To: Committee on Scope and Program

From: Study Committee on Assignments for the Benefit of Creditors; Dale Higer, Chair, and Laura Coordes, Reporter[i]

Re: Updated Report and Recommendation

February 28, 2023

Summary:

This memorandum is the report and recommendation of the Study Committee on Assignments for the Benefit of Creditors. The Study Committee was appointed to study the need for and feasibility of a uniform act on the assignment for the benefit of creditors (ABC). A roster of the committee membership is attached as Exhibit A.

The full committee met [seven] times by video conference, and the chair and reporter conferred separately by video conference and email several additional times. The committee recommends that a drafting committee be appointed to develop a uniform law on ABCs, giving due consideration to the issues identified in this report. Specifically, a drafting committee may wish to 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.

This memo first provides background and context on ABCs and the existing patchwork of state laws and practices. The memo briefly references the Model Statute for General Assignments for the Benefit of Creditors before assessing the need for, scope of, and feasibility of a potential uniform act. The memo concludes with a recommendation that a drafting committee be appointed. This recommendation was unanimously supported by observers who took a position[ii] in the Study Committee video conferences on May 10, 2022, June 22, 2022, and August 16, 2022, and approved by Committee vote. As detailed in Exhibit A, the observers constitute a wide range of key stakeholders in this area, including ABA's Business Law Section; attorneys, consultants, and turnaround specialists advising both assignors and assignees; bankers; bankruptcy practitioners and judges; the American Law Institute; the American College of Commercial Finance Lawyers; and academics.

Introduction 2

Background on ABCs 2

Overview of State ABC Laws 5

Existing State Practice 6

Interaction With Other Laws 9

The Model Statute for General Assignments for the Benefit of Creditors 10

Whether There is a Need for a Uniform Act 10
The Scope of a Potential Act 14
Groups Interested or Involved in Participating in a Drafting Effort 18
Whether there is a reasonable probability that a uniform act will be adopted by a substantial number of states? 19
Conclusion and Recommendation 20

Introduction

An assignment for the benefit of creditors (ABC) can be an important tool to help owners of distressed businesses liquidate their assets. An ABC is a voluntary, debtor-initiated state law alternative to the federal bankruptcy process, state receiverships, and voluntary workouts. Importantly, though initiated by the debtor, an ABC is not a debtor remedy that is prejudicial to creditors. As discussed later in this report, ABCs may provide distinct benefits to creditors as well as debtors that alternatives, such as receiverships and bankruptcy, do not. However, ABC laws vary widely from one state to the next,[iii] and custom and practice, in addition to varying governing statutes, make the use of ABCs differ across the country. Thus, there is currently an imbalance when it comes to frequency of use and general knowledge of ABC procedures from state to state: while an ABC may be an adequate, viable option for debtors in one state, in another, there may be no ABC law, either on the books or in practice.

ABCs have often been used in states such as California, Delaware, Florida, and Illinois.[iv] Today, there is a general sense that ABCs are a useful tool in a debtor's financial-distress toolkit; however, the lack of uniform ABC laws and practices means that ABCs are not as widely used as they could be. This report critically assesses the potential for a uniform act in light of the wide variation of existing state laws and practices in this area.

Background on ABCs

An ABC is a liquidation procedure governed by state statutory or common law. An ABC is typically viewed as an alternative to the federal bankruptcy process, although it is possible for either a voluntary or involuntary bankruptcy to be commenced during the ABC process.[v] In an ABC, the "assignor," usually a company, voluntarily assigns all of its assets to an "assignee," a trustee/fiduciary, which then liquidates the assets and distributes the proceeds to the assignor's creditors. In essence, the ABC operates through the creation of the equivalent of a trust, with the assignor's creditors as the beneficiaries.

ABC laws have been around, in various forms, for well over a hundred years.[vi] As originally conceived, ABCs were adapted from trust law to provide an informal liquidation option for debtors.[vii] Trust law allows an entity or person to transfer assets into a trust for the benefit of others. In an ABC, the debtor is the trustor, and the debtor's creditors are the beneficiaries.[viii]

With the development of ABC statutes in the 1850s and 1860s, procedures were increasingly put in place to protect creditors and curb assignee abuses.[ix] For example, some states began to require court supervision of ABCs, while others required assignees to post a bond. After the Bankruptcy Code was enacted in 1978, some states incorporated bankruptcy-like provisions into the ABC process, such as limited preference avoidance powers. Additionally, and as discussed below, some states have turned the ABC process into a receivership, effectively eliminating the distinction between ABCs and receiverships in those states, and other states have repealed their ABC statutes entirely.

Consequently, the ABC process continues to differ from state to state; however, ABCs are generally characterized as less expensive and more flexible than a bankruptcy liquidation.[x] In particular, although bankruptcy has some flexibility regarding "negative notice" and the number of creditors who must be served, the time and expense of plan confirmation and certain other proceedings can be avoided in an ABC.

An ABC also differs from bankruptcy in other ways. Unlike a bankruptcy, an ABC cannot be used to reorganize a company's debts, nor can an ABC discharge debt. Although some state statutes, such as those in Minnesota[xi] and North Carolina, contain a limited-duration automatic stay, most ABC laws do not provide an automatic stay. ABCs also do not provide the ability to assign executory contracts and leases without the consent of the contract counterparty. Generally speaking, absent court approval or secured creditor consent, state law does not permit assignees to sell assets free and clear of secured creditors' liens.[xii]

ABCs are commonly viewed as a good option for businesses for whom a bankruptcy process would be too cumbersome or expensive.[xiii] In general, a business seeking to use an ABC decides when the process will commence and, typically, which entity or person will serve as the assignee.[xiv] Assignees are frequently chosen for their industry- or insolvency-specific experience and expertise. Having an assignee familiar with the assignor's industry may pose a comparative advantage to having a trustee in bankruptcy or a receiver, who may not be an industry specialist. Additionally, ABCs may be a good option for businesses, such as those in the cannabis industry, that cannot file for bankruptcy under current law.[xv]

As a debtor-commenced process, an ABC can sometimes exhibit differences from a receivership, which can be more of a creditor-led process.[xvi] For example, 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.[xvii] Notably, however, some states, such as Minnesota, North Carolina, Washington,[xviii] and Wisconsin,[xix] have effectively converted their ABC processes into receiverships. For example, in 2021, North Carolina repealed its ABC statutes and replaced them with receivership statutes. In these states, which now statutorily require their ABCs to be converted into receiverships as explained in more detail below, the debtor chooses the assignee/receiver, and the ABC process does not otherwise differ from a receivership.

In states that have not gone this route, there can still be differences between an ABC and a receivership. An assignee in an assignment is a fiduciary to all creditors, while a receiver's interests "are generally aligned with the creditor who sought the receiver's appointment."[xx]

Importantly, an ABC does not always require court oversight, whereas a receivership process requires court involvement and court oversight of the receiver. Even when an ABC does involve the courts, the proceeding, with some exceptions, tends to involve less court supervision than a receivership. Some commentators have observed that this can make the ABC process less expensive than a receivership.[xxi] Finally, the focus of an assignee is often not to continue the debtor's operations (although there are some exceptions), whereas receivers can, and often do continue operations.[xxii] In general, an ABC is a relatively more informal process than a receivership, which entails court time and expenses. In addition, the debtor's ability to choose an assignee who understands the assets and the business at stake, and in whom the debtor believes that creditors will have confidence, suggests that in certain circumstances, with the right assignee, an ABC will do a better job of maximizing value than a receivership.

ABCs also differ from more informal processes, such as an informal wind down or liquidation, where a company attempts to find a buyer for its assets on its own and shuts down operations if it is unable to sell. Relative to these processes, ABCs are often more formal, as they use a fiduciary (the assignee) to liquidate the company's assets and contemplate some sort of procedure for creditors to receive notification of the process so that they may submit claims.[xxiii] Although an informal liquidation allows for individualized settlement agreements with each creditor, and although cost savings may be realized if a debtor does not need an assignee, if a debtor cannot voluntarily reach agreements with its creditors, an informal liquidation may not be possible.[xxiv] The presence of an assignee also relieves the debtor's management from the need to wind down the business and liquidate assets themselves, and creditors may prefer an ABC if they are concerned about the ability of existing management to conduct a sale.[xxv] Furthermore, the potential for a debtor to prefer one creditor (or group of creditors) over another in an informal liquidation is a possible drawback to the use of such proceedings.

A purchaser of some or all of a company's assets may also prefer an ABC to an informal liquidation because of the ability to negotiate with the assignee, an "independent fiduciary," and because the sale will be deemed commercially reasonable.[xxvi] The assignee's presence helps reduce concerns about fraudulent transfer and successor liability as well.[xxvii]

A debtor's creditors, and particularly its secured creditors, may prefer an ABC to an Article 9 foreclosure, receivership, or bankruptcy.[xxviii] An ABC allows a secured creditor to outsource the foreclosure process to an assignee, meaning that the secured creditor need not undertake the steps and diligence typically required in a foreclosure, such as hiring an auctioneer or investment banker. In addition, because Article 9 deems a sale by an assignee to be "commercially reasonable," a secured creditor may prefer to proceed via an ABC if it has concerns about being sued for non-commercially reasonable behavior.[xxix] Although a secured creditor may need to subordinate its interest to the assignee's fees, a secured creditor proceeding via Article 9 foreclosure would also have to pay fees and expenses of the foreclosure sale prior to satisfying its own interest.[xxx] Just as in a bankruptcy, "secured creditors' rights are preserved," leading many secured creditors to "prefer the ABC over a bankruptcy filing because they can enforce their collection rights without first being forced to go to court for relief from the automatic stay."[xxxi]

Similar to secured creditors, unsecured creditors may view an ABC as a better way to maximize their recovery than a bankruptcy process, which is likely to be more expensive. An assignee who is credible, experienced, and transparent is in a good position to maximize value for unsecured creditors. Because the assignee acts on behalf of all creditors, the likelihood of a sale being challenged is substantially lower.[xxxii]

An ABC, in fact, as a voluntary procedure, generally needs to work for all affected parties. A secured creditor, which does not approve of an ABC for its debtor, is entitled to exercise its default remedies or seek the appointment of a receiver notwithstanding the commencement of the ABC. Unsecured creditors cannot be forced to agree to the ABC and always have the remedy of seeking a receivership themselves or commencing an involuntary bankruptcy case against the debtor. As a result, ABCs provide a useful means for all affected parties voluntarily to resolve their interests and claims under the management of a credible assignee while minimizing the time, costs and expenses or adversary litigation so often associated with a receivership or bankruptcy case.

In short, an ABC is an important tool in the "toolbox" of debtor-creditor remedies.

Overview of State ABC Laws

States vary widely in terms of the statutory framework governing ABCs, and the overall state approach may be characterized as "patchwork." Some states, including Florida,[xxxiii] New York,[xxxiv] and New Jersey[xxxv] have extensive statutory schemes. In others, such as Illinois and California,[xxxvi] ABCs are primarily a common law or hybrid process. Indeed, in several states, there are no ABC statutes on the books at all. In others, existing laws date back many decades.

As ABCs have grown in popularity, the lack of a uniform state law has contributed to complications in practice. Because state ABC laws vary so widely, use of ABCs among the states also varies. Consequently, practitioners and judges in one state may be very familiar with the ABC process, while those in another state may have no experience with ABCs at all. ABCs are thus a more limited tool than they could be if they were more widely understood.

State statutory schemes range from the minimal (e.g., the existence of a statute permitting the ABC process) to the highly developed, with those in the latter category including provisions relating to notice, avoidance, claims priority, and claims adjudication. Florida's statutory scheme, for example, goes into significant details about the duties of the assignor and the assignee and the powers of the court. By contrast, Delaware, though it has a statutory scheme, does not go into the same level of detail; instead, most details about the rights, powers, and duties of the assignor and assignee are provided in an assignment agreement drawn up between the parties and governed by contract and trust law. In practice, assignees may have their own standard assignment contracts to try to address the entirety of administering an ABC. States with skeletal statutes arguably provide practitioners with more flexibility in terms of steering the ABC process; however, if a state's statute is too skeletal (or too outdated), it may not be used at all. In addition, some states' ABC statutes expressly void common law ABCs, while others do not.[xxxvii]

Recently, the Delaware Court of Chancery has begun to express concern over the expansion of relief sought in ABCs, in some cases seeking to limit matters before the court to statutory

provisions.[xxxviii] Practically speaking, in Delaware, once a bond has been court-authorized and filed, assignees may not come to court again except to file a final report. With its recent decisions, the Delaware Court of Chancery has also indicated that counsel seeking court involvement to facilitate an ABC should provide more detail in their petitions and motions and should be prepared for greater court scrutiny. [xxxix] However, this area is continuing to evolve, and future decisions may further define the scope of relief the Court is willing to grant.

ABC procedures also differ from state to state. In some states, such as Delaware, Florida, Michigan, and Minnesota, ABCs proceed in court. In other states, such as California and Illinois, an ABC is an out-of-court process.

When an assignor has assets in different states, the lack of a uniform ABC law poses an even greater potential problem. There are inconsistent rulings among different jurisdictions about ABC processes, and it may be difficult for an assignor with multi-state assets to commence an ABC unless it first consolidates its assets in one state.[xl] Typically, an assignor with assets in multiple states chooses to use the bankruptcy process rather than an ABC. The first-to-file or parallel litigation "rule" may provide an argument for the assignee in a judicial ABC (such as in Delaware) that, when an ABC petition is filed before a local creditor's complaint in another state, the ABC proceeding should control over local assets because such assets became part of the assignment estate in the judicial ABC proceeding before the local creditor's suit commenced. However, a uniform ABC law may provide arguments or means for addressing local actions regarding assets in other states.

Existing State Practice

This section delves into greater detail about specific state practices in order to give the reader a better understanding of the state law landscape and trends. It touches on five broad themes: (1) states in which ABCs and receiverships are treated substantially similarly; (2) states that use ABCs often; (3) states in which receiverships are indicated as a common or preferred method of debtor liquidation; (4) states that have made updates to their ABC or receivership laws in recent years; and (5) states in which practitioners have indicated a reason that ABC practice is not common. Although common themes have been identified where possible, this section illustrates the wide variation in the use and treatment of ABCs across the 50 states.

States in which ABCs are folded into receiverships. Seven states have folded aspects of ABC law into receivership law and/or treat ABCs and receiverships identically, or nearly identically. Arkansas law appears to have always treated ABCs as a subchapter of a receivership law.[xli] Similarly, Wisconsin has always treated receiverships and ABCs similarly. Wisconsin's chapter 128[xlii] provides statutory guidance for both types of processes, with the only difference between the two being that an ABC is a voluntary, debtor-initiated process, while a receivership is an involuntary, creditor-driven process. In both cases, there is extensive court involvement. Chapter 128 has not been significantly updated since 1977, and at least one commentator has suggested that the statute could be updated and modernized to provide better guidance.[xliii]

While Arkansas and Wisconsin have historically treated ABCs and receiverships similarly, other states have more recently made changes to their laws to bring ABCs more in line with receiverships. Washington was the first to do so in 2004, when it overhauled its receivership

statutes, including the chapter involving ABCs. In essence, the overhaul created a hybrid ABC/receivership proceeding, and ABCs in Washington are considered a special type of receivership.[xliv] Prior to this overhaul, ABCs had not been attractive to creditors since the enactment of the Bankruptcy Code in 1978. Now, in Washington, in effect, all ABCs are converted into receivership actions after the execution of the assignment.

Eight years later, Minnesota followed in Washington's footsteps, enacting a new statute in August 2012 that essentially merged ABCs and receiverships.[xlv] Prior to this, ABCs were seldom used in Minnesota. Minnesota's ABC laws contemplate a court-supervised process. Although the assignor may select the assignee (thus commencing the ABC process), the assignee must meet the same criteria required of a receiver, and the assignee serves the same purpose as a general receiver. Once commenced, ABCs are conducted similarly to general receiverships in Minnesota.[xlvi]

In 2016, Missouri enacted the Missouri Commercial Receivership Act (MCRA), a comprehensive receivership statute that provided, *inter alia*, that a receiver can be appointed if a general assignment for the benefit of creditors has been made.[xlvii] Although the MCRA did not modify or repeal Missouri's existing ABC laws,[xlviii] the ABC process is not, and has not been, much used in Missouri. By contrast, receivership is the most common method of liquidating a business outside of bankruptcy in the state.[xlix]

In 2019, Maryland enacted the Maryland Commercial Receivership Act and extended it to cover ABCs and to provide, generally speaking, that an ABC will be handled in the same manner as a receivership.[l] Prior to this change, Maryland's ABC laws were comprised of numerous statutes, coupled with insight from older case law.[li] Maryland's prior ABC laws contemplated significant court involvement.[lii]

Finally, in 2021, North Carolina repealed its ABC statutes in conjunction with the enactment of the North Carolina Commercial Receivership Act, which is similar to UCRERA.[liii] The repealed statutes appeared to provide for a court-supervised process.

In sum, three states (Arkansas, Wisconsin, and Washington) have a history of treating ABCs as a subset of receivership law, with Washington most recently taking steps to treat ABCs more explicitly as a type of receivership. Two states (Minnesota and Maryland) have taken steps within the past decade or so to effectively merge ABC and receivership law. One state (Missouri) has provided for voluntary receiverships in its receivership statute without touching existing ABC laws, and one state (North Carolina) has repealed its ABC statutes in conjunction with enactment of an expanded receivership statute.

States with frequent ABC use. Seven states can be characterized as using ABCs frequently: California, Delaware, Florida, Illinois, Massachusetts, New Jersey, and New York.[liv] Of these states, three (Florida, New Jersey, and New York) contemplate significant court involvement and have detailed statutory schemes. One state, Delaware, has a less detailed statutory scheme and a "medium" level of court involvement. The remaining three states (California, Illinois, and Massachusetts) have little-to-no court involvement. California's ABC process relies on common

law and a scattering of statutes among various state codes, while the processes in Illinois and Massachusetts are predominantly grounded in common law.

States where receivership is a popular liquidation method. Of states where such information was available, nine indicated that receiverships are used often to liquidate a debtor. These states are Arizona, Missouri, New Hampshire, Ohio, Rhode Island, Utah, Vermont, Washington, and Wisconsin.[lv]

States with recent updates to ABC or receivership laws. Nineteen states have made updates to either their ABC or receivership laws in the past ten to twenty years. In addition, Hawaii proposed, in the mid-2000s, that its ABC process be reformed to be regulated by statute and to give courts control over the ABC process; however, no reforms have been documented to date.

Of states that have made reforms, twelve (Arizona, Connecticut, Florida, Maryland, Michigan, Nevada, North Carolina, Oregon, Rhode Island, Tennessee, Utah, and West Virginia) have enacted the Uniform Commercial Real Estate Receivership Act (UCRERA) or a version of the statute that is substantially similar to it.[lvi] In most cases, the state's adoption of UCRERA did not impact ABC laws. The exceptions are Maryland and North Carolina, both discussed above. However, in some of these states' versions of UCRERA (notably Oregon and Rhode Island), voluntary receiverships are permitted in some cases.

Other states have recently revised or updated their assignment statutes. In 2002, Indiana substantially revised its assignment statutes to add flexibility and maintain a less expensive alternative to other, more costly liquidation methods such as bankruptcy.[lvii] Despite this, and despite Indiana's statute being fairly detailed, ABCs remain rare in the state.[lviii] As discussed above, Minnesota enacted a new ABC statute in 2012, which essentially merges ABCs and receiverships. Relatedly, in 2015, New Hampshire revised its laws governing New Hampshire-chartered trust companies.[lix] Under these laws, a trust company is authorized to act as assignee under any ABC of any debtor.

Still other states have revised their receivership laws without adopting UCRERA. For example, Missouri's Commercial Receivership Act became effective in 2016, and, as discussed above, allows for a voluntary receivership option. In 2015, Ohio enacted new legislation ratifying a receiver's right to sell property free and clear of liens, modifying and clarifying the receiver appointment process, and expanding receivers' powers.[lx] This legislation had no impact on Ohio's ABC laws. In 2019, Oklahoma passed a new marijuana business receivership law.[lxi] And, as discussed above, Washington overhauled its receivership statutes in 2004, including the chapter on ABCs. ABCs and receiverships are treated similarly in that state.

Some explanations for ABC disuse. Of states where practitioners responded to a questionnaire asking about frequency of ABC use, six indicated reasons as to why ABCs are not commonly used in the state. These reasons vary. For example, the respondent from Alabama cited an antiquated statute and a general lack of familiarity with ABCs among relevant parties as a reason for lack of use.[lxii] In Colorado, the statute was characterized as "cumbersome," which seems to have led to disuse.[lxiii] Similarly, despite Indiana having a fairly detailed statute, ABC proceedings are rare, and bankruptcy or receiverships are preferred to ABCs as a liquidation

method.[lxiv] Tennessee also has a statutory framework, but parties prefer corporate dissolution under the Tennessee Business Corporation Act, likely because there is a greater level of flexibility, less stigma, and even less state involvement than an ABC.[lxv] By contrast, Connecticut lacks a statutory scheme, and ABCs are not used at all.[lxvi] Finally, Utah's ABC statute provides only a loose framework for ascertaining creditor and debtor rights.[lxvii] "For this reason, the ABC process is rarely used in Utah, and there is a dearth of authority on this procedure."[lxviii]

Interaction With Other Laws

ABCs have the potential to interact with a number of other state laws, as described more fully below.[lxix]

Authorization Laws. Companies that seek to use an ABC must comply with the requirements of the state law where the company was formed to ensure that the assignment is authorized. For example, Illinois' Business Corporation Act requires shareholder approval for an assignment.[lxx] Delaware's Limited Liability Company Act states that a person ceases to be a member of a LLC upon a member making an ABC, unless all members consent or the LLC agreement otherwise provides.[lxxi]

The Uniform Commercial Code. Under the UCC, the interest of an assignee in the personal property of the assignor is subordinate to a security interest perfected at or before the time when the assignment becomes effective.[lxxii] Practically speaking, this means that the assignee needs the secured creditor's consent if that creditor's collateral is being liquidated. In many cases, the secured creditor may also wish to have a say in choosing the assignee. The UCC also deems a sale by an assignee "commercially reasonable."[lxxiii] Once an assignee is chosen, section 9-317(a)(2)(A) of the UCC gives the assignee priority over most unperfected security interests.[lxxiv] Assignees may also use their status as lien creditors to recover assets under applicable state law.[lxxv] Notably, however, in addition to the UCC, other state laws may address the status of the assignee as a creditor or lien creditor.[lxxvi]

Trust Law. As an assignment is essentially a trust, state trust law may apply to the ABC. State trust law does not require a trust beneficiary to consent to the trust. Consequently, unsecured creditors' consent is not necessary for a valid assignment.[lxxvii]

Priorities. State law determines the priorities of unsecured claims against the assignor. Although some states follow the Bankruptcy Code's priority scheme, not all do, so it is important to consult the law of the specific state to determine whether state law or the assignment contract will govern priorities in an ABC.[lxxviii] In general, state and municipal tax claims, unpaid wage claims, employee benefits, and customer deposits are recognized as priority claims, to be paid ahead of general unsecured claims.[lxxix] In addition, absent specific statutory authority to the contrary, priority claims do not prime prior properly perfected security interests. Some states provide that tax claims have a higher priority than wage and benefit claims, and state caps on the amount of the priority claim may differ from those provided in the Bankruptcy Code.[lxxx] In addition, some states afford priority to UCC Article 2 reclamation claims, and some afford priority to deposit or governmental claims, fines and penalties that are not truly tax claims.[lxxxi] Other states may not address the priority of all possible claims, in which case the parties may decide to agree on a priority scheme themselves or seek court guidance.

In addition to state law priorities, the federal priority statute, 31 U.S.C. §3713, also applies. That statute, which is not operative in bankruptcy, gives priority to a claim of any agency of the federal government ahead of other unsecured creditor claims.[lxxxii]

Rights or Exemptions Triggered by Commencement of ABC. Upon the commencement of an ABC, other state laws may be triggered implicating parties' rights or remedies or exempting parties from a law's application. For example, Delaware's motor vehicle law provides parties to recreational vehicle manufacture-dealer agreements certain rights upon one of the parties entering into an ABC.[lxxxiii] The Uniform Debt-Management Services Act does not apply to assignees for the benefit of creditors engaged in the regular course of business.[lxxxiv] By contrast, the Uniform Foreign-Money Claims Act considers an ABC to be a "distribution proceeding" to which the Act applies.[lxxxv]

Partnership Law. If the assignor is a partnership or partner in a partnership, commencing an ABC may trigger certain applicable laws. For example, Delaware's Revised Uniform Partnership Act provides that an assignee in the ABC of a partnership or partner may enforce a partner's obligation to contribute to the partnership.[lxxxvi]

The Model Statute for General Assignments for the Benefit of Creditors

In 2009, Geoffrey L. Berman and Catherine Vance discussed the concept of a Model Statute on General Assignments.[lxxxvii] The Model Statute was designed to be a framework that provided state legislators with a variety of options for designing their ABC processes.

The Model Statute is composed of six sections: Section I (Definitions), Section II (Assignments: Validity & Effect), Section III (Rights, Powers & Duties of Assignor), Section IV (Rights, Powers & Duties of Assignee), Section V (Claims), and Section VI (Miscellaneous Provisions). In assessing the scope and content of a possible uniform act, the Study Committee considered the contents of the Model Statute as a starting point.

Whether There is a Need for a Uniform Act

The Uniform Law Commission's objective is "to promote uniformity in the law among the several States on subjects where uniformity is desirable and practicable." This section discusses the primary considerations when assessing the need for a uniform act.

A uniform act would provide additional structure and definition to ABCs. Notably, and despite efforts to do so in this report, the current lack of uniformity makes it very difficult to generalize what ABC law and practice look like. ABCs involve different processes and procedures from one state to the next. In some states, they involve court proceedings; in others, they are functionally no different from receiverships; in others, the process takes place with no judicial supervision; and in still others, ABCs lack a defined process and are functionally unavailable. There is no singular ABC model that can be held up as the definitive process, making it extremely difficult to compare ABCs (in general) with other liquidation options. A uniform law

could allow states to draw upon shared principles that seek to provide baseline protections and preserve process.

As discussed above, in recent years several states have effectively blurred the line between ABCs and receiverships. Despite this practice, in many other states, ABCs are a distinct remedy from receiverships. A uniform ABC act would clarify the line between ABCs and receiverships (as well as other remedies), solidifying the differences between these two distinct remedies and articulating instances where an ABC may be preferable to a receivership and vice versa. In turn, the existence of a uniform act setting forth the distinct features of an ABC may encourage states to clarify the line between ABCs and receiverships and to recognize the distinct benefits and drawbacks to both procedures.

A uniform act may encourage greater use and promote accessibility. Uniformity could encourage further use of ABCs. Several commentators and observers have remarked that ABCs are used infrequently, or not at all, in some states because there is no viable statutory framework and the state has not recognized ABC common law.[lxxxviii] Alternatively, some states, such as Ohio, have ABC laws that are unused because the statute is outdated, and an ABC is not a familiar part of the state's legal practice.[lxxxix] Indeed, familiarity with the process is a key reason to select an ABC over an alternative mechanism. If attorneys in a particular state are familiar with the laws, customs, and practices surrounding ABC use, and if there is a well-established ABC process in that state, they will likely recommend it as an option for a distressed company to consider. By contrast, if there is no case law, or if the statutory law is older, and attorneys and judges are unfamiliar with the process, an ABC will not be recommended because an ABC's advantages and disadvantages relative to other, more frequently used options, will not be apparent.

Because the law in many states is either non-existent or not well-settled, uniformity could improve the integrity of the law in this area and result in more use of ABCs when appropriate.[xc] A uniform law would minimize state-to-state variation and could streamline the process, making ABCs a more attractive option for states that do not currently use them. A uniform law could also be valuable to the extent it encourages legal culture to develop around ABCs in all fifty states. In some circumstances, an ABC is the best option for a company to use,[xci] but it is not available because ABC practice has not developed in that state. A statute that provides guidance as to what works well or that allows states to opt into various provisions may be particularly helpful in this case.

A uniform act provides recognition of the unique role an ABC can play for a distressed business. Commissioners and observers have noted that ABCs serve distinct purposes for businesses that do not want to file for bankruptcy because of the time and expense. Although new subchapter V of the Bankruptcy Code streamlines the chapter 11 process for many small businesses, some businesses may yet have too much debt to qualify for these proceedings, and others may prefer to liquidate out of court rather than proceed with a chapter 11 liquidation. Currently, businesses in some states have access to well-established ABC processes, while those in other states effectively lack access to this tool in a struggling business's toolkit because the procedure is unused and practitioners are unfamiliar with it. Observers from the bankruptcy community have suggested that many in that community, and particularly those serving smaller and mid-market

businesses, may be receptive to increased use of ABCs, given that they serve distinct purposes as bankruptcy alternatives, as described in more detail above.[xcii]

A uniform law may lower transaction costs and provide clarity in complex situations. Substantive uniformity has the benefit of keeping transaction costs low, making ABCs easier to complete. However, at a minimum, a uniform choice of law rule would provide clarity on which state's law to look to in potential cases involving assignors with assets in multiple states. If a uniform law results in identical substantive law across the states, there is no need to worry about choice of law if the debtor has assets in multiple states.

A uniform law may provide more enforcement mechanisms. Members of the Study Committee have expressed concern about potential wrongdoing by assignees in current practice, including engaging in self-dealing or showing undue favoritism to certain creditors. Currently, an assignee's liability is decided pursuant either to applicable state probate law or to common law principles. An assignee's fiduciary duty runs to creditors of the assignment estate generally, rather than to any particular creditor. Consequently, creditors are basically left with the remedy of bringing breach of fiduciary duty claims against assignees for allegedly failing to act in creditors' best interests. This can be an expensive process. Creditors can also challenge an assignment's validity or seek to remove an assignee when they believe the assignee is failing to act as it should. In states that require assignees to post a bond, creditors may also look to the bond as a recovery mechanism if the assignee fails to properly perform its duties.[xciii]

Creditors may also decide to file an involuntary bankruptcy petition as a remedy,[xciv] but there are at least two major limitations on the use of this bankruptcy remedy. First, with limited exceptions, an involuntary petition can only be filed by creditors holding non-contingent claims not subject to a "a bona fide dispute," and even if only a fraction of a claim is disputed that might disqualify the entire claim.[xcv] The creditors most likely to want judicial oversight are also most likely to be engaged in disputes over at least part of their claims, so for them the involuntary bankruptcy remedy might not be useful.

Second, the bankruptcy court's power to "surcharge" any custodian "for any improper or excessive disbursement" applies only to custodians "*other than* an assignee for the benefit of the debtor's creditors" if that assignee was appointed or took possession more than 120 days before the bankruptcy petition.[xcvi] In other words, even if the bankruptcy court is persuaded that the involuntary petition should be granted, it has limited powers to remedy any misconduct by an assignee for the benefit of creditors.

In short, several Study Committee observers have expressed the need for creditors to have additional ways to rein in abusive or misleading behavior from assignees. In current practice, creditors may not wish to waste additional money by filing an involuntary bankruptcy or seeking to investigate the assignee. A uniform law could provide mechanisms to make the assignment process more transparent for creditors (through, e.g., uniform notice provisions[xcvii]), making it easier for creditors to observe the assignee's actions and to raise objections and seek redress if the assignee fails to comply. A uniform act would also help with enforceability across state lines.

A uniform act would enhance and work in conjunction with other uniform laws. The experience of the Uniform Commercial Real Estate Receivership Act (UCRERA) may be instructive here. As discussed above, receiverships are not dissimilar to ABCs, and similar concerns could be raised about the appropriateness of a uniform act in that area. Although only a handful of states have adopted the UCRERA to date, interest in the act continues to grow.[xcviii] Similarly, if uniform measures are proposed that provide some consistency to the ABC process, interest in a uniform act may take hold, especially as states consider reforms and updates to their own laws. Indeed, a state that has adopted or is considering adopting the UCRERA may welcome a uniform ABC law as a supplement to the UCRERA. This might especially be the case if, as would be expected from the work of a drafting committee, the ABC law clearly distinguishes an ABC from a receivership so that the benefits of both procedures, each with its own advantages and disadvantages, are available to residents of that state.

Having a uniform law for ABCs would also be consistent with other uniform laws that address ABCs in various capacities, such as the Uniform Commercial Code and the Uniform Foreign Money Claims Act.

A uniform act would promote comity across jurisdictions and allow for use of ABCs by debtors with assets in multiple states. As discussed above, due to inconsistencies from different jurisdictions about ABCs, assignors with assets in multiple states typically cannot commence an ABC unless they first consolidate their assets in one state. This renders an ABC difficult for debtors with multi-state assets. A uniform law would promote consistency across jurisdictions, bringing consistency to both the practice and court procedures and making it easier for debtors with assets in several states to commence an ABC. By extension, this should make an ABC more palatable to an assignee's creditors if they are scattered across several states. In short, having a uniform act would result, not only in substantive uniformity, but also in case law interpreting the act that is useful and relevant for courts and parties in other states.

Comity is the principle of courts of one jurisdiction respecting the laws and decisions of other jurisdictions. As with all uniform laws, a uniform ABC statute would promote comity because creditors would be treated the same in all states that have adopted it. This is true regardless of the possibility under a uniform act for an ancillary ABC. A uniform act would also reduce the incentive for a potential assignor to change its state of organization by, for example, reincorporating in a particular state to be able to commence an ABC there. In addition, ABC case law (which is relatively scarce compared to, e.g., bankruptcy) would likely be persuasive if from another jurisdiction that has adopted the uniform act, similar to the way that courts rely on UCC case law from all over the country.

A uniform act would allow states to modernize their ABC laws and related laws. As discussed, ABC laws in some states are highly out of date, with the result that they are rarely, if ever, used. A uniform ABC act would give states the tools to modernize their outdated ABC statutes or codify aspects of their common law practice. A uniform ABC act could also provide guidance for updating other, related acts, such as the priority wage statute. For example, California's priority wage statute has not been updated since 1999 and only allows up to $4,300 for priority wage claims.[xcix] Because ABC laws interact with priority wage statutes (and other laws, as

outlined above), states enacting a uniform ABC law would be encouraged to update those other laws as well.

A uniform law proposal from the ULC could also come at an opportune time as many states are beginning to think about reforming their ABC laws. As discussed above, a sizeable group of states has already enacted reforms to ABC or receivership laws, but these reforms are not uniform with respect to their impact on ABCs. A uniform law could provide a resource for states to draw upon, encouraging states to adopt similar principles rather than proceed on an individualized basis.

A uniform law may not be attractive to states that have committed to a different framework. Although there are significant benefits to uniformity, there is one caveat: some states have developed significant statutory law on ABCs and may resist adopting a uniform law that would require them to change aspects of their existing law. Other states may have made a conscious choice not to use statutes and may therefore be hesitant to adopt a statute to replace their common law practices. The Study Committee's consensus was that a uniform act is needed, but that it ought to be simpler and clearly different from bankruptcy relief in order to convince state legislatures to adopt the act. However, a uniform act could also provide much-needed guidance to states on issues such as choice of law that all states could draw upon, regardless of the existing statutory framework (or lack thereof) in the state.

The Scope of a Potential Act

In the Study Committee's research and deliberations, it became clear that the frequency of use of an ABC in a particular jurisdiction did not necessarily depend on the structure of the laws governing the process. For example, ABCs are used frequently in California, Delaware, and Florida despite each state differing significantly in terms of the framework governing ABCs. California relies primarily on common law, in an out-of-court process supplemented by a series of relevant statutes scattered across various state codes. Delaware has a bare-bones ABC statute supplemented substantially by the common law, and courts are involved in the process. Florida has a detailed statutory scheme with court involvement.

Put differently, ABCs seem to work well in certain states because of the legal culture that has grown up around their use, rather than because different states' ABC laws share certain characteristics. However, one common, unifying theme is that ABCs are successful when the process works quickly and flexibly—and in particular, more quickly and more flexibly than a bankruptcy.

In determining the scope of a potential act, a drafting committee may wish to consider the following issues:

Interaction with bankruptcy law. Members of the Study Committee were emphatic that a uniform act should not be overly complex, nor should it try to make ABCs into a "state bankruptcy" process. ABCs are a state law mechanism and are therefore appropriate for state, rather than federal, legislation. Some members believe that if too many "bankruptcy type" provisions are included in a uniform act, the very benefits of using an ABC might be perceived as having been

eliminated, which in turn could make ABCs be viewed as less attractive and therefore ultimately used less frequently.

At the same time, federal bankruptcy law does sometimes come into play, as questions that may arise in an ABC are often resolved by looking to bankruptcy law by analogy. In addition, some courts and scholars have pointed out that the more comprehensive state ABC statutes may allow for processes and practices that would be preempted by the Bankruptcy Code.[c] In general, however, ABCs are viewed as state alternatives to bankruptcy, so it is certainly possible for a uniform act to be drafted in a way that is not preempted by the Bankruptcy Code.[ci] Although the case law is not always clear on what, exactly, the Bankruptcy Code preempts, there seems to be a consensus that state law cannot provide a discharge of debts.[cii] A "less is more" approach to drafting a uniform act could provide the dual benefit of making the act more attractive to states—in particular, those with already-existing statutory schemes—while ensuring that the act is not preempted by federal bankruptcy law. The Study Committee's consensus was that a potential law should be limited to the purpose of facilitating voluntary assignments.

Priorities. A drafting committee should also consider the potential for disconnect between priorities in the Bankruptcy Code and those under an ABC. If an ABC makes a distribution according to state law priority rules that differ from those that apply in bankruptcy, there could be an incentive for the entity or person with bankruptcy priority to file an involuntary bankruptcy. A drafting committee should thus be mindful of the consequences of establishing different priority rules than those under the Bankruptcy Code, although some disconnect between the Bankruptcy Code and non-bankruptcy priorities will be inevitable given the federal priority statute discussed above.

Interaction with other laws. Relatedly, the drafting committee may wish to closely examine the state and federal statutes, described above, that interact with ABCs. As stated above, not all states accord the same priority to the same types of claims—for example, Delaware lacks a priority wage statute, and Colorado limits the amount of wage priorities. The lack of rules addressing priority in some states may make the ABC process vulnerable to disuse in those states. To the extent a uniform ABC law can provide guidance for updating relevant state priority rules, such guidance may help ease the burden on states whose priority rules are due for an update.

Whether an ABC is a security interest. The drafting committee should consider whether an ABC should be treated as a security interest. Treating an ABC as a security interest has the benefit of addressing personal property priority issues. As previously discussed, in most states' version of the UCC, assignees have the rights of a lien creditor, which limits creditors' claims to the status they had upon the making of the ABC.[ciii] The UCC's definition of "lien creditor" in 9-102(a)(52)(B) includes an assignee for the benefit of creditors but notably does not make the assignee a "secured party."

There remains disagreement, and a consequent lack of clarity, over whether an ABC is a security interest. The UCC's definition of "security interest" does not include an assignment for the benefit of creditors.[civ] Although §9-309 of the UCC lists an ABC under the category of "security interests [that] are perfected when they attach," it is arguable that this section does not equate an

ABC to a security interest but merely provides that if the ABC results in a sale of accounts or chattel paper, no financing statement is necessary to perfect that sale.[cv] This position is supported by the fact that § 9-102(a)(52) defines a "lien creditor" as including an assignee. If the assignee were considered to be a secured party, it would be anomalous also to consider an assignee to be a lien creditor.

If an ABC is a security interest, Article 9's rules would address attachment, perfection, and priority of that interest. However, Article 9 would not address the validity of contractual provisions of the assignment and the powers of an assignee, or whether a court in one state would necessarily recognize an ABC in another state if the assignor had assets in both states. Thus, choice of law provisions would still be necessary to address the entirety of the ABC, as discussed immediately below.

Choice of law. Although a drafting committee would determine the ultimate balance of substantive, procedural, and choice of law provisions, the Study Committee recommends that a potential act address choice of law issues. However, the drafting committee should be mindful that, if an assignor has significant assets spread over multiple states, bankruptcy could be a more appropriate resolution than a multi-state cross-border ABC.[cvi] Once the assignment is created, an assignee obtains all the assignor's rights, title and interest in assigned assets.[cvii] However, practically speaking, if the assets are in multiple states, a creditor may be able to work around this. In current practice, a senior secured creditor could file a lawsuit or take other steps to block such a creditor's attempt to reach in-state assets, but if no such creditor exists, an assignee may need to devise other ways to protect out-of-state assets. If no other ways exist, an ABC may not be feasible, and a federal equity receivership or a bankruptcy may need to be pursued instead.

Court involvement. The Study Committee extensively discussed the need for court involvement in the ABC process and identified several advantages and disadvantages for a drafting committee's consideration. An ABC process that does not involve a court may be completed more quickly; however, buyers of the assignor's assets may want a court to approve the sale, and a court's involvement may bring more transparency to the process overall and provide safeguards against any misconduct by the assignee, including self-dealing, unduly favoring insiders, making improper or excessive disbursements, and the like. A uniform act could leave the decision of the extent of court involvement to the individual states; however, it would be beneficial to recommend uniform practices for court oversight, as well as to provide some guidance as to when judicial involvement is desirable and which courts within a state are best equipped to provide that involvement.

Several members of the Study Committee felt that mandating court involvement did not make sense if existing state custom and practice do not involve the courts. In particular, state courts may not be familiar with ABCs or want to add ABCs to their dockets, and the addition of ABCs to a court's docket may unduly delay the process. In addition, although judicial oversight may provide more transparency and some safeguards, court involvement may increase the cost of an ABC, and the availability of a court may make the process susceptible to more litigation. Other members preferred that any drafting committee review all options without a predetermined preference.

One possible middle ground for the drafting committee to consider is to allow the parties to an assignment agreement, or a majority of creditors, to choose whether to have the agreement recognized by a court. Along these lines, a drafting committee may wish to seek guidance from the Uniform Trust Code, which "does not create a system of routine or mandatory court supervision" and notes that "the court's intervention will normally be confined to the particular matter brought before it."[cviii]

The issue of court involvement also impacts choice of law. If a company with assets in multiple states chooses to pursue an ABC in one state, judicial involvement may be required to allow an ancillary ABC to be carried out in other states to liquidate the assets located in those states. As discussed in the Overview section and above with respect to choice of law, a court in one state does not have *in rem* jurisdiction over property located in other states, so some type of ancillary proceeding involving a court in another state would be necessary for ABCs involving property in multiple states.

As discussed above, existing ABC practice may occur with or without court supervision, and the extent of court involvement is dependent on the state.[cix] When an ABC is court-supervised, the parties file the assignment contract with the court, which in some cases also approves the contract. A hearing and court approval may also be needed before significant events, such as asset sales, can occur. Assignees may also need to provide interim reports to a supervising court and to request that the court close the estate when the ABC process is complete. In states that require the assignee to post a bond, the court may determine the amount of the bond.[cx] Court supervision also gives creditors who wish to file a complaint against the assignee a ready forum in which to do so. Although a court-supervised ABC process may take up more time and resources, court-supervised assignments can still provide "good value for creditors."[cxi] When state law requires court supervision, as in Delaware and Florida, practitioners must have a firm grasp of the requirements and the ability to navigate the system so as to allow for maximum creditor recoveries. Because asset sales in an ABC are still subject to creditors' liens on the assets, if an assignee wishes to sell the assets free and clear of liens, it will need to obtain creditor consent to a lien release. In some court-supervised states, such as New Jersey, courts have approved sales free and clear of liens, in a possible violation of the Contracts Clause.[cxii]

In many instances, a detailed assignment contract can perform the same functions as court supervision. For example, if funds are unclaimed after the asset sale, an assignee in a court-supervised state would typically seek court approval to redistribute those funds to known creditors.[cxiii] However, if no court supervision is required, the assignment contract itself can spell out the distribution process for unclaimed funds, if there is no state law to the contrary.[cxiv] Similarly, in a court-supervised proceeding, the assignee typically prepares an accounting of the money handled during the ABC and files that with the court. However, even without court supervision, it is good practice to notify creditors of this accounting, and the assignment contract could provide details on how to do so, while also following trust law processes.

In short, court oversight can provide greater formality to the ABC process and greater protections to creditors by allowing the court to monitor the assignee and the liquidation process. However, such oversight can also slow down the proceedings, increase expenses and, in some cases, create stigma for an assignor, which must utilize a public forum to address its debts.

Although a drafting committee may wish to provide the option of court supervision in a uniform statute, limited court supervision is likely preferable to more significant court involvement in order to maximize the comparative advantages of an ABC over a receivership or other in-court process. In addition, a uniform statute that recommends minimal or no court involvement may be comparatively easier to enact, because states will not need to commit significant judicial resources to the ABC process. Alternatively, a uniform act could have alternative provisions for states to opt into depending on whether or not they desire judicial involvement.

Transparency, due process, conflict of interest, and adequate notice. The need for court involvement may be alleviated if a uniform ABC statute provides non-judicial mechanisms for greater transparency during the ABC process. Regardless of whether a court is involved, the Study Committee recommends that an ABC statute provide mechanisms to ensure due process and adequate notice to the parties. Many observers commented that a significant problem with current ABC practice is a lack of transparency and accountability from assignees. Several suggested that conflict of intertest rules may help make the assignment process more credible.

Specifically, a uniform ABC statute could provide procedures for what notice is needed and, when practical, for the provision of electronic notice to creditors. Electronic notice procedures would reduce the time and expense incurred when physical documents are mailed out to creditors. The drafting committee may also wish to consider conflict of interest rules for assignees, a uniform bar date for claims, and procedures addressing how to file a claim. Remedies for assignee misconduct could also be drawn from the Uniform Trust Code.[cxv]

Groups Interested or Involved in Participating in a Drafting Effort

The Study Committee has engaged observers from numerous groups that may have an interest in possible uniform state legislation. A full list of observers and their affiliations may be found in Exhibit A. These groups include the ABA's Business Law Section; attorneys, consultants, and turnaround specialists advising both assignors and assignees; bankers; bankruptcy practitioners and judges, including a representative from the National Conference of Bankruptcy Judges; the American Law Institute; the American College of Commercial Finance Lawyers; and academics.

The Study Committee also requested feedback on this project from the Commercial Law League of America (CLLA) and the National Creditors Bar Association (NCBA). The CLLA intends to observe and comment on the project going forward, while the NCBA declined the invitation to participate, noting that the topic of ABCs falls outside the general practice area of its membership.

Many if not all of the observers responded favorably to the enactment of some type of uniform ABC law. For example, the May 10, 2022 meeting of the Study Committee was attended by consultants, bankruptcy experts, ABA representatives, turnaround specialists, and debtor/creditor attorneys, all of whom participated throughout the meeting. When informally polled, no attendee indicated opposition to drafting a uniform law. A similar level of consensus could be observed at the meetings on June 22, 2022 and August 16, 2022.

At the same time, observers and commissioners have repeatedly advised that any proposed act steer clear of unneeded complexity. The overall consensus appears to be that the act need not be comprehensive, but instead should seek to provide guidance and options to states. The more an act looks like a code (bankruptcy or otherwise), the less likely states will be to adopt it. In particular, states that have detailed processes for ABCs, including those states that have essentially replaced ABCs with receiverships, may be hesitant to adopt a new law, uniform or otherwise. Nevertheless, the lack of a uniform law means that future legislative changes will continue to be on a state-by-state basis. A uniform law could become a baseline from which states could work.

Due to the benefits of uniformity discussed above, it is generally thought that repeat players such as banks, asset-based lenders, venture capital and private equity firms, especially those in the small- or mid-sized business space, would favor a uniform law because of the certainty it would provide to existing patchwork state law processes. This also includes private equity funds that invest in start-ups; business lenders, including banks and trade creditors; and most restructuring professionals. Groups likely to want to be involved in a drafting effort include the National Association of Credit Management (on behalf of general unsecured creditors), the Commercial Law League, the Turnaround Management Association, and the American Bar Association.

There is a significant interest in a uniform ABC law among the business insolvency professional community. Specifically, two ABA Business Law Section Committees—Business Bankruptcy and M&A—each indicated support for the creation of a drafting committee. If the ULC does not wish to become involved, it is likely that states will continue to reform and adopt their own versions of ABC laws, so there is an opportunity for the ULC to take a leadership role in this area.

Whether there is a reasonable probability that a uniform act will be adopted by a substantial number of states?

The Study Committee believes that the success or failure of a uniform act will depend on whether an act can be drafted that is demonstrably better than the current, patchwork system of state laws, and in particular on whether the act is user-friendly, in the sense that it does not seek to over-legislate. While the exact contours of the act's substance should be worked out by the drafting committee, several observers have pointed out that a uniform act addressing choice of law issues is likely to be attractive to states, even if they already have ABC statutes in place, because there is no existing guidance in this area. In addition, it has been suggested that provisions for a uniform ABC act could be drawn from the Uniform Trust Code, given ABCs' roots in trust law.[cxvi] Accordingly, this report has noted several places where reference to the Uniform Trust Code could be useful.

A uniform ABC act may also help states bring their law up to date with modern practice. In some states, ABC laws may date back as far as the 19th century. In other states, a uniform law might help the state codify aspects of that state's common law practice. In addition, a uniform ABC law may provide much-needed clarity on whether an assignment is in fact a security interest under UCC Article 9. For all of these reasons, a uniform ABC act may provide some benefits that are recognizable to many states, thus increasing the likelihood that those states will pass the law.

It should be noted, however, that previous efforts to codify ABC statutes have not come to fruition. The Model Statute on General Assignments for the Benefit of Creditors (see above) was not adopted by the states despite being proposed to the Uniform Law Commission, the American Bar Association's Business and Bankruptcy Sections, and the Commercial Law League.[cxvii] In addition, California twice considered modernizing its ABC statute, and after receiving significant opposition from those in the credit management industry, twice abandoned its effort at codification. Despite this history, the current support for enactment of some type of uniform ABC law among observers, commissioners, and external (e.g., ABA) committees seems to indicate the feasibility of passing a uniform act in a substantial number of states, particularly if the act is simple and straightforward, as indicated above.

Conclusion and Recommendation

As discussed above, the patchwork of state laws raises some concern about the viability of a uniform state ABC law. States with more comprehensive statutes or well-developed case law on ABCs may not be interested in a uniform law unless such a law either allows them to retain existing practices or presents a clearly superior option. Put differently, in many states, ABC practice has adapted to fit the needs and customs of the state. Thus, if a drafting committee is appointed, it will be critical to recognize the role played by existing state laws and practices to gain the fullest acceptance possible of a uniform ABC law.

However, there are clear benefits to a uniform state law on ABCs. Having a uniform approach to ABC practice will bring consistency to the practice and a greater acceptance of the use of ABCs across all of the states. Moreover, a uniform act would promote comity and reduce the incentive to forum shop. In short, a uniform ABC law has the potential to provide greater clarity and consistency across all fifty states, in the form of both substantive statutory law and court decisions that can be relied upon across the fifty states. Some states may use the proposal to update statutes, such as wage priority. Others may use a uniform law to help with the drafting (or redrafting) of their own laws[cxviii] or as the basis for their own laws if there is little to no ABC law on the books. A uniform statutory scheme could potentially resolve questions about *in rem* jurisdiction, the ability to get an order selling free and clear of liens, and other questions raised and discussed in this Report. There is no question that getting a uniform statute into law will be a daunting task, but doing so would make the ABC alternative more uniform in scope and more user friendly so that it can lead to greater use of this distinct remedy in those areas of the country that do not currently look to ABCs as a meaningful alternative for distressed businesses.

Accordingly, the Study Committee recommends, with the unanimous support of the observers who participated in Study Committee meetings, that a drafting committee be authorized to draft a uniform law on ABCs.

The Study Committee further recommends that such a law address the following: (1) the act's interaction with bankruptcy 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 duties of assignees.

[i] The Study Committee Report was written by the Study Committee Reporter, Professor Laura Coordes. Professor Coordes is the Associate Dean of Faculty and an Associate Professor of Law at Arizona State University's Sandra Day O'Connor College of Law.
[ii] Judge Neil Bason, while attending in his capacity as a representative from the National Conference of Bankruptcy Judges, did not take a position on behalf of that organization.
[iii] As discussed later in this report, there is significant variance across states in ABC procedure. This variance exists due to different states having different statutes, but also exists due to variations in states that use common law ABCs. *See* Carly Landon, Note, *Making Assignments for the Benefit of Creditors as Easy as A-B-C*, 41 FORDHAM URB. L.J. 1451, 1473 (2014) ("Common law ABCs are admittedly hard to summarize, because there are no comparable statutes and each state's case law differs from other states' case law.").
[iv] *Id*. at 1469.
[v] If a bankruptcy is commenced, it should be noted that bankruptcy law makes an exception to the turnover requirement for assignees for the benefit of creditors that were appointed or have been in possession of the debtor's assets for more than 120 days before the petition date. 11 U.S.C. §543(d)(2).
[vi] Melvin Nathanson, *Assignments for the Benefit of Creditors*, 17 MARYLAND L. REV. 18, 18 (1957) ("This procedure for the liquidation of estates of insolvent debtors…is of great antiquity in the law.").
[vii] *Id.* (noting that a general assignment may also be called "a deed of trust for the benefit of creditors" and is defined as a transfer by a debtor of "property to an assignee or trustee, in trust") (internal quotations omitted).
[viii] Mark S. Melickian & Hajar Jouglaf, *The ABCs of Assignments for the Benefit of Creditors (ABCs)*, SUGAR, FELSENTHAL, GRAIS & HELSINGER LLP, *available at* https://www.sfgh.com/siteFiles/News/The%20ABCs%20of%20Assignments%20for%20the%20Benefit%20of%20Creditors-%20SFGH.pdf ("The assignee becomes the trustee of the trust, responsible for liquidating property and distributing proceeds to the assignor's creditors.").
[ix] *See, e.g.*, Nathanson, *supra* note at 22-29 (discussing requirements in Maryland law that assignee file a bond and report receipts and disbursements).
[x] This is not to say that bankruptcy cannot be a flexible and efficient tool in the right circumstances. GEOFFREY L. BERMAN, GENERAL ASSIGNMENTS FOR THE BENEFIT OF CREDITORS 5th ed., https://www.bloomberglaw.com/product/blaw/browser/105.449892# ("Businesses (corporations, limited liability companies and, in some instances, partnerships), however, can frequently be more efficiently liquidated under the assignment process than under the Code.").
[xi] Minn. Stat. §576.45.
[xii] *See* Robert Richards & Nancy Ross, *Practical Issues in Assignments for the Benefit of Creditors,* 17 AM. BANKR. INST. L. REV. 5, 20 (2009) ("Unlike bankruptcy, there typically are no powerful free and clear rights of section 363 of the Bankruptcy Code.").
[xiii] James D. Silver, *When Business Goes Bad, Know Your ABCs*, BLOOMBERG L. (Apr. 16, 2021) ("For a straightforward liquidation or sale, an assignment may cost less, be quicker, and have less red tape than a comparable bankruptcy.").
[xiv] Despite this, a properly perfected secured creditor may withhold consent to an assignment, so the process is not entirely within the assignor's control.
[xv] *Bankruptcy Isn't a Choice for the Cannabis Sector, But Options Exist*, FOX ROTHSCHILD (Apr. 3, 2020), https://www.foxrothschild.com/publications/bankruptcy-isnt-a-choice-for-the-cannabis-sector-but-options-exist.
[xvi] *See, e.g.*, *Assignment for Benefit of Creditors*, Simon PLC (Oct. 1, 2020), https://simonattys.com/assignment-for-benefit-of-creditors/ ("Although both receivership and an ABC involve liquidation of assets under court supervision, a receivership is often imposed by a creditor on an unwilling debtor.").
[xvii] *Id*. ("[W]hile the choice of a receiver is subject to the discretion of the court, the assignee is chosen by the debtor."); *Assignments for the Benefit of Creditors – "ABC's" – The Basics in California*, Stimmel, Stimmel & Roeser, https://www.stimmel-law.com/en/articles/assignments-benefits-creditors-abcs-basics-california ("The Assignee is generally an unrelated professional liquidator selected by the Assignor."); Landon, *supra* note at 1453 (noting that ABCs "involve the assignment of an insolvent company's assets to a third-party assignee, who is selected by the company").
[xviii] Rev. Code Wash. (RCW) §7.08/030; Minn. Rev. Stat. 2013 §576.22; N.C. Gen. Stat. Ch. 1, art. 507.42.
[xix] Wis. Stat. § 128.001 et seq.

[xx] Geoffrey L. Berman & Robert J. Keach, *"The Receivership Alternative" – A Response*, 20-AUG AM. BANKR. INST. J. 26 (July/August 2001).
[xxi] Leslie R. Horowitz & John A. Lapinski, *Advising Distressed Businesses on an Alternative to Bankruptcy*, 24-SEP L.A. LAW. 18, 22 (2001) ("An ABC is a less expensive method than a receivership, which requires the filing of a lawsuit and motions for the appointment of a receiver and instructions to the receiver from the court.").
[xxii] Tomas Ortiz, *Navigating the Rough Seas and Rocky Shores: Financial Restructuring in Cannabis*, Zuber Lawler (July 1, 2022), https://zuberlawler.com/navigating-the-rough-seas-and-rocky-shores-financial-restructuring-in-cannabis/ ("Unlike an assignee in an ABC, who is focused on liquidating the company's assets, a receiver may continue to operate the company, perhaps to attempt to sell the business as a going concern or to wind-down operations.").
[xxiii] Bob Eisenbach, *Running Out of Cash? Your Duties and Options for Winding Down*, COOLEY GO (Feb. 26, 2021), https://www.cooleygo.com/running-out-of-cash-your-duties-and-options-for-winding-down/.
[xxiv] *Business Basics: Shutting It* Down, OBERG LAW GROUP (Nov. 15), https://oberglawapc.com/blog/business-basics-shutting-it-down/; Berman, *supra* note (noting that a true out-of-court workout involves a meeting of creditors to gain their cooperation).
[xxv] *Assignment for the Benefit of Creditors*, THOMPSON HINE, https://www.thompsonhine.com/services/business-restructuring-creditors-rights-bankruptcy/assignment-for-the-benefit-of-creditors/ ("An ABC also relieves a company's directors and officers of the responsibility of winding down the business and disposing of assets and provides protection against breach of fiduciary duty or other claims often threatened by creditors in connection with a cessation of business operations and inability to satisfy all claims.").
[xxvi] *Id.*
[xxvii] *Id.*; *see also Is an Assignment for the Benefit of Creditors (ABC) Better Than Bankruptcy?*, EMAGROUP (2022), https://www.ema-group.com/is-an-assignment-for-the-benefit-of-creditors-abc-better-than-bankruptcy/ ("An assignment provides a way to shield the officers, directors and the buyer from litigation of a fraudulent transfer of the assets to the buyer.").
[xxviii] Melickian & Jouglaf, *supra* note ("[A]n ABC may be attractive to a secured creditor that wants to avoid the cost of a formal receivership and of taking property through a foreclosure and sale, preferring instead to engage an experienced, independent third party to act as assignee and to liquidate the distressed entity's assets.").
[xxix] *Alternatives to Bankruptcy: Article 9, ABC's, Receiverships and Other Alternatives*, *available at* https://turnaround.org/sites/default/files/4%20Alternatives%20to%20Bankruptcy%20Phil%20Chapter.pdf (noting that litigation over "commercial reasonableness" may slow down the foreclosure process and characterizing such litigation as a disadvantage of an Article Nine foreclosure sale).
[xxx] UCC § 9-615.
[xxxi] *Know Your ABCs – The Chapters 7 & 11 Alternative*, REED SMITH CLIENT ALERTS (Apr. 30, 2003), https://www.reedsmith.com/en/perspectives/2003/04/know-your-abcs--the-chapters-7--11-alternative (observing that secured creditors "frequently prefer working with the less formal ABC process").
[xxxii] *Alternatives to Bankruptcy*, *supra* note .
[xxxiii] Fla. Stat. Ch. 727.101-727.116 (2017).
[xxxiv] N.Y. Debt & Cred. Law §§1-24.
[xxxv] N.J. Stat. Ann. §§2A:19-1 to 2A:19-49 (2009).
[xxxvi] California's statutory scheme was repealed in 1978 and not replaced. Instead, other provisions of California law, including provisions in the Civil Code, the Code of Civil Procedure, and the Uniform Commercial Code, are applicable to ABCs. Practitioners in California, therefore, must be familiar with each of these codes and provisions if they wish to be involved in an ABC in that state.
[xxxvii] Landon, *supra* note at 1478.
[xxxviii] *See, e.g.*, *In the Matter of Global Safety Labs, Inc.*, C.A. No. 2022-0309-JTL (Del. Ch. 2022) (criticizing petition as "a bare-bones four-page document consisting principally of conclusory averments"); *In re Kidbox.com Inc.*, C.A. No. 2022-0379-PaF (Del. Ch. 2022) (denying motion for restrictions "comparable to the 'automatic stay' provisions under the Bankruptcy Code").
[xxxix] *Global Safety Labs*, *supra* note (suggesting that "the concept of a [bankruptcy] first-day declaration can serve as a guide" for ABC petitions).
[xl] Landon, supra note at 1461 ("Many scholars suggest that if a company holds assets in multiple states, it should consolidate those assets into one state before beginning the ABC process in order to simplify the process.").
[xli] *See* Ark. Rev. Stat. §§ 16-117-401 to 16-117-407.
[xlii] Wis. Stat. §§ 128.01 to 128.25.

[xliii] Hon. Catherine J. Furay, *Chapter 128: A Change Will Do Us Good*, STATE BAR OF WIS. (June 12, 2019), https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=92&Issue=6&ArticleID=27061.
[xliv] Wash. Rev. Code § 7.60.025.
[xlv] Minn. Stat. § 576.
[xlvi] Minn. Stat. §§ 576.21 to 576.53.
[xlvii] Mo. Rev. Stat. §§ 515.500 to 515.665.
[xlviii] Mo. Rev. Stat. §§ 426.010 to 426.410.
[xlix] JONATHAN FRIEDLAND, ET AL., STRATEGIC ALTERNATIVES FOR AND AGAINST DISTRESSED BUSINESSES, VOL. 1 §30:1 (2019).
[l] MD Code, Commercial Law, §§ 24-101 to 24-801.
[li] FRIEDLAND, *supra* note at § 27:1.
[lii] *Id.*
[liii] N.C. Gen. Stat. §§ 1-507.20, et seq.
[liv] FRIEDLAND, *supra* note , Chs. 19, 22, 23, 24, 31, & 32.
[lv] JONATHAN FRIEDLAND, ET AL., STRATEGIC ALTERNATIVES FOR AND AGAINST DISTRESSED BUSINESSES, VOL. 2 CHS. 40, 59, 61, 65, 71, 72, 74, & 76 (2019).
[lvi] *Commercial Real Estate Receivership Act*, UNIFORM LAW COMMISSION, https://www.uniformlaws.org/committees/community-home?CommunityKey=f8e2d89b-f300-40eb-a419-ad41902fcad2.
[lvii] FRIEDLAND, *supra* note at § 25:4.
[lviii] *Id.*
[lix] *See* W. John Funk, *An Overview of NH RSA Chapter 383-A and 383-C as They Apply to Governing Trust Companies*, GALLAGHER CALLLAHAN & GARTRELL (Apr. 5, 2020), https://www.gcglaw.com/knowledge-center/a-first-look-at-new-hampshires-new-trust-company-laws.
[lx] *See Ohio's New Receivership Law*, GRAYDON (Sept. 29, 2016), https://graydon.law/ohios-new-receivership-law/.
[lxi] *See* Andy Turner, *New Oklahoma Receivership Law for Marijuana Businesses*, CONNER WINTERS (May 31, 2019), https://www.cwlaw.com/newsletters-60#:~:text=Earlier%20this%20month%20the%20Oklahoma,received%20over%205%2C400%20business%20applications..
[lxii] FRIEDLAND, *supra* note at § 18:4.
[lxiii] *Id.* at § 20:4.
[lxiv] *Id.* at § 25:4.
[lxv] *Id.* at § 34:1.
[lxvi] *Id.* at § 21:1.
[lxvii] *Id.* at § 36:1 n. 2.
[lxviii] *Id.*
[lxix] A fuller discussion of many of these interactions may be found in Richards & Ross, *supra* note .
[lxx] *See also* 8 Del. C. 1953, §271; Stream TV Networks, Inc. v. SeeCubic, Inc., C.A. No. 360, 2022 WL 2149437 (Del. June 15, 2022) (holding that corporation must have shareholder consent to ratify board's action even when corporation is "a failing firm").
[lxxi] 6 Del. Code §18-304(1)(a) (2016).
[lxxii] UCC § 9-102(a)(52)(B) (defining assignee as a "lien creditor" from the time of assignment); § 9-317(a) (describing priority of lien creditors vis a vis secured creditors); §9-323(b) (describing priority of lien creditors vis a vis secured creditors).
[lxxiii] UCC §9-627(c)(4) ("A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved…by an assignee for the benefit of creditors.").
[lxxiv] Some state statutory schemes permit an assignee to bring avoidance actions. *See, e.g.,* Cal. Civ. Proc. Code §1800(b) (West 2008). However, as discussed further below, the Bankruptcy Code may preempt such power. In addition, note that UCC §9-102(a)(52)(B) does not make the assignee a secured party.
[lxxv] California Civil Code §3439 et seq; N.J.S.A. 25: 2-1 et seq.
[lxxvi] *See, e.g.*, Cal. Civ. Code §3439.01(c) (defining "creditor" to include an assignee).
[lxxvii] It should be noted that in Maine and Massachusetts, the assignee is required to obtain creditor consent to the ABC. However, a creditor's failure to consent merely places the creditor behind those who do assent when proceeds are distributed.
[lxxviii] Berman, *supra* note .

[lxxix] *Id.* (noting, however, that priority for unpaid wages is limited to those unpaid wages and benefits accrued within the 90-day period immediately preceding the assignment).
[lxxx] *See, e.g.*, Colo. Rev. Stat. §6-10-130 (2008); Ohio Rev. Code Ann. §1313.43 (2006).
[lxxxi] *See, e.g.,* Del. Code Ann. Tit. 19, §3363 (2005) N.Y. Debt & Cred. Law §22(1) (McKinney 2001).
[lxxxii] Per its terms, the federal priority statute is not applicable in bankruptcy cases. 31 U.S.C. §3713(a)(2) (1982).
[lxxxiii] *See, e.g.,* 21 Del. Code §8404(c)(2)(f) (2013) (providing for reduction of notice period for termination, cancellation, or nonrenewal of manufacturer-dealer agreement if new recreational vehicle dealer enters into an ABC); 21 Del. Code §8404(e)(5) (providing that new recreational vehicle dealer has good cause to propose termination, cancellation, or nonrenewal if the manufacturer or distributer enters into an ABC); 21 Del. Code §8406(a)(5) (2013) (allowing manufacturer or distributor to object to transfer of dealership if prospective transferee has entered into an ABC in the past 10 years).
[lxxxiv] *See, e.g.*, 6 Del. Code §2403A(c)(1) (2007).
[lxxxv] *See, e.g.*, 10 Del. Code §5201(4) (defining "distribution proceeding" to include an ABC); 10 Del. Code §5202(a) ("This chapter applies only to a foreign-money claim in an action or distribution proceeding. The provisions of this chapter are applicable to such foreign-money claims notwithstanding any contrary provisions of law.").
[lxxxvi] 6 Del. Code §15-807(g) (2015).
[lxxxvii] Geoffrey L. Berman & Catherine E. Vance, *Model Statute for General Assignments for the Benefit of Creditors: The Genesis of Change*, 17 AM. BANKR. INST. L. REV. 33 (2009).
[lxxxviii] *See, e.g.*, Kevin M. Lippman & Julian P. Vasek, *Workout Tactics and Other Strategies to Avoid Chapter 11 Bankruptcy* (2018), *available at* https://www.munsch.com/portalresource/lookup/wosid/cp-base-4-20104/overrideFile.name=/Lippman_Vasek_Westbrook%20Paper%20-%20Bankruptcy%20Alternatives%20(final).pdf (noting that, in Texas, ABCs were more common a century ago, "but there is almost no case law interpreting the ABC statutes since the legislature enacted chapter 23 of the Texas Business and Commerce code in 1967").
[lxxxix] *See, e.g.*, Mary K. Whitmer & James W. Ehrman, *Is an Assignment for the Benefit of Creditors a Viable Option for a Debtor?*, BAR J. BANKR. & COMM. L. (2017), https://static1.squarespace.com/static/5a8f807bf407b40d263dfff8/t/5a99c9a553450a1a94844a69/1520028069753/Document3+CMBAArticle-AssignmentForTheBenefitOfCreditors.pdf (noting that Ohio's ABC statute was last amended in 1953 and providing suggestions on making the Ohio ABC process "more user-friendly").
[xc] Landon, *supra* note ("Over time, the ABC process became too widely varied by state and too cumbersome, and, as a result, ABCs were not widely used in many states.").
[xci] *See* Al Statz, *Assignment for the Benefit of Creditors: Alternative to a Bankruptcy Sale*, EXIT STRATEGIES GROUP (Sept. 5, 2020), https://www.exitstrategiesgroup.com/assignment-for-the-benefit-of-creditors-abc ("When the goal of a financially distressed business owner is to sell with minimum publicity, free of unsecured debt and potential liability for directors and management, the most advantageous exit path may be an Assignment for the Benefit of Creditors.").
[xcii] Landon*,* *supra* note . (comparing ABCs to chapters 7 and 11 of the Bankruptcy Code and concluding that ABCs take less time, are less expensive, less public, less subject to oversight, and are generally faster and more flexible due to fewer requirements with respect to documentation and judicial involvement).
[xciii] For a more thorough discussion of creditor challenges to assignees, *see* Berman, *supra* note .
[xciv] *Know Your ABCs*, *supra* note ("Creditors who file an involuntary bankruptcy case after the ABC usually are faced with a motion by the Assignee or other interested parties to dismiss or abstain from the bankruptcy case on the grounds that the pending ABC is a more than adequate substitution for an involuntary bankruptcy case.").
[xcv] *See* 11 U.S.C. §303(b)(1); Montana Dept. of Revenue v. Blixseth, 942 F.3d 1179 (9th Cir. 2019).
[xcvi] 11 U.S.C. §543(c)(3) (emphasis added).
[xcvii] *See, e.g.*, CCP §1802 (requiring creditor notice in California ABCs).
[xcviii] *See* Ogonna M. Brown, Rob Charles, & Susan M. Freeman, *How the Uniform Commercial Real Estate Receivership Act ("UCRERA") May be an Option for Business Creditors Affected by the COVID-19 Pandemic*, LEWIS ROCA (Apr. 22, 2020), https://www.lewisroca.com/blog/how-the-uniform-commercial-real-estate-receivership-act-may-be-an-option-for-business-creditors-affected-by-the-covid-19-pandemic (observing that UCRERA "is slowly taking hold across the country").
[xcix] Cal. Code Civ. Proc. §1204 (1999).
[c] Sherwood Partners, Inc. v. Lycos, 394 F.3d 1198 (9th Cir. 2005) (holding that California statute that allowed assignees to avoid preferential transfers was preempted by the Bankruptcy Code); Andrew B. Dawson, *Better Than Bankruptcy?*, 69 RUTGERS U.L. REV. 137 (2016) (discussing debtors using ABC laws in South Florida to reorganize

rather than liquidate); Matthew S. Barr, *Examining Assignments for the Benefit of Creditors*, LAW360 (May 1, 2013, 4:01 PM), https://www.law360.com/articles/433794/examining-assignments-for-the-benefit-of-creditors (observing that providing the assignee with statutory authority to avoid fraudulent transfers or recover preferences may be preempted by the Bankruptcy Code).

[ci] Indeed, several courts, in California and elsewhere, have disagreed with *Lycos* and have found that state preference laws, like the one at issue in *Lycos*, do not preempt the Bankruptcy Code. *See, e.g.*, Haberbush v. Charles & Dorothy Cummins Family Limited Partnership, 43 Cal. Rptr. 3d 814 (2006) (holding that California's statute is not preempted by the Bankruptcy Code); Ready Fixtures Co. v. Stevens Cabinets, 488 F.Supp. 2d 787 (2007) (holding that Wisconsin's insolvency preference statute was not preempted by the Bankruptcy Code).

[cii] *See* Sturges v. Crowninshield, 17 U.S. 122 (1819).

[ciii] Berman, *supra* note .

[civ] UCC §1-201(b)(35).

[cv] *See also*, Geoffrey L. Berman, *Sales of Assets by an Assignee for the Benefit of Creditors*, AM. BANKR. INST. J. (Oct. 2012) (observing that the assignee's lien creditor rights under the UCC do "not necessarily 'secure' anything, but…effectively block[] creditors with not-otherwise-perfected lien claims against the assignor from improving their position post-assignment").

[cvi] An exception to this would be if a single secured creditor had a blanket lien over all of the assets.

[cvii] Berman, *supra* note .

[cviii] National Conference of Commissioners on Uniform State Laws, *Uniform Trust Code* §201 Comment (2010), *available at*
https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=ae68d637-6e52-0776-2e39-be6ce26f315f&forceDialog=0.

[cix] For a thorough discussion of the court's role in court-supervised ABCs, see Berman, *supra* note .

[cx] *See, e.g.,* Florida Statutes, Title XLI, §727.109(2); 10 Del. C. §7383.

[cxi] Berman, *supra* note .

[cxii] *Id.*

[cxiii] In a court-supervised ABC, where the facts so dictate, the court may allow for a *cy pres* type of distribution to a 501(c)(3) non-profit entity.

[cxiv] Many states require unclaimed distributions to be escheated.

[cxv] Uniform Trust Code, *supra* note , §§1001-1013.

[cxvi]*See generally* Uniform Trust Code, *supra* note .

[cxvii] *See* Carly Landon, Note, *Making Assignments for the Benefit of Creditors as Easy as A-B-C*, 41 FORDHAM URB. L.J. 1451 (2014) (suggesting that the Model Statute had several flawed provisions that may have prevented it from being taken up by the states).

[cxviii] For example, Missouri is contemplating changes to its ABC law. *See* S.B. 524, 101st Gen. Assembly (Mo. 2021).