

HB 1655 -- ASSIGNMENT FOR BENEFITS OF CREDITORS

SPONSOR: Cornejo

This bill replaces the Assignment for Benefit of Creditors provisions of Chapter 426, RSMo, with several new provisions.

The bill outlines which courts shall have authority over proceedings under Chapter 426 and also specifies the residency and venue for assignors. All matters under Chapter 426 that require court authorization must be brought by motion, except for certain matters, as outlined in the bill (Sections 426.510, 426.513, and 426.516).

A creditor cannot obtain priority of payment out of assets assigned if the assignment is voided and set aside. When an assignment is attacked as fraudulent or void, it is not necessary to prove that the assignor has knowledge of such fraud. In actions to set aside an assignment, the assignee and assignor are indispensable parties (Sections 426.519, 426.522, and 423.525).

Any individual, entity, or unincorporated group of people that has the capacity to convey real property by deed may execute an assignment of assets to one or more assignees in trust. Any general assignment made by partners in business may include only the partnership property. Any assignment of assets are also subject to Chapter 428 and other provisions of law, but is not subject to Chapter 456. Chapter 426 supersedes the common law of assignments. Assignments must be administered for the equal benefit of the assignor's creditors (Sections 426.550, 426.553, 426.556, and 426.559).

An assignment shall not be void because of any mistake in the assignment, except as otherwise provided in Chapter 426. An assignment may be amended. An assignment shall not be cancelled without a court order after notice and opportunity to be heard. The bill outlines when an assignment will be void (Sections 426.562, 426.565, and 426.568).

Every assignment must be in writing and contain specified parts, as outlined in the bill. The assignor must attest to the accuracy of the assignment, under the penalty of perjury. The assignment must be filed with the appropriate court within seven business days after execution. A notice of the assignment must also be recorded in the recorder's office, which will have the effect of conveying the assignee both legal and equitable title to the real property (Section 426.600).

Any purchaser and encumbrancer in good faith, where notice of the

assignment has not been recorded in the appropriate county, shall take free of the interest of the assignee. An assignment shall not include any property exempt from levy or sale or exempt from being applied to the payment of debts by any legal process under law, unless the exemption is expressly waived in the assignment (Sections 426.603 and 426.606).

An assignee must post a bond, to be approved by the court, that is double the amount of the estate and effects assigned, within three business days after filing the assignment with the court. The bond may be adjusted and is conditioned on the assignee's faithful discharge of his or her duties. Anyone injured by a breach of the required conditions of the bond may bring an action against the assignee (Sections 426.609, 426.612, and 426.615).

Within 30 days after an assignment is executed, the assignee must publish notice of his or her appointment in the appropriate newspaper once a week for three consecutive weeks. The assignee must also give written notice to each of the assignor's creditors, equity holders, and other parties of interest (Section 426.650).

The assignee must be paid a reasonable fee for services from the estate. Upon approval by the court, the assignee may employ counsel, accountants, appraisers, auctioneers, real estate brokers, or other professionals. These professionals must be paid a reasonable fee from the estate (Sections 426.653 and 426.656).

An assignee may sue; take into his or her hands all the estate of such assignor; settle any and all assigned claims and causes of action; redeem all mortgages and conditional contracts; sell property subject to encumbrances; sell property free and clear of all encumbrances; exercise any powers that are granted to a trustee or assignee for the benefit of creditors; borrow money secured by the assigned assets; receive at the assignee's address all mail or deliveries; abandon assigned assets, rights, claims, and causes of action; and perform any and all acts necessary for the orderly liquidation of the assigned rights. An assignee may see, lease, or otherwise dispose of all or any part of the assigned assets by public or private sale (Sections 426.659 and 426.662).

The assignee must dispose of all personal property and real estate and divide the proceeds among creditors. The assignee may call the creditors together at any time with reasonable notice (Sections 426.665 and 426.668).

Every assignee must file a report with the court at least quarterly. All proceeds arising from the sale of property will be deposited for safekeeping in a national bank (Sections 426.671 and 426.674).

A majority of the unsecured creditors of the assignor may agree upon a new assignee for good cause. The court shall remove or replace the assignee under certain circumstances (Sections 426.677 and 426.680).

The assignee will have the right to occupy any business premises held under real estate lease by the assignor for up to 90 days after the assignment, or longer by agreement or court order (Section 426.683).

An assignee takes assets subject to the rights of persons other than the assignor. Nothing in this section shall limit the assignee from seeking avoidance of transfers, defending against claims, or seeking any other relief. The assignee shall not be held liable for acts done in good faith and reasonable judgment. The assignee shall succeed to all rights of the assignor and may assert on behalf of the estate any claims to avoid fraudulent transfers (Sections 426.686 and 426.692).

The bill outlines the order of priority for distribution on claims under Chapter 426. Most claims must be filed in accordance with Chapter 426. Claims shall be delivered to the assignee by the proper date. The assignee must create and file with the court a register of all creditors who have filed claims. Any objection must be in writing. The assignee must allow a claim unless he or she has good reason to believe the claim is not just and true. The assignee must allow or deny a disputed claim within 30 days. This decision may be reviewed by the court (Sections 426.695, 426.700, 426.703, 426.706, and 426.709).

The assignee may allow a claim that is not due at its present value by discounting it. Any creditor may present not only any debt due, but any debt to become due. The failure of a creditor to file a proof of claim shall not void a property attached and perfected lien. The provisions of Section 400.9-309 apply for purposes of determining priority of unperfected security interests (Sections 426.712, 426.715, 426.718 and 426.750).

The making of a general assignment for the benefit of creditors terminates a lien of pre- and post-judgment attachment if the lien was created within 90 days before making the assignment. Where a lien of attachment terminates, the assignee may secure the release of the attached property by filing the specified request. The lien of prejudgment attachment that has been terminated shall be reinstated as if it had never been terminated, in certain instances, as outlined in the bill. Upon making an assignment that terminates a lien under Chapter 426, the assignment will be subrogated to the rights of the plaintiff (Sections 426.753,

426.756, 426.759, and 426.762).