

# Delaware's New ABC Act: What Private Equity Practitioners Need to Know

## WRITTEN BY

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## KEY POINTS

- Delaware Governor Matt Meyer signed Senate Bill 267 on June 10, 2026, replacing the state's 1875 ABC statute with a modern framework based on the Uniform Assignment for Benefit of Creditors Act with Delaware-specific enhancements. Delaware is now the sixth state to adopt the Uniform Act.
- The new act gives assignees authority to operate the business, incur debt, hire professionals, pursue avoidance actions, and sell assets through court-approved 363-style auctions.
- Court of Chancery oversight is available on an opt-in basis, preserving the speed and cost efficiency that make ABCs attractive while providing judicial credibility when needed.
- For PE sponsors, whose portfolio companies are already organized in Delaware in most cases, the practical implication is immediate. A Delaware ABC is now a genuine first-line wind-down option, and one that offers privacy, speed, and liability management at a reasonable price.

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## INTRODUCTION

On June 10, 2026, Governor Matt Meyer signed Senate Bill 267 (SB 267) into law, replacing Delaware's antiquated 1875 assignment for the benefit of creditors (ABC)<sup>[1]</sup> statute with a modern, comprehensive framework codified at 10 Del. C. §§ 7301A–7324A. The new statute adopts the Uniform Assignment for Benefit of Creditors Act (with Delaware-specific enhancements) (the act) and makes Delaware the sixth state to adopt the Uniform Act, positioning Delaware as a leading jurisdiction for controlled, private liquidation proceedings outside of federal bankruptcy court.

This development is particularly significant for private equity sponsors and their portfolio companies. Because most private equity (PE)-backed companies are organized in Delaware, the new act provides a streamlined, cost-effective tool for winding down distressed portfolio companies, executing distressed asset acquisitions, and managing sponsor liability, all without the expense, delay, and public visibility of a Chapter 11 or Chapter 7 proceeding.

## KEY ISSUES

### 1. A Modernized Framework Replacing an Outdated Statute

Delaware's prior ABC statute required two appraisals, a bond, and a formal inventory list. The new act eliminates these outdated mandates and provides a modern, flexible framework.

## **2. Jurisdictional Requirements Targeting Forum Shopping**

The act limits ABC filings to entities incorporated in Delaware, having their principal place of business in the state, or certain controlled affiliates of such entities. The assignee's jurisdiction alone is insufficient. This jurisdictional anchor was designed to prevent forum shopping and ensures the act is available primarily to entities with genuine Delaware ties, a condition most PE-backed portfolio companies meet.

## **3. Limited but Available Court of Chancery Oversight**

The assignee must file a petition in the Court of Chancery within 14 days of the assignment, but court involvement is limited unless affirmatively requested. This "opt-in" judicial framework preserves speed and cost efficiency while allowing the assignee to seek court approval of sales, bidding procedures, and debt as needed.

## **4. Broad Assignee Powers**

The new act grants the assignee expansive authority, including the power to:

- Operate the business during the wind-down period.
- Incur secured and unsecured debt.
- Hire professionals (counsel, financial advisors, auctioneers).
- Sell assets, including through court-approved auction procedures analogous to Section 363 sales.
- Settle claims and prosecute or defend litigation.
- Exercise avoidance powers.

## **5. Delaware-Specific Enhancements**

Beyond adopting the Uniform Act, Delaware added several enhancements designed to attract filings and qualified assignees:

- Choice-of-law provision: Assignments selecting Delaware law are governed by Delaware law.
- Broader assignee liability limitation (except for bad faith or reckless indifference).
- Explicit statutory authority for court-approved auctions (363-style sales without bankruptcy overhead).
- Exemption of conveyances under the act from Delaware realty transfer tax.
- Enhanced creditor notification requirements, including notice to holders of disputed, contingent, or unliquidated claims, employees, and contract parties.
- Rebuttable presumption that notice complying with court rules was received.

## **6. Material Advantages vs. Chapter 11**

For PE-backed portfolio companies lacking liquidity, ABCs offer material advantages:

- Dramatically cheaper than Chapter 11.
- Rapid execution- critical for companies burning cash.
- Greater privacy (press may report a newco asset acquisition rather than a bankruptcy filing).

- Sponsor/board control over assignee selection.
- Directors and officers resign when the ABC is effectuated, transferring wind-down responsibility to an independent fiduciary and reducing directors and officers (D&O) exposure.

## 7. Limitations of ABCs

PE sponsors should be mindful of the following limitations:

- No automatic stay: Creditors may continue collection efforts; if breathing room is needed, Chapter 11 may remain necessary.
- Liquidation only: ABCs are not suitable where the goal is business continuation or reorganization.
- No executory contract assumption process: Unlike Section 365 of the Bankruptcy Code, contracts cannot be assumed or assigned without counterparty consent.
- Involuntary bankruptcy risk: Creditors retain the right to file an involuntary petition, which can override the ABC.
- Board and shareholder approval required for transfer of all or substantially all assets.
- Secured creditor consent needed for encumbered assets.

## TAKEAWAYS

### For PE Sponsors With Distressed Portfolio Companies

- ABCs are now a standard part of the restructuring toolkit for distressed portfolio companies organized in Delaware. Engage restructuring counsel early, before cash runs out.
- Prepare a 13-week cash flow forecast to assess whether an ABC is feasible and to ensure sufficient liquidity to effectuate the assignment.
- Ensure payment of trust fund taxes and employee wages before effectuating an ABC to avoid personal liability for directors and officers.
- Document the board's fiduciary analysis and alternatives considered in formal board minutes. Approval by disinterested directors strengthens protection.
- Obtain D&O tail coverage before the ABC.

### For Distressed Asset Acquirers

- Delaware ABCs can offer 363-style sales without the cost of a bankruptcy proceeding. Court-approved sale procedures are available at the assignee's option for buyer comfort.
- Purchasing assets from an independent fiduciary can reduce fraudulent transfer and successor liability risk compared to a direct acquisition from the distressed company.
- Pre-negotiated sales can close rapidly post-assignment, analogous to pre-packaged Chapter 11 but faster and cheaper.
- Consider ABCs as a tool for acquiring portfolio company assets in industries barred from federal bankruptcy (e.g., cannabis and other federally restricted sectors).

## CONCLUSION

Delaware's new ABC act is not merely a procedural update. Rather, it is a structural shift in how distressed PE-backed companies can be wound down. By replacing a 150-year-old statute with a modern, flexible framework backed by Court of Chancery oversight, Delaware has positioned itself as the premier jurisdiction for private, cost-

effective liquidations outside of federal bankruptcy. For the PE community, where most portfolio companies are already organized in Delaware, the practical implications are real and immediate. An ABC can now serve as a first-line wind-down option for portfolio companies that lack the liquidity to fund a Chapter 11, face time pressure, or require the privacy that bankruptcy cannot offer. The act's broad assignee powers, 363-style sale mechanics, and Delaware-specific enhancements give practitioners a tool that is judicially supported and operationally superior to the alternatives in the right circumstances.

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[1] An ABC is a voluntary, company-initiated state law liquidation procedure in which a distressed company (the assignor) transfers all of its assets to an independent fiduciary (the assignee). The assignee is then responsible for liquidating the assets and distributing the proceeds to the assignor's creditors pursuant to the priorities established by applicable law. In Delaware, ABCs are done under the purview of the Court of Chancery.

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