

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

Senate Bill 949

By Senator Oliverio

[Introduced February 16, 2026; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,
 2 designated §46C-1-1, §46C-1-2, §46C-1-3, §46C-1-4, §46C-1-5, §46C-1-6, §46C-1-7,
 3 §46C-1-8, §46C-1-9, §46C-1-10, §46C-1-11, §46C-1-12, §46C-1-13, §46C-1-14, §46C-1-
 4 15, §46C-1-16, §46C-1-17, §46C-1-18, §46C-1-19, §46C-1-20, §46C-1-21, §46C-1-22,
 5 §46C-1-23, §46C-1-24, §46C-1-25, §46C-1-26, and §46C-1-27, relating to the Uniform
 6 Assignment for Benefit of Creditors Act; providing a short title; providing definitions;
 7 establishing requirements and effects for assignment agreements; clarifying filing,
 8 recording, and title transfer requirements; requiring notification to creditors; establishing
 9 duties of assignors and assignees; clarifying the powers of assignees; establishing when a
 10 claim is allowed, disputed, or disallowed; clarifying requirements for proof of claim;
 11 establishing rights of transferees; clarifying distributions and claim subordination; creating
 12 liability; clarifying removal of an assignee and a successor; clarifying requirements to wind
 13 up; clarifying interstate matters; establishing court action; and providing severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. UNIFORM ASSIGNMENT FOR BENEFIT OF CREDITORS ACT.

§46C-1-1. Short title.

1 This article shall be known and may be cited as the " Uniform Assignment for Benefit of
 2 Creditors Act."

§46C-1-2. Definitions.

1 For the purposes of this article:

2 (1) "Affiliate" means:

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

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

7 or

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

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

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

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

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

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

21 (B) If the assignor is an individual, a legal or equitable interest in property to the extent it is
22 exempt from legal process under other law.

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

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

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

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

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

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

32 (9) "Claim" means a creditor's right to payment or to an equitable remedy, regardless of
33 whether the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured,

34 unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

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

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

38 (12) "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
39 optical, electromagnetic, or similar capabilities.

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

42 (14) "Insider" includes:

43 (A) In the case of an individual:

44 (i) A relative of the individual;

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

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

48 (B) In the case of an organization:

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

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

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

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

56 (C) An affiliate; or

57 (D) A managing agent of an organization.

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

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

61 (17) "Perfected lien" means a lien on:

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

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

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

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

74 (20) "Record" means information:

75 (A) Inscribed on a tangible medium; or

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

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

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

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

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

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

- 86 (24) "Sign" means, with present intent to authenticate or adopt a record:
- 87 (A) Execute or adopt a tangible symbol; or
- 88 (B) Attach to or logically associate with the record an electronic symbol, sound, or process.
- 89 (25) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
- 90 United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the
- 91 United States. The term includes a federally recognized Indian tribe.
- 92 (26) "Transfer" means disposing of or parting with an asset or with an interest in an asset,
- 93 regardless of whether the disposition or parting is indirect, conditional, or involuntary.

§46C-1-3. Scope.

- 1 This article applies to an assignment made by an assignor that is:
- 2 (1) An organization whose principal place of business is in this state;
- 3 (2) An organization whose internal affairs are governed by other law of this state;
- 4 (3) An individual whose principal residence is in this state;
- 5 (4) An organization wholly owned, directly or indirectly, by an assignor that satisfies
- 6 subdivisions (1), (2), or (3) of this section; or
- 7 (5) An organization that:
- 8 (A) Is partly owned, directly or indirectly, and controlled by an assignor that satisfies
- 9 subdivisions (1), (2), or (3) of this section;
- 10 (B) Has no place of business or employees; and
- 11 (C) Relies on the services the organization receives from an assignor that satisfies
- 12 subdivisions (1), (2), or (3) of this section.

§46C-1-4. Requirements for assignee and assignment agreement.

- 1 (a) An assignee must be a person that:
- 2 (1) Is not a creditor, affiliate, or insider of the assignor;
- 3 (2) Is not an affiliate or insider of a creditor of the assignor;
- 4 (3) Does not have a claim against the assignment estate, other than a claim for fees and

5 expenses to be paid under the assignment agreement;

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

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

10 (6) Is not an affiliate of a person that fails to satisfy subdivisions (1), (2), (3), (4), or (5) of this
11 section.

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

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

16 (1) State the name and address of the assignor and of the assignee;

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

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

19 (4) Provide for the distribution of the assignment estate;

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

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

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

§46C-1-5. Effect of assignment; when assignment agreement effective.

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

3 (b) If the assignor is an organization, an assignee obtains the rights, title, and interests of

4 the assignor in assets acquired after the assignment.

5 (c) Except as provided in §46C-1-10(b)(12) of this code, an assignee takes each assigned
6 asset subject to an existing interest in the asset held by another person.

7 (d) An assignee holds the assigned assets subject to the assignee's duties under §46C-1-
8 9 of this code.

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

11 (f) The effective date of an assignment agreement is the date the agreement is signed by
12 the last party to the agreement that is required to sign the agreement unless a later date is
13 identified in the agreement as the effective date.

§46C-1-6. Filing, recording, and title transfer requirements.

1 (a) In this section, "financing statement" has the meaning in Uniform Commercial Code
2 Section 9-102(a)(39).

3 (b) An assignee of a legal or equitable interest in personal property may file a financing
4 statement in the filing office of:

5 (1) This state established for purposes of Uniform Commercial Code Section 9-501(a)(2);

6 (2) Any other state in which:

7 (A) The assignor would be located under Uniform Commercial Code Section 9-307 if the
8 assignor were a debtor for the purpose of that section; or

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

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

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

13 (1) Attach a copy of the assignment agreement to the financing statement; or

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

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

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

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

19 (f) The filing of a financing statement under subsection (b) is not itself a factor in

20 determining whether an asset secures an obligation. The rights of the assignee under the

21 assignment are not affected if the assignee does not file a financing statement under subsection

22 (b).

23 (g) An assignee of a legal or equitable interest in real property shall record the assignment

24 of the interest or notice of the assignment under the real estate recording law of the jurisdiction

25 where the property is located.

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

27 (i) By signing an assignment agreement, the assignor authorizes the assignee to take the

28 actions required by this section.

§46C-1-7. Notification to creditors.

1 (a) Unless a creditor waives in a signed record the right to notification, an assignee shall

2 send a notification of the assignment to each creditor known to the assignee within a reasonable

3 time not to exceed 30 days after the effective date of the assignment agreement.

4 (b) The notification must:

5 (1) Be in a record signed by the assignee;

6 (2) Include the assignee's name, address, and other contact information reasonably

7 necessary to communicate with the assignee;

8 (3) Provide reasonable instructions for submitting a proof of claim using the method

9 established by the assignee under §46C-1-9(b)(5) of this code; and

10 (4) Identify the date established under §46C-1-9(b)(6) of this code by which each creditor

11 whose claim is not otherwise allowed without timely proof of claim under this [act] must submit a

12 proof of claim.

- 13 (c) An assignee shall use reasonable means to provide the information in subsection (b) to
- 14 unknown creditors, including by any means the assignor regularly used to:
- 15 (1) Provide information to the assignor's creditors; or
- 16 (2) Communicate information about the assignor, other than advertising, to the public.

§46C-1-8. Duties of assignor.

1 (a) Subject to §46C-1-23 of this code, an assignor has a duty to take all reasonable actions
2 necessary for the assignee to administer the assignment, the assigned assets, and the
3 assignment estate.

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

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

7 (2) Provide to the assignee information reasonably necessary to administer the
8 assignment, the assigned assets, and the assignment estate;

9 (3) Sign any record reasonably necessary to transfer an assigned asset and comply with
10 any notarization required under other law;

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

15 (5) If the assignment includes a legal or equitable interest in real property or titled personal
16 property, cooperate with the assignee in taking actions under §46C-1-6 of this code;

17 (6) On or as soon as practicable after the effective date of the assignment agreement,
18 provide the assignee:

19 (A) A list of all assets;

20 (B) A list of all the assignor's employees, including those whose employment is terminated
21 in connection with the assignment; and

22 (C) A list of all the assignor’s known creditors, including, for each creditor, the creditor’s
23 address and other contact information reasonably necessary to communicate with the creditor;

24 (7) Verify under penalty of perjury the accuracy of the lists required under §46C-1-8(b)(6) of
25 this code;

26 (8) With respect to a legal or equitable interest in property restricted from assignment,
27 cooperate with the assignee to obtain consent from a person whose consent to assign the interest
28 is necessary under other law; and

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

30 (c) The duties in this section also apply to a representative designated under subsection
31 (b)(4).

§46C-1-9. Duties of assignee.

1 (a) Subject to §46C-1-23 of this code, an assignee has a fiduciary duty to the assignment
2 estate for the benefit of creditors:

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

4 (2) To use reasonable care to maximize distributions under §46C-1-15 of this code; and

5 (3) To wind up the assignment under §46C-1-19 of this code in a manner compatible with
6 the best interests of the assignment estate and creditors.(b) Without limitation on the duties under
7 subsection (a), and subject to §46C-1-23 of this code, the assignee also has a duty to:

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

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

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

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

15 (5) Establish a method that is reasonably designed to permit a creditor to submit a proof of

16 claim;

17 (6) Establish a single date by which creditors whose claims are not otherwise allowed
18 without timely proofs of claim under this [act] must submit proofs of claim, which must be 150 days
19 after the effective date of the assignment agreement;

20 (7) Unless a claim would receive minimal or no distribution without regard to the claim's
21 validity or asserted priority, examine the validity and priority of claims against the assignment
22 estate and, if necessary, consult with the representative designated by the assignor under §46C-1-
23 8(b)(4) of this code;

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

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

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

31 (11) Send a final accounting under §46C-1-19(a) of this code; and

32 (12) Comply with the other requirements imposed on the assignee under this article.

§46C-1-10. Powers of assignee.

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

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

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

6 (2) Incur secured or unsecured debt and pay expenses incidental to the exercise of the
7 power under §46C-1-10(b)(1) of this code;

8 (3) Assert a right, claim, cause of action, or defense the assignor could have asserted that

9 relates to the assignment estate;

10 (4) Engage professionals, including a professional previously engaged by the assignor, to
11 give advice, to prosecute or defend litigation, or for other purposes as the assignee considers
12 appropriate, and pay professionals reasonable fees for services from the assignment estate;

13 (5) Collect on, or sell, lease, license, or otherwise dispose of, an asset of the assignment
14 estate regardless of whether the asset is subject to a lien or other encumbrance;

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

17 (7) Settle a matter involving a debtor of the assignor;

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

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

23 (10) Settle claims against the assignment estate;

24 (11) Abandon an assigned asset;

25 (12) Subject to subsections (c) and (e), avoid a transfer or the incurrence of an obligation
26 which a creditor that has filed a proof of claim could have avoided under other law if the
27 assignment had not been made; and

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

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

33 (d) For the purpose of exercising the assignee's power under subsection (b)(12),
34 exercising a voidable-transaction remedy, or otherwise establishing the priority of the assignee's

35 interest, an assignee has a lien on the assignment estate and the status of:

36 (1) A lien creditor under [cite to Uniform Commercial Code Section 9-102(a)(52)(B)] as to
37 an asset that is a legal or equitable interest in personal property or fixtures;

38 (2) A bona fide purchaser under [the recording statute of this state] as to an asset that is a
39 legal or equitable interest in real property, other than fixtures, located in this state; and

40 (3) A bona fide purchaser under the law of another state as to an asset that is a legal or
41 equitable interest in real property, other than fixtures, located in the other state.

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

47 (f) An assignee shall exercise the powers under this section consistent with the assignee's
48 fiduciary duty under §46C-1-9(a) of this code.

§46C-1-11. Allowed claim.

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

2 (1) The creditor submits a proof of claim in compliance with §46C-1-13 of this code; and

3 (2) The assignee does not dispute the claim under §46C-1-12 of this code before final
4 distribution.

5 (b) An assignee may:

6 (1) Allow a claim, pay a known liquidated claim, or accept a notice to the assignee of a
7 claim received by the date established by the assignee under §46C-1-9(b)(6) of this code even if
8 the creditor does not submit a proof of claim; or

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

11 (c) Any unsecured portion of an allowed claim shall be valued as of the effective date of the

12 assignment agreement.

13 (d) A creditor's claim is allowed if the creditor succeeds in a dispute under §46C-1-12(b) of
14 this code.

15 (e) Subject to subsection (f), after expiration of the time for submitting a proof of claim, the
16 assignee shall create a complete list of creditors that have submitted a proof of claim in
17 compliance with §46C-1-13 of this code. For each creditor's claim, the list must state:

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

19 (2) Whether the claim is secured or unsecured and, if secured, describe the collateral for
20 the claim.

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

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

§46C-1-12. Disputed and disallowed claims.

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

3 (b) If a dispute cannot be resolved consensually, the assignee may commence a
4 proceeding under §46C-1-21 of this code to disallow the claim. The assignee must commence
5 proceedings before final distribution under §46C-1-15 of this code. If the proceeding is not filed
6 before final distribution, the assignee shall allow the claim under §46C-1-11 of this code.

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

9 (d) Subject to subsection (b), an assignee shall disallow a claim for reimbursement or

10 contribution of a person that is liable with the assignor on, or that has secured, the claim, to the
11 extent:

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

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

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

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

20 (f) An assignee may reconsider the assignee's decision to allow or disallow a claim for
21 cause. If a reconsidered claim is allowed under §46C-1-11 of this code, before the assignee
22 makes additional payments or transfers to other creditors that are equal or junior in priority under
23 §46C-1-15 of this code to the reconsidered claim, the creditor with the reconsidered claim shall
24 receive a payment or transfer in an amount proportionate in value to the payments or transfers
25 already received by the other creditors. This subsection does not modify the assignee's right under
26 other law to recover from a creditor an excess payment or transfer made to the creditor. If a
27 reconsidered claim is disallowed, the assignee shall comply with subsections (b) and (c).

§46C-1-13. Proof of claim.

1 (a) A proof of claim must:

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

4 (2) State the amount of the claim;

5 (3) Briefly state the nature of the claim;

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

7 (5) Be signed by the creditor under penalty of perjury;

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

9 (7) Be submitted using the method established under §46C-1-9(b)(5) of this code; and

10 (8) Be submitted by the date established by the assignee under §46C-1-9(b)(6) of this
11 code.

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

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

16 (1) Consent to the jurisdiction of the court under §46C-1-21 of this code; and

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

§46C-1-14. Rights of transferees.

1 (a) An assignee's disposition of an asset:

2 (1) Transfers to a transferee for value all of the assignee's rights in the asset;

3 (2) Discharges the assignee's lien and, to the extent the assignment creates a security
4 interest in favor of the assignee, the assignee's security interest; and

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

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

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

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

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

14 (3) Any other security interest or other line.

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

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

§46C-1-15. Distributions.

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

2 (1) Is a perfected lien;

3 (2) Cannot be avoided by the assignee under §46A-10(b)(12) of this code; and

4 (3) Is not subordinate to the assignee's lien.

5 (b) Except as provided in §46A-1-16 of this code, the assignee shall pay claims from the
6 assignment estate allowed under §46A-1-11 of this code in the order of priority stated in this
7 section.

8 (c) Unless otherwise agreed between the assignee and a protected secured creditor,
9 before distributions under subsections (d), (e), (f), and (g), and in accordance with the priorities of
10 creditors with liens under other law, the protected secured creditor shall receive the asset or the
11 proceeds from the collection on or disposition of the asset to the extent of the value of the
12 protected secured creditor's interest in the asset, less the assignee's reasonable and necessary
13 expenses of preserving or disposing of the asset to the extent the expenses benefit the protected
14 secured creditor and are incurred with the protected secured creditor's consent or acquiescence.
15 The protected secured creditor has an unsecured claim under subsection (g)(2) for the amount of
16 the claim that remains after deducting the amount or value of an asset the protected secured

17 creditor receives under this subsection. To the extent a claim is secured by an asset the value of
18 which, after the deductions provided under this subsection, is greater than the amount of the claim,
19 the protected secured creditor may receive interest on the claim and any reasonable fees, costs,
20 or charges provided for under the agreement or other law under which the claim arose.

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

23 (1) Fees and reimbursements of the expenses of the assignee and any professionals
24 engaged by the assignee;

25 (2) Post-assignment taxes incurred by the assignee;

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

28 (4) Post-assignment lease payments incurred by the assignee in renting personal property
29 used in the business of the assignor; and

30 (5) Amounts required to be paid under the assignment agreement for expenses of winding
31 up the assignment under §46A-19 of this code.

32 (e) After the distributions under subsections (c) and (d), the assignee shall pay claims
33 entitled to priority under federal law including under 31 U.S.C. Section 3713, as amended, from the
34 assignment estate.

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

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

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

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

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

47 (2) Unsecured claims not entitled to priority.

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

52 (i) If the claims entitled to the distribution under subsections (c), (d), (e), (f), and (g) are paid
53 in full, the residue shall be distributed to allowed claims evidenced by a late-filed proof of claim,
54 other than a late-filed claim allowed by the assignee under §46A-11(b)(2) of this code, and, after
55 the allowed claims evidenced by a late-filed proof of claim have been paid in full, as provided in the
56 assignment agreement.

57 (j) An assignee may make interim distributions after considering future expenses and the
58 reserves for disputed claims established under §46A-12(c) of this code.

§46C-1-16. Claim subordination.

1 (a) A subordination agreement is enforceable under this article to the same extent the
2 agreement is enforceable under other law.

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

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

8 (2) A claim for damages arising from the purchase or sale of the security or other equity
9 interest; and

10 (3) A claim for reimbursement or contribution allowed on account of the rescission or
11 damage claim.

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

§46C-1-17. Liability.

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

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

3 (c) A representative designated by an assignor under §46C-1-8(b)(4) of this code is
4 exculpated to the same extent as a person acting on behalf of the assignor under other law had
5 there been no assignment, except for an act or omission resulting from the representative's gross
6 negligence or willful misconduct.

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

11 (e) Subject to subsection (f), an assignee is personally liable for breach of a fiduciary duty
12 under §46C-1-9(a) of this code. If the assignee is liable:

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

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

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

19 (1) A record of the assignor;

20 (2) Information, an opinion, a report, or a statement presented to the assignee by the

21 assignor's officer or employee, a committee of the assignor's board of directors, an independent
22 director or manager of the assignor, or another representative of the assignor; or

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

§46C-1-18. Assignee removal; successor assignee.

1 (a) The assignor or a creditor may request a court of competent jurisdiction in West Virginia
2 to remove the assignee, if the assignor or creditor has a reasonable belief grounds for removal
3 exist under subsection (b) of this section.

4 (b) After a request under subsection (a) or on the court's initiative in an action pending
5 before the court under §46C-1-21 of this code, the court may remove an assignee:

6 (1) For cause, including the assignee's fraud, dishonesty, incompetence, gross
7 mismanagement, or failure to comply with this article; or

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

9 (c) After an assignee resigns, or is removed, dies, or becomes incapacitated, a successor
10 assignee provided for in the assignment agreement becomes the assignee, unless the successor
11 assignee is not eligible to be an assignee under §46C-1-4(a) of this code or is subject to removal
12 under subsection (b). A court shall appoint a successor assignee if:

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

14 (2) The successor assignee provided for in the assignment agreement is ineligible to be an
15 assignee under §46A-1-4(a) of this code or is subject to removal under subsection (b).

16 (d) Subject to §46C-1-17 of this code , an assignee that resigns, or is removed, dies, or
17 becomes incapacitated, is discharged from the assignee's duties under this article when the
18 assignee, or a representative of a deceased or incapacitated assignee:

19 (1) Accounts for and turns over to the successor assignee all assets of the assignment
20 estate; and

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

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

§46C-1-19. Winding up.

1 (a) On completion of an assignee's duties, the assignee shall send a creditor whose claim
2 is allowed under §46C-1-11 of this code, and not satisfied in full, a final accounting sufficient to
3 inform the creditor of all material aspects of the assignment, including:

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

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

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

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

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

13 (6) A description of additional work to be done by the assignee to complete the
14 administration of the assignment estate and the distributions under §46C-1-15 of this code; and

15 (7) Other information considered reasonably necessary by the assignee.

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

20 (c) If the final accounting describes additional work under subsection (a)(6), the assignee

21 shall exercise the powers appropriate to complete the work.

§46C-1-20. Interstate matters.

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

4 (b) If a claim for wages, salaries, or commissions or a claim of a governmental unit exists in
5 another state, for the purpose of determining the priority of the claim under §46C-1-15(f)(2) of this
6 code, the assignee shall use the amount asserted or determined under the law of the other state.

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

§46C-1-21. Court action.

1 (a) A court of competent jurisdiction in West Virginia may hear and resolve a matter
2 involving the administration of an assignment or the exercise of an assignee's powers and duties,
3 including a request for instructions or approval or to declare rights.

4 (b) Without limiting the rights of the assignee or a creditor or other interested person to
5 request the court to hear or resolve a matter under subsection (a), on request of the assignee, the
6 court may issue an order relating to the administration of the assignment or the exercise of the
7 assignee's powers and duties, including an order for disposition of an asset or the incurrence of an
8 obligation.

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

§46C-1-22. Ancillary assignee.

1 (a) Subject to other law of this state governing a person from another state serving as a
2 fiduciary in this state, a court of competent jurisdiction in West Virginia may appoint a person
3 -serving as an assignee in an assignment in another state, or the person's nominee, as an ancillary

4 assignee relating to assigned assets located in this state or subject to the jurisdiction of a court in
5 this state, if:

6 (1) The person or nominee would be eligible to serve as an assignee under §46C-1-4 of
7 this code; and

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

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

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

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

§46C-1-23. Provisions variable by agreement.

1 (a) Except as provided in this section and §46C-1-10(b) of this code, the provisions of this
2 article may not be varied by agreement.

3 (b) The duties under §46C-1-8(a) and §46C-1-9(a) may not be disclaimed by agreement.
4 An assignor and the assignee may determine by agreement the standards measuring the
5 fulfillment of the duties of the assignor under §46C-1-8 and the assignee under §46C-1-9 if the
6 standards are not manifestly unreasonable.

7 (c) Except as provided in §46C-1-17(d) of this code, the assignment agreement may limit
8 the assignee's liability under §46C-1-17 and may require the assignee be indemnified by the
9 assignment estate.

10 (d) Except as provided under §46C-1-7(a) of this code, whenever this article requires an
11 action to be taken within a reasonable time, a time not manifestly unreasonable may be fixed by

12 agreement.

13 (e) The assignment agreement may provide for duties of the assignee in addition to those
14 in this article.

§46C-1-24. Uniformity of application and construction.

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

§46C-1-25. Relation to electronic signatures in global and national commerce act.

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

§46C-1-26. Transitional provision.

1 This article applies to an assignment made on or after passage of this article.

§46C-1-27. Severability.

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

NOTE: The purpose of this bill is to create the Uniform Assignment for Benefit of Creditors Act.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.