the amount of the claim, if the amount is known to the assignee; and

(2) state whether the claim is secured or unsecured and, if secured, describe the collateral for the claim.

(f) If a class of creditors will receive no distribution on account of allowed claims, the assignee shall send a notice in a record to each creditor in that class that the creditor will receive no distribution instead of the list required in subsection (e).

(g) Upon request, the assignee shall provide the list created under subsection (e) to a creditor or other party with an interest in the assignment estate to the extent permitted by privacy laws and subject to any privacy safeguards the assignee determines in the assignee's business judgment are reasonably necessary.

Comment

When the assignee creates a list of creditors under subsection (e), the assignee may need to anonymize names or take other reasonable steps to comply with privacy laws.

The list of creditors in subsection (e) does not constitute an admission by the assignee that those claims are valid or allowed. The assignee may dispute the claims on the list and need not note any dispute on the list itself. The claims listed may be unliquidated.

The assignee may comply with its obligation under subsection (g) by any reasonable means, including by posting the list on a website.

The effective date of the assignment agreement referenced in subsection (c) is addressed in Section 5(f).

Section 12. Disputed and Disallowed Claims

(a) An assignee may dispute a creditor's claim before final distribution by sending notice in a record stating the nature of the assignee's dispute to the creditor.

(b) If a dispute cannot be resolved consensually, the assignee may commence a proceeding to disallow the claim under Section 21. The assignee must commence the proceeding before final distribution under Section 15. If the proceeding is not filed before final distribution, the assignee shall allow the claim under Section 11.

(c) An assignee shall create a dollar-for-dollar reserve for the estimated amount of the potential distribution on a disputed claim.

(d) Subject to subsection (b), an assignee shall disallow a claim for reimbursement or contribution of a person that is liable with the assignor on, or that has secured, the claim, to the extent:

(1) the claim against the assignment estate is disallowed;

(2) the claim for reimbursement or contribution is contingent as of the time of allowance or disallowance; or

(3) the person asserts a right of subrogation to the rights of a creditor.

(e) A claim for reimbursement or contribution of a person liable with the assignor on, or that has secured, the claim that becomes fixed after the effective date of the assignment agreement shall be determined, and shall be allowed or disallowed, subject to subsection (b), as if the claim had become fixed before the effective date of the assignment agreement.

(f) An assignee may reconsider the assignee's decision to allow or disallow a claim for cause. If a reconsidered claim is allowed under Section 11, before the assignee makes additional payments or transfers to other creditors that are equal or junior in priority under Section 15 to the reconsidered claim, the creditor with the reconsidered claim shall receive a payment or transfer in an amount proportionate in value to the payments or transfers already received by the other creditors. This subsection does not modify the assignee's right under other law to recover from a creditor an excess payment or transfer made to the creditor. If a reconsidered claim is disallowed, the assignee must comply with subsections (b), and (c).

Comment

This act takes no position on whether a dispute resolution clause in a contract between the assignor and a creditor is binding on the assignee.

The effective date of the assignment agreement referenced in subsection (e) is addressed in Section 5(f).

Because the assignee must comply with subsections (b) and (c) for a reconsidered claim that is disallowed, subsection (f) does not provide an independent cause of action by the creditor with the reconsidered claim against the assignee.

Section 13. Proof of Claim

(a) A proof of claim must:

(1) state the name, address, and other contact information reasonably necessary to communicate with the creditor;

(2) state the amount of the claim;

(3) briefly state the nature of the claim;

(4) identify any asset of the assignment estate securing the claim;

(5) be signed by the creditor on penalty of perjury;

(6) include a copy of a record, if any, on which the claim is based;

(7) be submitted using the method established under Section 9(b)(5); and

(8) be submitted by the date established by the assignee under Section 9(b)(6).

(b) A proof of claim submitted in compliance with this section is prima facie evidence of the validity and amount of the claim.

(c) The submission by a creditor of a proof of claim in compliance with this section constitutes the creditor's:

(1) consent to the jurisdiction of the court specified in Section 21; and

(2) assignment to the assignee of any right of the creditor to bring a voidable transaction action relating to the creditor's claim.

Comment

This act does not preclude the use of electronic means for filing a proof of claim.

Although a secured creditor is not exempt from the requirement of submitting a proof of claim, other law may require the secured creditor to receive the value of the property secured by the creditor's security interest, regardless of whether a proof of claim is submitted. Furthermore, Section 11(b)(1) gives the assignee discretion to waive the formal proof of claim requirement for a secured creditor in exchange for that creditor's consent to the use of cash collateral and the subordination of its lien to certain administrative expenses of the assignment.

Employees are similarly not exempt from the requirement of submitting a proof of claim. However, Section 11(b)(1) gives the assignee discretion to waive the formal proof of claim requirement or accept a less formal notification of claim, and the assignee may wish to do so in some circumstances for employee claims.

Government entities are similarly not exempt from the requirement of submitting a proof of claim. However, the assignee should be aware of governmental claims that in some circumstances could subject the assignee to personal liability under federal or other state law. This act does not address whether the bar date is a sufficient defense to a late-filed claim by a government entity.

Section 14. Rights of Transferees

(a) An assignee's disposition of assets:

(1) transfers to a transferee for value all of the assignee's rights in the assets;

(2) discharges the assignee's lien as a lien creditor and, to the extent the assignment creates a security interest in favor of the assignee, the assignee's security interest; and

(3) discharges any subordinate security interest or other lien subordinate to the assignee's lien.

(b) A transferee that acts in good faith takes free of the rights and interests described in subsection (a), even if the assignee fails to comply with this [act] or the requirements of a judicial proceeding.

(c) If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the asset subject to:

(1) the assignee's rights in the assets of the assignment estate;

(2) the assignee's lien and, if applicable, security interest; and

(3) any other security interest or other lien.

(d) Unless otherwise provided in a record, any warranty arising by operation of other law is disclaimed to the extent permitted by other law.

(e) If a subordinate security interest or other lien is discharged under this section, the assignee may file a record with the official or office responsible for maintaining an official filing, recording, registration, or certificate-of-title system covering the collateral secured by the security interest or other lien. The record must state that the security interest or other lien is discharged as a subordinate security interest or other lien in connection with a disposition under an assignment for the benefit of creditors of the debtor whose property is subject to the security interest or other lien.

Comment

If an asset is transferred by the assignee with the consent of the lienholder free of the lien, the lien attaches to the proceeds of the transfer and retains for the proceeds the priority that the lien would have had had the lien remained on the original collateral.

The provisions in this section are intended to reference similar provisions in Section 9-617 of the Uniform Commercial Code. Accordingly, as used in this section, the term "discharge" is used in the same sense as it is used in Section 9-617 of the Uniform Commercial Code.

Section 15. Distributions

(a) In this section, "protected secured creditor" means a secured creditor whose lien:

(1) is a perfected lien;

(2) cannot be avoided by the assignee under Section 10(b)(12); and

(3) is not subordinate to a lien of the assignee.

(b) Except as provided in Section 16, the assignee shall pay claims from the assignment estate allowed under Section 11 in the order of priority stated in this section.

(c) Unless otherwise agreed between the assignee and a protected secured creditor, before distributions are made under subsections (d), (e), (f), and (g), and in accordance with the priorities of creditors with liens under other law, the protected secured creditor shall receive the asset or the proceeds from the collection on or disposition of the asset to the extent of the value of the creditor's interest in the asset, less the assignee's reasonable and necessary expenses of preserving or disposing of the asset to the extent the expenses benefit the creditor and are incurred with the creditor's consent or acquiescence. The creditor has an unsecured claim under subsection (g)(2) for the amount of the claim that remains after deducting the amount or value of an asset the creditor receives under this subsection. To the extent a claim is secured by property the value of which, after the deductions provided under this subsection, is greater than the amount of the claim, the creditor may receive interest on the claim and any reasonable fees, costs, or charges provided for under the agreement or other law under which the claim arose.

(d) After the distributions under subsection (c), the assignee shall pay the necessary costs of the administration of the assignment estate. The costs include:

(1) fees and reimbursements of the expenses of the assignee and a professional employed by the assignee;

(2) post-assignment taxes incurred by the assignee;

(3) post-assignment rent incurred by the assignee in occupying premises on which the assets of the assignment estate are located or the business of the assignor is conducted; and

(4) amounts required to be paid under the assignment agreement for dissolution or other expenses of winding up the assignment under Section 19.

(e) After the distributions under subsections (c) and (d), the assignee shall pay claims under 31 U.S.C. Section 3713[, as amended] from the assignment estate.

(f) After the distributions under subsections (c), (d), and (e), the assignee shall pay claims from the assignment estate for wages, salaries, or commissions earned not later than [180] days before the earlier of the effective date of the assignment agreement or the cessation of the assignor's business. Payment shall be limited to the greater of:

(1) the amount of the claim allowed as a priority claim ahead of claims of other unsecured creditors under the Bankruptcy Code, 11 U.S.C. Section 101 et seq.[, as amended]; or

(2) the amount allowed as a priority claim ahead of claims of other unsecured creditors under applicable non-bankruptcy law.

(g) After the distributions under subsections (c), (d), (e), and (f), each creditor shall receive a distribution of the assets of the assignment estate in the following order of priority:

(1) unsecured claims entitled to priority ahead of claims of other unsecured creditors under other law; and

(2) unsecured claims not entitled to priority.

(h) If the assets available for distribution to claims with equal priority under subsection (g) are insufficient to pay the total amount of the claims with that priority, each creditor with a claim with that priority shall receive a pro rata distribution of the available assets based on the proportion the amount of the creditor's claim bears to the total amount of the claims with that priority.

(i) If the claims entitled to the distribution under subsections (c), (d), (e), (f), and (g) are paid in full, the residue shall be distributed to allowed claims evidenced by a late-filed proof of claim, other than a late-filed claim allowed by the assignee under Section 11(b)(2), and, after the allowed claims evidenced by a late-filed proof of claim have been paid in full, as provided in the assignment agreement.

(j) An assignee may make interim distributions after considering future expenses and the reserves for disputed claims established under Section 12(c).

Comment

A creditor whose lien is junior to the status of the assignee as a lien creditor or bona fide purchaser under Section 10(d) or is otherwise subject to avoidance by the assignee under Section 10(b)(12) would not be a "protected secured creditor."

The reference in subsection (c) to "reasonable and necessary expenses" refers to expenses incurred that directly benefit the protected secured creditor. If the preservation of the asset in fact conveys a direct benefit on the protected secured creditor, and if the expenses in fact are reasonable and necessary for the preservation of the collateral, the secured creditor need not explicitly consent to those expenses being incurred and paid so long as the creditor is aware of the28ncurence of the expenses and does not object to the incurrence.

The act takes no position on whether unsecured creditors of a solvent estate are entitled to post-assignment interest.

The effective date of the assignment agreement referenced in subsection (f) is addressed in Section 5(f).

Section 16. Claim Subordination

(a) A subordination agreement is enforceable under this [act] to the same extent the agreement is enforceable under other law.

(b) Subject to subsection (c), the following claims are subordinate to a claim or interest that is senior or equal in priority to a claim or interest represented by a security or other equity interest in the assignor or an affiliate of the assignor:

(1) a claim arising from rescission of a purchase or sale of the security or other equity interest; and

(2) a claim for damages arising from the purchase or sale of the security or other equity interest or for reimbursement or contribution on the claim.

(c) If the security is common stock or another common equity interest, a claim subject to subordination under subsection (b) has the same priority as common stock or another common equity interest.

Section 17. Liability

(a) An assignor is not personally liable for an act or omission by the assignee.

(b) An assignee is not personally liable for an act or omission by the assignor.

(c) If an assignor designates a representative that may act on behalf of the assignor under Section 8(b)(4), the representative is exculpated to the same extent as a person acting on behalf of the assignor under other law had there been no assignment, except for an act or omission resulting from the representative’s gross negligence or willful misconduct.

(d) A term of an assignment agreement relieving the assignee of liability is unenforceable to the extent the agreement relieves the assignee of liability for an act committed in bad faith or with reckless indifference to the purposes of the assignment or the interests of the creditors of the assignment estate.

(e) An assignee is personally liable for breach of a fiduciary duty under Section 9(a). If the assignee is liable:

(1) the assignee is personally liable to a creditor for an individualized harm to the creditor, if the harm is not shared by all creditors or a class of creditors; and

(2) the assignee is personally liable to the assignment estate for a harm shared by all creditors or a class of creditors.

(f) An assignee is not liable if, in the performance of the assignee's duties and exercise of the assignee's powers, the assignee relies in good faith on:

(1) a record of the assignor;

(2) information, an opinion, a report, or a statement presented to the assignee by the assignor's officer or employee, a committee of the assignor's board of directors, an independent director or manager of the assignor, or another representative of the assignor; or

(3) information, an opinion, a report, or a statement presented to the assignee by another person as to a matter the assignee reasonably believes is within the other person's professional or expert competence, that has been selected with reasonable care by or on behalf of the assignee.

Comment

The assignment agreement may specify details about indemnification requirements and other limitations on the assignee's liability. *See* Section 23(c).

The assignee is not liable for the claims of creditors against the assignor, even if a creditor has recourse to an assigned asset. *See* Section 10, cmt; *see* Sherwood Partners Inc. v. EOP-Marina Business Center, L.L.C., 153 Cal. App. 4th 977 (2007) (finding that an assignee was not liable for attorney's fees and costs under a tenant-assignor's lease because the assignee did not assume the tenant-assignor's obligations under the lease).

Individualized harm to a creditor is harm that is specific to rights that creditor has that are separate from the rights of all creditors.

Section 18. Assignee Removal; Successor Assignee

(a) The assignor or a creditor may request [a court of competent jurisdiction in this state] [specify the court in the enacting state] to remove the assignee, if the assignor or creditor has a reasonable belief grounds for removal exist under subsection (b).

(b) After a request under subsection (a) or on the court's initiative in an action pending before the court under Section 21, the court may remove an assignee:

(1) for cause, including the assignee's fraud, dishonesty, incompetence, gross mismanagement, or failure to comply with this [act]; or

(2) if removal of the assignee best serves the interests of the creditors.

(c) After an assignee resigns, or is removed, dies, or becomes incapacitated, a successor assignee provided for in the assignment agreement becomes the assignee, unless the successor assignee is not eligible to be an assignee under Section 4(a) or is subject to removal under subsection (b). A court shall appoint a successor assignee if:

(1) the assignment agreement does not provide for a successor assignee; or

(2) the successor assignee provided for in the assignment agreement is ineligible to be an assignee under Section 4(a) or is subject to removal under subsection (b).

(d) Subject to Section 17, an assignee that resigns, or is removed, dies, or becomes incapacitated, is discharged from the assignee's duties under this [act] when the assignee, or a representative of a deceased or incapacitated assignee:

(1) accounts for and turns over to the successor assignee all assets of the

assignment estate; and

(2) submits to creditors a report summarizing the receipts and disbursements made during the service of the assignee.

(e) Subject to an applicable privilege, a court may order an attorney, accountant, or other person that has information in a record relating to the assignment estate or the assignor's financial affairs to turn over or disclose the record to the successor assignee.

Legislative Note: *This [act] does not specify any particular court within a state to oversee assignee removal under this section, hear and resolve matters under Section 21, or appoint an ancillary assignee under Section 22. For each of these sections, a state may wish to specify a business court, or a court with a business docket, if one is available. Otherwise, a state may specify another court in the state or use the more general language of "a court of competent jurisdiction in this state."*

Comment

This act does not displace other legal or equitable remedies available under other law. If an assignee has breached its fiduciary duties under other law, the assignee may be removed or subject to litigation for breach of fiduciary duty.

"Cause" under subsection (b)(1) may also include replacement of an assignee that dies, resigns, becomes unable to perform the duties of an assignee, or is removed, or replacement of an assignee that is no longer in business. "Cause" does not include compliance with the assignment agreement or with this act. "Cause" does not include an assignee making a judgment consistent with its fiduciary duties. "Cause" may include breach of fiduciary duty and fraud.

This act does not address whether an assignee may succeed to any applicable privileges of an assignor with respect to the information referred to in subsection (e); the resolution of that issue should be determined under other law. *See* Assignment for Benefit of Creditors of Miami Perfume Junction, Inc. v. Osborne, 314 So. 3d 604 (Fla. Ct. App. 2020) (denying petition for certiorari on grounds that circuit court's decision determining that privileges passed to assignee did not depart from the essential requirements of law).

Section 19. Winding Up

(a) On completion of an assignee's duties, the assignee shall send a creditor whose claim is allowed under Section 11, and not satisfied in full, a final accounting sufficient to inform the creditor of all material aspects of the assignment, including:

(1) a description of the actions taken by the assignee under the assignment;

(2) a summary of the assets received by the assignee at the commencement of the assignment and the assets received by the assignee during the assignment;

(3) a summary of disbursements made by the assignee during the assignment for the purpose of administering the assignment estate, including the fees charged by the assignee, and payments to professionals, for rent, and for business purchases;

(4) a summary of collections and dispositions of assets by the assignee;

(5) a summary of distributions made or proposed to be made by the assignee for creditor claims;

(6) a description of additional work to be done by the assignee to complete the administration of the assignment estate and the distributions under Section 15; and

(7) other information considered reasonably necessary by the assignee.

(b) Except as otherwise provided in the final accounting or if the assignee has not fulfilled the assignee's duties under this [act], the assignee is discharged from the assignee's duties under this [act] when the assignee sends the final accounting and distributes all the assets of the assignment estate.

(c) If the final accounting describes additional work under subsection (a)(6), the assignee shall exercise the powers appropriate to complete the work.

Comment

This act does not set a time limit for completion of the assignment, in recognition of the fact that assignments vary, and setting a deadline could work against the interest of creditors in some cases. The assignee's duty to act in a manner compatible with the best interests of the assignment estate and creditors in Section 9(a)(3) is designed to require the assignee to conclude its work in a timely fashion and to address any concerns about undue delay on the part of the assignee.

Section 20. Interstate Matters

(a) Subject to subsection (b), an assignment made under the law of another state must be recognized and enforced on an issue if the result for the issue would be substantially similar to the result for the issue if the assignment had been made under this [act].

(b) If a claim for wages, salaries, or commissions or a governmental claim exists in another state, for the purpose of determining the priority of the claim under Section 15(f)(2), the assignee shall use the amount asserted or determined under the law of the other state.

(c) If an assignee determines that a creditor should receive the treatment the creditor would receive under an assignment made under the law of another state, the assignee may treat the creditor as the creditor would be treated in the other state.

Comment

This act encourages coordinated assignments of multiple assignors in the same enterprise group, even if they are not all formed under the laws of the same state or have a principal place of business in the same state. This act promotes coordination among the states and their respective courts for the benefit of each assignor's creditors; however, this act does not substantively consolidate estates. This act does not preclude joint administration, whether in a state or across states under court-to-court protocols.

Section 21. Court Action

(a) [A court of competent jurisdiction in this state] [specify the court in the enacting state] may hear and resolve a matter involving the administration of an assignment or the exercise of an assignee's powers and duties, including a request for instructions or approval or to declare rights.

(b) On request of the assignee, the court may issue an order relating to the administration of the assignment or the exercise of the assignee's powers and duties, including an order for disposition of an asset or the incurrence of an obligation.

(c) Acceptance of the assignment by the assignee constitutes the assignee's consent to the jurisdiction of the court.

Legislative Note*: With respect to subsection (a), see the Legislative Note under Section 18.*

Comment

This section contemplates that an appropriate court will be available to the extent its jurisdiction is invoked by interested persons. Such a court may hear disputes and authorize declaratory actions relating to assignments. An assignee may also go to an appropriate court for instructions or to obtain a confirmatory sale order, as provided by subsection (b). Except as provided in this section, this act does not contemplate an assignment with judicial supervision. Although this act does not create a system of routine or mandatory court supervision, it does not preclude states with judicially supervised assignments from adopting other provisions of the act, whether by statute or rules of civil procedure.

If a creditor files a claim in a court other than the court specified in this section, the court where the claim was filed may consider declining to exercise its jurisdiction under the doctrine of *forum non conveniens*.

Section 22. Ancillary Assignee

(a) Subject to other law of this state governing a person from another state serving as a fiduciary in this state, [a court of competent jurisdiction in this state] [specify the court in the enacting state] may appoint a person serving as an assignee in an assignment in another state, or the person's nominee, as an ancillary assignee relating to assigned assets located in this state or subject to the jurisdiction of a court in this state, if:

(1) the person or nominee would be eligible to serve as an assignee under Section 4; and

(2) the appointment furthers the person's possession, custody, control, or disposition of an assigned asset under the assignment in the other state.

(b) The court may issue an order that implements an order entered in another state appointing or directing an assignee or otherwise concerning an assignment in the other state.

(c) Unless the court orders otherwise, an ancillary assignee appointed under subsection (a) has the rights, powers, and duties of an assignee appointed under this [act].

(d) A person in possession, custody, or control of an assigned asset in this state, other than a creditor holding a lien or a right of setoff or recoupment relating to the asset, shall, on notification in a record by an ancillary assignee appointed under subsection (a), turn the asset over to the ancillary assignee.

Legislative Note*: With respect to subsection (a), see the Legislative Note under Section 18.*

Comment

To invoke full faith and credit or comity, a relevant court may enter an order that recites and implements any portion of this act and may retain appropriate jurisdiction to enforce the order.

A court may appoint a person as an ancillary assignee under subsection (a) even if the primary assignee has not been appointed by a court.

Section 23. Provisions Variable by Agreement

(a) Except as provided in this section and Section 10(b), the provisions of this [act] may not be varied by agreement.

(b) The duties under Sections 8(a) and 9(a) may not be disclaimed by agreement. An assignor and the assignee may determine by agreement the standards measuring the fulfillment of the duties of the assignor under Section 8 and the assignee under Section 9 if the standards are not manifestly unreasonable.

(c) The assignment agreement may limit the assignee's liability under Section 17 and may require the assignee be indemnified by the assignment estate.

(d) Except as provided under Section 7(a), whenever the [act] requires an action to be taken within a reasonable time, a time not manifestly unreasonable may be fixed by agreement.

(e) The assignment agreement may provide for duties of the assignee in addition to those in this [act].

Comment

Standards that are "manifestly unreasonable" include standards that are patently unreasonable, as well as standards that are an unreasonable means to measure the fulfillment of the assignor's or assignee's duties. If standards result in unfair dealing or a situation outside the reasonable expectations of creditors of the assignment estate as a whole, the standards may be manifestly unreasonable.

Section 24. Uniformity of Application and Construction

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among states that enact it.

Section 25. Relation to Electronic Signatures in Global and National Commerce Act

This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended], but does not modify, limit, or supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).

Section 26. Transitional Provision

This [act] applies to an assignment made on or after [the effective date of this act].

[Section 27. Severability

If a provision of this [act] or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.]

Legislative Note: *Include this section only if the state lacks a general severability statute or a decision by the highest court of the state adopting a general rule of severability.*

[Section 28. Repeals; Conforming Amendments

(a) . . .

(b) . . .]

Legislative Note: *A state should examine its statutes to determine whether conforming revisions are required by provisions of this act relating to the effect of an assignment. See Section 5. It is intended that the transfer of assets from an assignor to an assignee be treated as the equivalent of a bankruptcy plan or actions pending lien foreclosure for purposes of state transfer tax applicability. Accordingly, to the extent that state transfer tax provisions would apply, the enacting state should consider amending those provisions so that an assignment does not* *constitute a taxable transaction.*

Section 29. Effective Date

This [act] takes effect . . .