

FIRST REGULAR SESSION

SENATE BILL NO. 422

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHITE.

Read 1st time February 21, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1859S.011

AN ACT

To repeal sections 426.010, 426.020, 426.030, 426.040, 426.050, 426.060, 426.070, 426.080, 426.090, 426.100, 426.110, 426.120, 426.130, 426.140, 426.150, 426.160, 426.170, 426.180, 426.190, 426.200, 426.210, 426.220, 426.230, 426.240, 426.250, 426.260, 426.270, 426.280, 426.290, 426.300, 426.310, 426.320, 426.330, 426.340, 426.350, 426.360, 426.370, 426.380, 426.390, 426.400, and 426.410, RSMo, and to enact in lieu thereof forty-eight new sections relating to the assignment of benefits for creditors.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 426.010, 426.020, 426.030, 426.040, 426.050, 426.060, 426.070, 426.080, 426.090, 426.100, 426.110, 426.120, 426.130, 426.140, 426.150, 426.160, 426.170, 426.180, 426.190, 426.200, 426.210, 426.220, 426.230, 426.240, 426.250, 426.260, 426.270, 426.280, 426.290, 426.300, 426.310, 426.320, 426.330, 426.340, 426.350, 426.360, 426.370, 426.380, 426.390, 426.400, and 426.410, RSMo, are repealed and forty-eight new sections enacted in lieu thereof, to be known as sections 426.500, 426.510, 426.513, 426.516, 426.519, 426.522, 426.525, 426.550, 426.553, 426.556, 426.559, 426.562, 426.565, 426.568, 426.600, 426.603, 426.606, 426.609, 426.612, 426.615, 426.650, 426.653, 426.656, 426.659, 426.662, 426.665, 426.668, 426.671, 426.674, 426.677, 426.680, 426.683, 426.686, 426.689, 426.692, 426.695, 426.700, 426.703, 426.706, 426.709, 426.712, 426.715, 426.718, 426.750, 426.753, 426.756, 426.759, and 426.762, to read as follows:

426.500. For the purposes of this chapter, the following terms shall mean:

(1) "Abandon", to file and obtain the court's approval of a renunciation of assigned assets, rights, claims, and causes of action. An

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

5 abandonment shall be effective to the extent approved by the court as
6 if the assets, rights, claims, and causes of action so abandoned were
7 never assigned to the assignee;

8 (2) "Affiliate":

9 (a) A person that directly or indirectly owns, controls, or holds
10 with power to vote twenty percent or more of the outstanding voting
11 securities of the assignor or twenty percent or more of whose
12 outstanding voting securities are directly or indirectly owned,
13 controlled, or held with power to vote by the assignor, excluding
14 securities held in a fiduciary or agency capacity without sole
15 discretionary power to vote, or held solely to secure a debt if the holder
16 has not in fact exercised the power to vote; or

17 (b) A person that operates the business of the assignor under a
18 lease or operating agreement or whose business is operated by the
19 assignor under a lease or operating agreement;

20 (3) "Assets":

21 (a) Property, real or personal, of a debtor not exempt from
22 liability for its debts;

23 (b) Any property, real or personal, to the extent that the
24 property is liable for any debts of a debtor; and

25 (c) Exempt property waived pursuant to section 426.606;

26 (4) "Assignment", a document intended to serve as a general
27 assignment for the benefit of creditors;

28 (5) "Claim":

29 (a) A right to payment, regardless if such right is reduced to
30 judgment, liquidated, unliquidated, fixed, contingent, matured,
31 unmatured, disputed, undisputed, legal, equitable, secured, or
32 unsecured; or

33 (b) A right to an equitable remedy for breach of performance if
34 such breach gives rise to a right to payment, regardless if such right to
35 an equitable remedy is reduced to judgment, fixed, contingent,
36 matured, unmatured, disputed, undisputed, secured, or unsecured;

37 (6) "Conveyance", every payment of money, assignment, release,
38 transfer, lease, mortgage, or pledge of tangible or intangible property
39 or the creation of any lien or incumbrance;

40 (7) "Creditor", a person that has a claim and includes an assignee
41 of a general assignment for the benefit of creditors against a debtor or

42 assignor;

43 (8) "Debt", liability on a claim;

44 (9) "General assignment for the benefit of creditors", an
45 assignment that:

46 (a) Is of all the debtor's or assignor's assets that are transferable
47 and not exempt from enforcement of a monetary judgment; or

48 (b) Is for the benefit of all the debtor's or assignor's creditors
49 and does not create a preference of one creditor or class of creditors
50 over any other creditor or class of creditors except those priorities to
51 which certain classes of creditors are entitled under sections 426.500
52 to 426.762 or other applicable law;

53 (10) "Governmental unit", a subdivision, agency, department,
54 county, parish, municipality, or other unit of a county, state, the United
55 States, or a foreign country. The term includes a political subdivision
56 or an organization having a separate corporate existence if the
57 organization is eligible to issue debt on which interest is exempt from
58 income taxation under the laws of the United States;

59 (11) "Insider":

60 (a) If the debtor or assignor is a natural person:

61 a. A relative of the debtor or assignor or of a general partner of
62 the debtor or assignor;

63 b. A partnership in which the debtor or assignor is a general
64 partner;

65 c. A general partner of the debtor or assignor; or

66 d. A corporation of which the debtor or assignor is a director,
67 officer, or person in control;

68 (b) If the debtor or assignor is a corporation or a limited liability
69 company:

70 a. A director, officer, or person in control of the debtor or
71 assignor;

72 b. A partnership in which the debtor or assignor is a general
73 partner;

74 c. A general partner of the debtor or assignor; or

75 d. A relative of a general partner, director, officer, or person in
76 control of the debtor or assignor;

77 (c) If the debtor or assignor is a partnership:

78 a. A general partner in the debtor or assignor;

79 **b. A relative of a general partner in, general partner of, or**
80 **person in control of the debtor or assignor; or**

81 **c. A partnership in which the debtor or assignor is a general**
82 **partner;**

83 **(d) An affiliate of the debtor or assignor or an insider of an**
84 **affiliate as if such affiliate were the debtor or assignor; or**

85 **(e) A managing agent of the debtor or assignor;**

86 **(12) "Person", a natural person, partnership, corporation, limited**
87 **liability company, and any other organization, association, or group of**
88 **individuals that may voluntarily transfer property or enforce a claim**
89 **in its own name;**

90 **(13) "Prime lending rate", the prime lending rate as published in**
91 **the Wall Street Journal. In the event that the Wall Street Journal does**
92 **not then or ceases to report a prime lending rate, the judge assigned to**
93 **the main case shall, upon motion, designate another financial or**
94 **governmental publication of national circulation to be used to**
95 **determine the prime lending rate;**

96 **(14) "Relative", an individual related by blood or marriage within**
97 **the third degree as determined by the common law, or an individual in**
98 **a step or adoptive relationship within such third degree;**

99 **(15) "Statutory lien", a lien arising solely by force of a statute on**
100 **specified circumstances or conditions or a lien of distress for rent,**
101 **whether or not statutory. "Statutory lien" shall not include a security**
102 **interest or judicial lien, regardless if such interest or lien is provided**
103 **by or is dependent on a statute and regardless if such interest or lien**
104 **is made fully effective by statute;**

105 **(16) "Transfer", every mode, direct or indirect, absolute or**
106 **conditional, voluntary or involuntary, of disposing of or parting with**
107 **property or with an interest in property, including retention of title as**
108 **a security interest;**

109 **(17) "Wages", all remuneration paid to any employee for his or**
110 **her employment, including the cash value of all remuneration paid in**
111 **any medium other than cash.**

426.510. All proceedings under this chapter shall be subject to
2 **the order and supervision of the circuit court for the county of**
3 **assignor's residence. The court in all cases shall have exclusive**
4 **authority over the assignee; the exclusive possession and right of**

5 control with respect to all real property and all tangible and intangible
6 personal property so assigned to the assignee, wherever located; and
7 the exclusive authority to determine all controversies relating to the
8 collection, preservation, application, and distribution of all property
9 and to determine all claims against the assignee arising out of the
10 exercise of the assignee's powers or the performance of the assignee's
11 duties.

426.513. Any assignor, other than an individual, making a general
2 assignment shall be considered, for the purposes of this chapter, a
3 resident of the county in which its principal office is located. An
4 individual making a general assignment shall be venued in the county
5 in which the individual resides.

426.516. 1. All matters requiring court authorization under this
2 chapter shall be brought by motion, except for the following matters,
3 which shall be brought by adjunct action, as provided in subsection 2
4 of this section:

5 (1) An action by the assignee to recover money or other assets of
6 the estate;

7 (2) An action by the assignee to determine the validity, priority,
8 or extent of a lien or other interest in property or to subordinate or
9 avoid an unperfected security interest;

10 (3) An action by the assignee to avoid any conveyance or transfer
11 void or voidable by law under section 426.692;

12 (4) An action by an aggrieved person to assert a claim on the
13 assignee's bond under section 426.615; or

14 (5) An action to seek a receiver under sections 515.500 to 515.665.

15 2. An adjunct action designated in subsection 1 of this section
16 shall be brought as follows:

17 (1) The Missouri rules of civil procedure shall apply to adjunct
18 actions, except where inconsistent with the provisions of this chapter;

19 (2) The clerk of the court shall docket an adjunct action under
20 both the same case number assigned to the original petition filed by the
21 assignee under section 426.510 and a separate adjunct action number
22 and shall assign such adjunct action to the same division and judge
23 assigned to the main case; and

24 (3) All pleadings and other papers filed in an adjunct action shall
25 contain a separate subcaption and the adjunct action number in

26 addition to the caption and case number applicable to the main case.

426.519. No creditor shall obtain any priority of payment out of
2 the assets assigned on any judgment rendered after the filing of a
3 complaint to set aside the assignment if the assignment is set aside and
4 decreed to be void.

426.522. In all actions to set aside any assignment made by the
2 assignor, the assignee and assignor shall be indispensable parties and
3 any preferred or unpreferred creditor may be made a party plaintiff or
4 defendant at any time.

426.525. When any assignment is attacked as fraudulent or void
2 for any reason, it shall not be necessary to prove that the assignee had
3 knowledge of such fraud or collusion or notice thereof in order to
4 render the assignment void.

426.550. Any individual, entity, or unincorporated group of
2 individuals that has capacity, either in its own right or through a
3 representative such as a trustee, to convey real property by deed in
4 this state may execute an assignment of assets to one or more assignees
5 in trust for the benefit of creditors in conformity with the provisions
6 of this chapter, subject to any restrictions on executing such an
7 assignment in other applicable law.

426.553. Any general assignment made by partners in business
2 may include only the partnership property.

426.556. An assignment of assets pursuant to the provisions of
2 this chapter shall be subject to chapter 428, as well as the provisions of
3 the law relative to alter ego liability, piercing the corporate or other
4 entity veil, and other like equitable principles. An assignment shall not
5 be subject to the provisions of chapter 456, but assignees shall be
6 fiduciaries of the creditors and any other parties in interest of the
7 estate to the extent not inconsistent with the provisions of this
8 chapter. This chapter shall supersede the common law of assignments
9 for the benefit of creditors, and all assignments for the benefit of
10 creditors shall comply with such sections.

426.559. Assignments shall be administered for the equal benefit
2 of the assignor's creditors as provided by section 426.695.

426.562. Except as otherwise provided in this chapter, no
2 assignment shall be void or set aside because of any defect, informality,
3 or mistake therein or in the bond, inventory, or list of creditors

4 accompanying the same. An assignment may be amended and any such
5 amendment shall relate back to the time of the execution of the
6 assignment. No mistake or inadvertent failure to comply with the
7 provisions of this chapter shall void the assignment.

426.565. An assignment shall not be canceled or rescinded except
2 pursuant to court order after notice and an opportunity to be heard.

426.568. The following provisions in an assignment shall be void:

2 (1) A provision that prefers a creditor with respect to a claim
3 arising before the commencement of the assignment;

4 (2) A provision that provides that the assignment is dependent
5 upon any condition or contingency or reserves any power of revocation;

6 (3) A provision that provides for the payment of any claim known
7 by the assignor to be false or fraudulent or that provides for the
8 payment of more upon any claim than is known to be justly due from
9 the assignors;

10 (4) A provision that confers upon the assignee any power that,
11 if exercised, might prevent or delay the immediate conversion of the
12 assigned assets, provided that the assignment may provide reasonable
13 terms and manner of sale to be carried out only so far as practicable
14 and not prejudicial to the interest of the estate; or

15 (5) Any assignment that fails to transfer all assets of the assignor
16 to the assignee or reserves any interest or benefit in such assets to the
17 assignor except as provided in section 426.606.

426.600. 1. Every assignment shall be by an instrument in
2 writing, setting forth the following:

3 (1) The name of the assignor and his or her residence and
4 business addresses;

5 (2) The name of the assignee and his or her business address;

6 (3) A full and complete inventory of all of the assignor's estate,
7 real or personal, and its location; and

8 (4) A statement reasonably detailing the compensation of the
9 assignee and the purpose of the assignment, including all property
10 exempted from execution under chapter 513 that is being claimed by
11 the assignor and stating the estimated amount of each such exemption.

12 2. The assignor shall attach the inventory to the assignment,
13 together with a list of creditors, equity holders, and other parties in
14 interest, which shall include the names, addresses, cities, states, and

15 postal codes for each person and with the amount of that person's
16 anticipated claim in the assignment proceedings.

17 3. The accuracy of the assignment, together with its attachments,
18 shall be attested to by the assignor by affixing his or her signature to
19 the assignment under penalty of perjury. The assent of the assignee,
20 subscribed and acknowledged by him or her, shall appear in writing,
21 embraced in or at the end of, or endorsed upon the assignment, before
22 the same is recorded.

23 4. Within seven business days after its execution by both the
24 assignor and assignee, the assignment, together with its attachments,
25 shall be filed in the circuit court where venue is appropriate. A notice
26 of the assignment, identifying the circuit court where the assignment
27 was filed, shall also be recorded by the assignee in the office of the
28 recorder of any county in which any real property being assigned is
29 located. The recording of the notice of the assignment shall have the
30 effect of conveying to the assignee both legal and equitable title to the
31 real property.

426.603. Purchasers and encumbrancers in good faith and for
2 value, where the notice of the assignment has not been recorded in the
3 appropriate county, shall take free of the interest of the
4 assignee. Nothing in this chapter shall prohibit the assignee from
5 pursuing the proceeds of any conveyance or encumbrance from the
6 assignor.

426.606. No assignment for the benefit of creditors shall include
2 or cover any property exempt from levy or sale on execution under law,
3 or exempt from being applied to the payment of debts by any legal
4 process under law, unless in the assignment the exemption is expressly
5 waived.

426.609. An assignee shall, within three business days after the
2 filing of an assignment with the court, give bond to be approved by the
3 court in double the amount of the estate and effects assigned. The bond
4 may be adjusted upon motion, notice, and hearing.

426.612. The bond required under section 426.609 shall be
2 conditioned on the assignee's faithful discharge of the assignee's duties
3 in accordance with orders of the court and state law. Unless otherwise
4 ordered by the court, the assignee's bond runs in favor of all persons
5 having an interest in the assignment proceeding or property held by

6 the assignee.

426.615. Any person injured by a breach of the condition of the
2 bond required under section 426.609 may bring an adjunct action to
3 assert a claim on the bond.

426.650. 1. Within thirty days after an assignment is executed,
2 the assignee shall publish notice of his or her appointment as assignee
3 in a newspaper published in the county where the assignment has been
4 filed with the court. The assignee shall publish notice of his or her
5 appointment as assignee once each week for three consecutive weeks.

6 2. The assignee shall also, within thirty days after the
7 assignment has been accepted in writing, give written notice of the
8 assignment by United States mail or electronic mail to each of the
9 assignor's creditors, equity holders, and other parties in interest as set
10 forth on the list provided by the assignor under subsection 1 of section
11 426.600.

12 3. In the notices given pursuant to this section, the assignee shall
13 establish a date by which creditors are required to file their claims to
14 be able to share in the distribution of proceeds of the liquidation of the
15 assignor's assets. That date shall not be greater than one hundred
16 eighty days after the date of the first giving of the written notice to
17 creditors and parties in interest.

426.653. The assignee shall be paid a reasonable fee for his or her
2 services from the estate. Notwithstanding the terms of the general
3 assignment to the contrary, upon motion filed with the court by the
4 assignee, a creditor, equity holder, or other party in interest, the court
5 shall determine reasonable compensation for services provided by the
6 assignee.

426.656. Upon application and approval by the court, the
2 assignee may employ counsel to give advice and prosecute or defend
3 litigation. The assignee may also employ accountants, appraisers,
4 auctioneers, real estate brokers, or other professionals as deemed
5 appropriate. Such professionals shall be paid a reasonable fee for their
6 services from the estate. Upon motion filed with the court by the
7 assignee, a creditor, equity holder, or other party in interest, the court
8 may determine reasonable compensation for services provided by such
9 professionals.

426.659. The assignee may:

- 2 (1) Sue in his or her representative capacity as such assignee
3 and recover all the estate, debts, and assets belonging to or due to such
4 assignor in the manner and with like effect as the assignor might or
5 could have done if an assignment had not been made;
- 6 (2) Take into his or her hands all the estate of such assignor
7 whether delivered to him or her or afterwards discovered, and all
8 books, vouchers, and papers relating to the same;
- 9 (3) Upon motion, notice, and approval by the court, settle any
10 and all assigned claims and causes of action, with full power to, in the
11 discretion of the assignee, compromise, sue or be sued, and prosecute
12 or defend any of the assigned claim or claims;
- 13 (4) Redeem all mortgages and conditional contracts or other
14 encumbrances and pledges of personal property;
- 15 (5) Sell property subject to encumbrances, contracts, or pledges;
- 16 (6) Sell property free and clear of all encumbrances under
17 section 426.662;
- 18 (7) Exercise any powers that are granted to a trustee or assignee
19 for the benefit of creditors under the laws of this state;
- 20 (8) Upon motion, notice, and approval by the court, borrow
21 money secured by the assigned assets;
- 22 (9) Receive at the assignee's address, as he or she directs in
23 writing, all mail of all classes, hand deliveries, parcel posts and express
24 delivery materials, fax transmissions, and telegrams directed or
25 addressed to the assignor;
- 26 (10) Upon motion, notice, and approval by the court, abandon
27 assigned assets, rights, claims, and causes of action; and
- 28 (11) Perform any and all other acts necessary and proper for the
29 orderly liquidation or other disposition of the assigned rights, claims,
30 and causes of action.

426.662. 1. Upon motion, notice, and approval by the court, the
2 assignee may sell, lease, or otherwise dispose of all or any part of the
3 assigned assets by public or private sale or auction, for cash or on
4 credit or for any other good consideration, on such terms as he or she
5 may deem appropriate in the exercise of reasonable judgment and may
6 convey and transfer the assigned assets by good and sufficient deeds,
7 bills of sale, or other instruments to the purchaser or purchasers, free
8 from claims of the assignment, the assignor, and its creditors of the

9 estate created hereby.

10 2. At a sale of property under this section, a creditor with a lien
11 against the property to be sold may credit bid at the sale of the
12 property, meaning that the holder of such claim may bid at such sale,
13 and, if the holder of such claim purchases such property, such holder
14 may offset such claim against the purchase price of such property,
15 subject to payment of applicable transfer or sales tax, if any. The
16 purchaser shall take free and clear of all liens, claims, encumbrances,
17 and interests, and such liens, claims, encumbrances, and interests shall
18 attach to the proceeds of the sale in accordance with their priorities.

426.665. The assignee shall dispose of all personal property and
2 real estate and divide the proceeds of the same among creditors as they
3 may be entitled thereto within a reasonable time from the date of the
4 assignment and shall make full settlement by that time unless
5 otherwise ordered by the court.

426.668. 1. The assignee may call the creditors together at any
2 time upon reasonable notice and such meetings may be continued from
3 time to time at the discretion of the assignee.

4 2. The assignee shall, in conjunction with any meeting called
5 under subsection 1 of this section, compel the assignor to submit to an
6 examination by the assignee and creditors under oath concerning the
7 acts, conduct, assets, liabilities, and financial condition of the assignor
8 or any matter related to the assignee's administration of the
9 assignment estate.

10 3. The court may compel the appearance of the assignor or any
11 other person as may be requested by the assignee.

426.671. Every assignee, not less than quarterly, shall file a
2 written report with the court stating the condition of the remaining
3 assets of the assignment, reporting the disposition of any and all assets
4 of the assignment since commencement of the assignment, all sums
5 received therefrom, all disbursements made from the funds so received,
6 and such other information as shall be reasonably requested by the
7 court, a creditor, or other party in interest. Upon request of a creditor
8 or other party in interest, the assignee shall make an electronic copy
9 of the most recent report available to such creditor or party in interest.

426.674. The proceeds arising from the sales of the property
2 assigned shall be deposited for safekeeping in a national bank within

3 this state or some banking institution incorporated under the laws of
4 this state in the name of the assignee or assignees, in trust for the
5 benefit of the assignor's creditors.

426.677. A majority of the unsecured creditors, in number and
2 amount, of the assignor may agree in writing upon an assignee
3 different from the one named in the assignment for good cause
4 shown. Such substitute assignee shall be substituted in lieu of the
5 original assignee with all of the rights, powers, and duties conferred
6 upon such original assignee in the assignment. A motion for
7 substitution pursuant to this section shall be filed no later than sixty
8 days following the filing of the inventory.

426.680. 1. The court shall remove or replace the assignee on
2 application of the assignor, of the assignee, or of any creditor or on its
3 own motion if:

4 (1) The assignee has not executed and filed the bond required by
5 section 426.609;

6 (2) The assignee resigns, refuses, or fails to serve for any reason;
7 or

8 (3) For good cause.

9 2. Upon removal, resignation, or death of the assignee, the court
10 shall appoint a replacement assignee if the court deems in its
11 discretion that further administration of the estate is required. Upon
12 executing and filing a bond under section 426.609, the replacement
13 assignee shall take possession of the estate and assume her or his
14 duties as assignee.

15 3. Whenever the court shall be satisfied that the assignee so
16 removed or replaced has fully accounted for and turned over to the
17 replacement assignee appointed by the court all of the property of the
18 estate and has filed a report of all receipts and disbursements during
19 his or her tenure as assignee, the court shall enter an order
20 discharging the assignee from all further duties, liabilities, and
21 responsibilities as assignee after notice and a hearing.

426.683. The assignee shall have the right to occupy, for a period
2 of up to ninety days after the date of the assignment, any business
3 premises held under a real estate lease by the assignor,
4 notwithstanding any provision in the lease to the contrary, whether
5 previously or subsequently entered into, for the termination thereof

6 upon the making of the assignment or the insolvency of the lessee or
7 other condition relating to the financial condition of the lessee. The
8 assignee's right to occupy the premises shall be conditioned upon
9 payment when due of the monthly rental reserved in the lease for the
10 period of such occupancy. When the assignee believes that more than
11 ninety days is necessary to complete his or her duties at the leased
12 premises, the assignee may extend the period of occupation mentioned
13 in this section either by agreement with the landlord or by court order
14 entered after appropriate motion, notice, and hearing for such
15 extension for a reasonable time upon conditions that protect the
16 landlord's interests in the premises. In a hearing under this section,
17 the assignee shall have the burden of proof to show good cause for the
18 extension and to show that under the circumstances the equities favor
19 the assignee's request for such extension, which may include, but not
20 be limited to, all the benefits and burdens that will accrue to both the
21 assignee and the landlord. At any time after the date of the assignment,
22 the landlord may seek from the court by appropriate motion, notice,
23 and hearing, emergency modification or termination of the assignee's
24 occupation of the premises in the event of threat of damage to the
25 property or other breach of the conditions that the assignee shall
26 satisfy. The assignee's occupation of premises pursuant to the
27 provisions of this section, for the period authorized in this section,
28 shall not be deemed to be a tenant's "holding over", as that phrase is
29 defined under section 441.080. Any security deposit held by the
30 landlord shall only be applied to claims arising from the breach of the
31 lease prior to the date of the execution of the general assignment.

426.686. Subject to other provisions of this chapter, or of other
2 applicable law, an assignee for the benefit of creditors takes assets
3 subject to the rights of persons other than the assignor. Nothing in this
4 section shall be deemed to limit or preclude the assignee from:

- 5 (1) Seeking avoidance of transfers, recovery of property, or
6 declarations of priorities in assets;
- 7 (2) Defending against claims of third persons in estate assets or
8 against the assignee; or
- 9 (3) Seeking any other relief or asserting any other defense,
10 offset, or counterclaim that the assignee is otherwise authorized to seek
11 or assert by applicable law.

426.689. The assignee shall not be held liable for acts done in
2 good faith and with the reasonable exercise of business judgment in the
3 execution of the trust.

426.692. The assignee shall succeed to all rights of the assignor,
2 including any attorney-client privilege. An assignee may assert on
3 behalf of the estate any claims to avoid fraudulent transfers that any
4 creditor may assert under state or federal law and may set aside any
5 fraudulent conveyances or recover property conveyed by the assignor
6 for the purpose of hindering, delaying, or defrauding creditors. The
7 assignee's rights in this section shall be exclusive. If the assignee does
8 not exercise such rights, upon motion, notice, and court approval, then
9 a creditor may resume the power to exercise them. If the assignee
10 exercises such rights, the transferee and any creditor that could have
11 asserted them are bound by the results.

426.695. 1. Allowed claims shall receive distribution under this
2 chapter in the following order of priority and, with the exception in
3 subdivision (1) of this subsection, on a pro rata basis:

4 (1) Creditors with liens on assets of the estate, which liens are
5 duly perfected pursuant to applicable law, shall receive the proceeds
6 from the disposition of their collateral less the reasonable and
7 necessary expenses of preserving or disposing of such collateral to the
8 extent of any benefit to such creditors. If and to the extent that such
9 proceeds are less than the amount of a creditor's claim or a creditor's
10 lien is avoided pursuant to section 426.692, such a creditor shall be
11 deemed to be an unsecured creditor for such deficiency;

12 (2) Expenses incurred during the administration of the estate,
13 other than those expenses allowable under this subdivision, including
14 allowed fees and reimbursements of all expenses of the assignee and
15 professional persons employed by the assignee under section 426.656,
16 and rent incurred by the assignee as provided for in section 426.683 in
17 occupying any premises in which the assets of the assignment estate
18 are located or the business of the assignor is conducted, from and after
19 the date of the assignment, through and until the earlier of the date on
20 which the lease for such premises is rejected pursuant to an order of
21 the court or the date of termination of such lease;

22 (3) Unsecured claims of governmental units for taxes that
23 accrued within three years before the filing date notwithstanding any

24 provision of law to the contrary;

25 (4) Claims for wages, salaries, or commissions, including
26 vacation, severance, and sick leave pay, or contributions to an
27 employee benefit plan earned by employees of the assignor within one
28 hundred eighty days before the filing date or the cessation of the
29 assignor's business, whichever occurred first, but only to the extent of
30 ten thousand dollars per individual employee. Any amount in excess
31 of ten thousand dollars shall be a general unsecured claim;

32 (5) Allowed unsecured claims, to the extent of two thousand two
33 hundred twenty-five dollars for each individual, arising from the
34 deposit of money with the assignor before the filing date in connection
35 with the purchase, lease, or rental of property or the purchase of
36 services for personal, family, or household use by such individuals that
37 were not delivered or provided; and

38 (6) Unsecured claims.

39 2. A subordination agreement shall be enforceable under this
40 chapter to the same extent that such agreement is enforceable under
41 applicable law.

42 3. For the purpose of distributions under this chapter, a claim
43 arising from rescission of a purchase or sale of a security of the
44 assignor or of an affiliate of the assignor for damages arising from the
45 purchase or sale of the security or for reimbursement or contribution
46 allowed under this chapter on account of such a claim shall be
47 subordinated to all claims or interests that are senior to or equal to the
48 claim or interest represented by such security, except that if the
49 security is common stock, the claim has the same priority as common
50 stock.

51 4. If all claims subject to distribution under this section have
52 been paid in full, any residue shall be paid to the assignor.

53 5. Notwithstanding any provision of law to the contrary, nothing
54 contained in this section shall excuse the assignee from compliance
55 with 31 U.S.C. Section 3713.

426.700. 1. All claims other than the reasonable costs of the
2 administration of the assignment under subdivision (2) of subsection 1
3 of section 426.695 and claims of governmental units, whether secured,
4 unsecured, contingent, liquidated, unliquidated, or disputed, that arose
5 prior to the filing date of the assignment under section 426.600 shall be

6 filed in accordance with the provisions of this chapter. Except as
7 provided in section 426.718, any claim not filed shall be barred from
8 any further recovery against the estate.

9 2. Claims shall be filed by delivering the claim to the assignee by
10 the claims bar date prescribed by the notice of the assignee's
11 appointment under section 426.650 unless for cause shown and after
12 notice and hearing.

13 3. Claims shall be in written form entitled "proof of claim" setting
14 forth the name and address of the creditor and the nature and amount
15 of the claim and shall be executed by the creditor or the creditor's
16 authorized agent.

17 4. When a claim or an interest in property of the assignor
18 securing the claim is based on a writing, the original or a copy of such
19 writing shall be filed with the proof of claim, together with evidence of
20 perfection of any security interest, if applicable.

21 5. A proof of claim executed and delivered in accordance with
22 this section shall constitute prima facie evidence of the validity and
23 amount of the claim.

24 6. If a claim for damages results from the assignee's rejection of
25 a lease of real property, the claim shall be limited to:

26 (1) The rent reserved by such lease, without acceleration, for the
27 greater of one year or fifteen percent of the remaining term of the
28 lease, following the earlier of either:

29 (a) The date of assignment; or

30 (b) The date on which the lessor repossessed, or the lessee
31 surrendered, the leased property; and

32 (2) (a) Any unpaid rent due under the lease, without
33 acceleration, on the earlier of the dates specified in subdivision (1) of
34 this subsection;

35 (b) Reasonable attorney's fees and costs incurred by the lessor
36 in connection with the lease; and

37 (c) The lessor's reasonable costs incurred in reletting the
38 premises previously leased by the assignor.

39 7. If a claim for damages results from the termination of an
40 employment contract, the claim shall be limited to:

41 (1) The compensation provided for by the contract, without
42 acceleration, for one hundred eighty days following the earlier of

43 either:

44 (a) The date of assignment; or

45 (b) The date on which the assignor directed the employee to
46 terminate, or such employee terminated, performance under the
47 contract; and

48 (2) Any unpaid compensation due under the contract, without
49 acceleration, on the earlier of the dates specified in subdivision (1) of
50 this subsection.

426.703. 1. Within thirty days following expiration of the claims
2 bar date, the assignee shall create and file with the court a register of
3 all creditors that have filed claims against the assignor's estate. The
4 assignee shall also list on the claims register the reasonable costs of the
5 administration of the assignment that the assignee has incurred and
6 expects to incur in the future under subdivision (2) of subsection 1 of
7 section 426.695 and the claims of any governmental units.

8 2. The assignee, as well as any creditor or any party in interest,
9 shall have standing to challenge the validity, extent, or priority of any
10 claim filed by a creditor against the assignor's estate; the
11 reasonableness of any expense under subdivision (2) of subsection 1 of
12 section 426.695; or any claims of governmental units within sixty days
13 following expiration of the claims bar date and may file an objection to
14 any such claim or expense in the circuit court where the assignment
15 was filed. The assignee may file omnibus objections if the assignee is
16 objecting to multiple claims or expenses.

17 3. Any objection shall be in writing and shall set forth the nature
18 of the objection. The objecting party shall serve a copy of the objection
19 on the creditor at the address provided in the proof of claim and to the
20 assignee. All claims properly filed with the assignee and not disallowed
21 by the court constitute all claims entitled to distribution from the
22 estate.

23 4. A creditor whose claim is secured by a lien against property
24 of the estate shall have sixty days following the sale or disposition of
25 the property securing his or her claim to file a claim for an unsecured
26 deficiency, notwithstanding the passage of the last date on which a
27 proof of claim may be served upon the assignee set forth in section
28 426.650. If such a creditor fails to file with the assignee a deficiency
29 claim within ten days after the filing and service by mail of the

30 assignee's final report of all receipts and disbursements, the creditor's
31 deficiency claim shall be disallowed as untimely, and the creditor shall
32 not be entitled to share in any distribution made to holders of
33 unsecured claims under section 426.695 on account of its deficiency
34 claim.

35 5. The discovery provisions of the Missouri rules of civil
36 procedure shall apply to objections to claims.

426.706. 1. The assignee shall allow a claim filed under this
2 chapter against the assigned estate unless he or she has good reason to
3 believe the claim is not just and true.

4 2. If a creditor does not file a claim in the time required by this
5 chapter, he or she is not entitled to receive any of the assigned estate.

426.709. 1. Within thirty days after the notification of dispute
2 provided for by section 426.703, the assignee shall allow or deny the
3 contested claim. Within thirty days after the assignee's allowance or
4 denial of any contested claim, the objecting party or the claimant may
5 file a motion with the court to determine the validity of the claim.

6 2. In the event a claim is contested, the assignee may reserve
7 from the proceeds of the estate an amount sufficient to pay the
8 contested claimant its pro rata share of the estate's assets.

426.712. 1. The assignee may allow a claim that is not due at its
2 present value by discounting it at the prime lending rate on the day of
3 the assignment.

4 2. If a creditor holds collateral to secure his or her claim that is
5 worth less than such claim, the assignee may estimate the value of the
6 collateral and allow the creditor, as an unsecured claim against the
7 assigned estate, only the difference between the value of the collateral
8 and the amount of the claim.

9 3. A party disputing the value estimated pursuant to this section
10 may object to the assignee's valuation pursuant to the procedure set
11 forth under section 426.703.

426.715. Any creditor may present not only any debt due, but any
2 debt to become due.

426.718. The failure of any creditor to file a proof of claim under
2 section 426.700 shall not void a properly attached and perfected lien on
3 property securing such creditor's claim.

426.750. The provisions of section 400.9-309 shall apply for

2 purposes of determining priority of unperfected security interests.

426.753. 1. The making of a general assignment for the benefit
2 of creditors terminates a lien of pre- and postjudgment attachment if
3 the lien was created within ninety days prior to the making of a
4 general assignment.

5 2. Subsection 1 of this section shall not apply unless all liens of
6 attachment on the defendant's property in other states that were
7 created within ninety days prior to the making of an assignment under
8 this chapter have terminated.

426.756. 1. Where a lien of attachment terminates pursuant to
2 applicable state law, the assignee under a general assignment for the
3 benefit of creditors may secure the release of the attached property by
4 filing with the levying officer a request for release or the attachment
5 stating the grounds for release and describing the property to be
6 released, executed under oath, together with a copy thereof.

7 2. In the case of an assignee, the request shall include two copies
8 of the general assignment for the benefit of creditors to be
9 authenticated as any judgment registered outside this state.

10 3. If immediate release of the attachment is sought, the request
11 shall be accompanied by a notice of the bond acquired under section
12 426.609 for any damages resulting from an improper release of the
13 attachment. Claims for any such damages may be brought under
14 section 426.516.

15 4. Within five days after the filing of the request for release of
16 the attachment, the levying officer shall mail to the plaintiff:

17 (1) A copy of the request for release of the attachment, including
18 the copy of the document filed under subsection 2 of this section; and

19 (2) A copy of the notice of the bond under subsection 3 of this
20 section.

21 5. Unless otherwise ordered by a court, the levying officer shall
22 release the attachment pursuant to the request for release of
23 attachment after the expiration of ten days from the date of mailing the
24 papers referred to in subsection 4 of this section to the plaintiff.

25 6. If the attached property has been taken into custody, it shall
26 be released to the assignee or some other person designated in the
27 request for release of the attachment. If the attached property has not
28 been taken into custody, it shall be released as provided in subsection

29 **3 of this section or other applicable law.**

30 **7. The levying officer shall not be liable for releasing an**
31 **attachment in accordance with this section nor is any other person**
32 **liable for acting in conformity with the release.**

426.759. 1. The lien of a prejudgment attachment that has
2 **terminated pursuant to applicable state law shall be reinstated with the**
3 **same effect as if it had not been terminated in the following cases:**

4 **(1) If the termination is the result of the making of a general**
5 **assignment for the benefit of creditors and the general assignment for**
6 **the benefit of creditors is set aside in a way other than by the filing of**
7 **a petition commencing a case under Title 11 of the United States Code;**

8 **(2) If the termination is the result of the filing of a petition**
9 **commencing a case under Title 11 of the United States Code and the**
10 **petition is dismissed; or**

11 **(3) If the termination is the result of the filing of a petition**
12 **commencing a case under Title 11 of the United States Code and the**
13 **trustee abandons property that had been subject to the lien of the**
14 **prejudgment attachment.**

15 **2. The period from the making of a general assignment for the**
16 **benefit of creditors until reinstatement of the lien of the prejudgment**
17 **attachment shall not be counted in determining the duration of the**
18 **prejudgment attachment.**

426.762. 1. Upon the making of a general assignment for the
2 **benefit of creditors that terminates a lien under this chapter, the**
3 **assignment shall be subrogated to the rights of the plaintiff under the**
4 **prejudgment attachment.**

5 **2. Upon the filing of a petition commencing a case under Title 11**
6 **of the United States Code, a lien terminated pursuant to this chapter**
7 **shall be preserved for the benefit of the estate.**

[426.010. Every voluntary assignment of lands, tenements,
2 goods, chattels, effects and credits made by a debtor to any person
3 in trust for his creditors, shall be for the benefit of all the creditors
4 of the assignor in proportion to their respective claims; and every
5 provision in any assignment providing for the payment of one debt
6 or liability in preference to another shall be void, and all debts and
7 liabilities (including judgments entered by confession thirty days
8 previous to such assignment) shall be paid pro rata from the assets

9 thereof; and every such assignment shall be proved or
10 acknowledged, and certified and recorded in the same manner as
11 is prescribed by law in cases wherein real estate is conveyed.]

 [426.020. It shall be the duty of the assignee, within fifteen
2 days after the execution of the deed of assignment, to file in the
3 office of the clerk of the circuit court of the county in which the
4 assignor, or, if there be more than one, in which any one of them
5 shall reside, unless longer time be allowed by the court for good
6 cause shown, an inventory of the property, effects and things
7 assigned.]

 [426.030. The inventory shall be accompanied with an
2 affidavit by the assignee, that the same is a full and complete
3 inventory of all such property, effects and things, as far as the
4 same have come to his knowledge.]

 [426.040. It shall be the duty of the circuit court in whose
2 clerk's office such inventory may be filed to appoint two or more
3 disinterested and competent persons to appraise the property,
4 effects and things so inventoried; provided, that such appraisers
5 may be appointed before the filing of the inventory and may
6 accompany the assignee and make said appraisement at the time
7 of the making of said inventory, and said inventory and
8 appraisement may be made out upon one paper with the affidavits
9 of the assignee and appraisers thereto attached.]

 [426.050. The appraisers, or a majority of them, having first
2 taken an oath or affirmation, before some person having authority
3 to administer oaths, to discharge their duties with fidelity, shall
4 forthwith proceed to make such appraisement. The appraisers
5 shall file the appraisement and their oath of office, in the office of
6 the clerk of the circuit court, within five days after they shall have
7 completed the same. The appraisers shall each receive three
8 dollars per day for their attendance.]

 [426.060. If, after making the first inventory, any other
2 property, effects and things conveyed by the deed of assignment
3 shall come to the possession or knowledge of the assignee, his duty
4 in relation thereto, and the duty of the court or judge, and the
5 appraisers, shall be the same as is required of them by this

6 chapter.]

2 [426.070. The assignor, his agent or attorney, at the time
3 of the execution of the deed of assignment, shall make a statement,
4 in writing, verified by affidavit, setting forth the general nature
5 and full value of the estate and effects assigned, which statement
6 shall be filed with the deed of assignment for record; and the
7 assignee shall, within three days after the filing of such deed and
8 statement, give bond with at least two good and sufficient
9 securities, to be approved by the court or judge, or clerk thereof in
10 vacation, in double the amount of the estate and effects assigned,
11 and if the appraised value of such estate and effects, when
12 appraised, shall be greater than the value given in such statement,
13 or if the securities in such bond should in any way become
14 impaired or insufficient, the assignee shall, at the time of filing the
15 appraisal, give another bond with at least two good and
16 sufficient securities, to be approved by the court or judge, or the
17 clerk thereof in vacation, in double the amount of the appraised
value of the estate and effects assigned.]

2 [426.080. The bond shall be taken in the name of the state
3 of Missouri, and the condition shall be as follows:

3 The condition of this obligation is such that if the above
4 bound _____, assignee of _____, shall, in all things, discharge his
5 duty as assignee of _____, aforesaid, and faithfully execute the
6 trust confided to him, then the above obligation to be void;
7 otherwise to remain in full force.]

2 [426.090. The bond shall be filed in the office of the clerk
3 of the court in which the inventory is filed, shall be approved by
4 the court, or in the absence of the judge, by the clerk and shall be
5 by the clerk recorded in a book for such purpose, to be kept in his
6 office and labeled "assignments".]

2 [426.100. The circuit court shall approve or reject the bonds
3 taken in the absence of the judge, and the clerk shall enter the
4 approval or rejection on the record.]

2 [426.110. If the bond be rejected, the court shall order the
3 assignee to give another bond, with sufficient security, to be
4 approved by the court; and if he fail to give such bond within such

4 time as the court shall direct, not exceeding thirty days, his
5 authority further to act as assignee shall be deemed to be revoked.]

2 [426.120. Such bond shall be valid until such new bond be
3 given and approved, notwithstanding its rejection by the court, and
4 such new bond, when approved, shall relate back, and be operative
from the date of assignment.]

2 [426.130. Any person injured by a breach of the condition
3 of the bond may sue thereon in the name of the state to his use,
4 and the damages shall be assessed as on bonds with collateral
conditions.]

2 [426.140. Every assignee shall exhibit, on oath, a statement
3 of the accounts of the trust, with proper vouchers, to the circuit
4 court within sixty days after the execution of the assignment,
5 unless for good cause postponed, and shall file a like statement
6 every ninety days thereafter until such assigned estate is fully
7 settled; and if such assignee shall fail to make such settlement
8 within such times, then on the application of any person interested,
9 the court shall order a citation to issue to such assignee, requiring
10 him to appear in court within a time to be therein named, and
11 exhibit, on oath, a statement of his said accounts; and if said
12 assignee shall neglect and fail to exhibit such accounts within the
13 time named in said citation, the said court shall, on motion, unless
for good cause shown, dismiss said assignee from his trust.]

2 [426.150. The court shall, by such order as the
3 circumstances of the case may require, direct the clerk to give
4 notice of the exhibition and filing of such accounts, for such time
5 and in such public newspapers as it shall appoint, and that such
6 accounts will be allowed by the court at a certain time to be stated
in such notice, unless good cause to the contrary be shown.]

2 [426.160. The expense of advertising shall be paid by the
3 assignee, at the time of exhibiting his account, and shall be passed
to his credit in such account.]

2 [426.170. The assignee shall appoint a day, within three
3 months after the date of the assignment, and a place, which shall
4 be the county seat of the county where the inventory is filed, or
such other place in said county most convenient to all the parties

5 in interest, where any court of record may be lawfully held, when
6 and where he will proceed publicly to adjust and allow demands
7 against the estate and effects of the assignor.]

2 [426.180. The assignee shall give notice of the time and
3 place of adjusting and allowing demands against the estate of his
4 assignor, by advertisement published in some newspaper printed
5 in the county, or, if there be none, in the one nearest the place
6 where the inventory is filed, for four weeks successively, the last
7 insertion to be at least one week before the appointed day; and
8 also, whenever the residence of any of the creditors is known to
9 him, by letter addressed to such creditors at their known or usual
10 places of abode, at least four weeks before the appointed day. The
11 assignee shall attend at the place designated in said notice in
12 person, on said day, and shall remain in attendance at said place
13 on said day, and during two consecutive days thereafter, and shall
14 commence the adjustment and allowance of demands against the
15 trust fund at nine o'clock a.m., and continue the same until five
16 o'clock p.m., of each of said three days; and all creditors who, after
17 being notified as aforesaid, shall not attend at the place designated
18 during the said term, and lay before the assignee the nature and
19 amount of their demands, shall be precluded from any benefit of
20 said estate; but the hearing on any demand presented at the time
21 may be continued, for good cause shown, to such time as is deemed
22 right; provided, that any creditor who shall fail to lay his claim
23 before said assignee during said term, on account of sickness,
24 absence from the state, or any other good cause, may, at any time
25 before the declaration of the final dividend, file and prove up his
26 claim, and the same may be allowed, and the remaining dividends
paid thereon, as in the case of other allowed claims.]

2 [426.190. The assignee shall have power to administer all
3 necessary oaths to debtors, creditors and witnesses; and may
4 examine them on oath, touching any claim exhibited to him for
allowance.]

2 [426.200. The assignee shall require such evidence, and no
3 other, of the justice of such demands, as is required to establish
demands of a similar character in the circuit court in suits between

4 the original parties to the contract.]

2 [426.210. The decision of the assignee in relation to all
3 claims presented to him for allowance shall be final, unless a
4 creditor or some other person interested shall, after a decision is
5 made on any such claim, ask an appeal therefrom; and all appeals
6 so asked shall be allowed by such assignee to the circuit court
7 having jurisdiction of the matter of the assignment, and all appeals
8 heretofore taken shall be transferred to and perfected in such
9 circuit court.]

2 [426.220. All appeals allowed by virtue of section 426.210
3 shall be taken and made by the appellant, or someone for him,
4 making and filing an affidavit that the appeal is not taken for
5 vexation or delay, but because affiant believes that appellant is
6 prejudiced by the decision appealed from, and by giving bond to the
7 state of Missouri in such sum as the assignee may require, and
8 with such sureties as he may approve, conditioned that appellant
9 will prosecute his appeal with due diligence, and pay all cost
10 thereon awarded against appellant. If judgment for costs be
11 rendered against appellant, it shall be against him and his sureties
12 on the bond. In all other respects appeals shall be taken, certified
13 and proceeded with in the same manner as applications for a trial
de novo from judgments of associate circuit judges.]

2 [426.230. Upon such appeal being allowed and certified, as
3 in section 426.220 is required, the court shall become possessed of
4 the case, and shall proceed to hear and determine the same, in the
5 same manner as if such case was pending before a circuit judge on
6 an application for trial de novo from the judgment of an associate
7 circuit judge; and appeals may be taken from the judgment of the
8 court, in the same manner as appeals are now allowed by law from
9 judgments of circuit judges in this state.]

2 [426.240. All judgments rendered in favor of any claimant
3 in the circuit court by virtue of the provisions of this chapter, shall
4 be certified by the clerk thereof to the assignee, who shall allow the
5 same, and class it as if such judgment had been rendered by him
6 on the original hearing thereof.]

[426.250. If the assignee shall have a demand against the

2 assignor, which he desires to have allowed, he may present a
3 petition to the circuit court stating the particulars of his demand
4 and the amount thereof, verified by affidavit, and thereupon such
5 court shall appoint some suitable person to act temporarily as
6 assignee of such estate, for the purpose of hearing and passing
7 upon such demand. The assignee so appointed shall take an oath
8 that he will faithfully discharge the trust confided to him, and
9 shall proceed to examine the claim, and if the same shall be found
10 to be correct, in whole or in part, he shall allow the amount found
11 to be due, and report his action in premises to the proper court, at
12 a date to be fixed by the judge; and the court shall make an order
13 directing the sum allowed to be paid to the claimant as other
14 allowances are paid, and appeals shall be allowed from the decision
15 of such temporary assignee as in other cases provided for in this
16 chapter.]

[426.260. Whenever it shall be made to appear to the court
2 having jurisdiction that any assignee has neglected or refused,
3 when required by law, to file a full and true inventory, or to give
4 bond, as required by this chapter, the court shall issue a citation
5 to such assignee to appear in court at the time therein specified, to
6 show cause why he should not be dismissed from his trust.]

[426.270. On the return of the citation, the court may
2 require the assignee to file an inventory and to give bond, with
3 good and sufficient security, in such time as it may deem
4 reasonable, or may proceed at once to dismiss such assignee from
5 his trust.]

[426.280. The like proceedings as are prescribed in sections
2 426.260 and 426.270 may be had whenever it shall appear to the
3 court that any person who shall have become security for any
4 assignee, in any bond given for the due execution of his trust, has
5 or is likely to become insolvent, or has removed, or is about to
6 remove from the state.]

[426.290. The court having jurisdiction, or the judge thereof
2 in vacation, shall have power to appoint an assignee in all cases
3 where a vacancy occurs in the trust, and like bond and security
4 shall be required and given by the assignee so appointed as are

5 required and given by an assignee appointed by an assignor.]

2 [426.300. When any assignee shall be dismissed from his
3 trust, the court shall order all the books, papers, effects, moneys
4 and evidences of debt to be forthwith delivered to his successor in
5 the trust, or to such other persons as the court shall appoint to
receive the same for the time being.]

2 [426.310. The circuit court shall make an order for the sale
3 of all the real and personal estate conveyed by any deed of
4 assignment, either for cash in hand, or upon such reasonable credit
5 and upon such other terms and notice as shall appear to the court
6 to be most advantageous to all the parties in interest, and shall, by
7 order, direct the nature of the security to be taken at sales made
8 by assignees under this chapter. Before any sale of such real
9 estate shall be made, the assignee shall give bond, with at least
10 two good securities, to be approved by the court in an amount equal
11 to the value of the real estate to be sold, conditioned that the said
12 assignee will faithfully make the same under such order, and duly
13 account for the proceeds thereof under the provisions of this
chapter.]

2 [426.320. As soon as practicable, and not exceeding one
3 month after the time for an allowance of demands had under this
4 chapter, the assignee or assignees shall pay upon the demands
5 allowed, according to their right, as much as the means on hand
6 will permit, after reserving enough for proper fees, costs, expenses
7 and demands, whose trial is legally continued or removed; and as
8 often thereafter as a dividend of five percent can be paid upon the
9 demands allowed as aforesaid, the assignee or assignees shall give
10 notice thereof by publication, for one week, in the same newspaper
11 in which was published the notice for allowance of demands, or in
12 such other newspaper as the court, or judge thereof in vacation,
13 may direct; and if such assignee or assignees shall neglect or
14 refuse to make payment out of such trust fund, as in this section
15 required, for more than three days after the same have become due
16 and have been demanded by the person entitled thereto, his agent
17 or attorney, or if he or they shall in any wise neglect or refuse to
comply with the provisions of this section, he or they shall, for

18 every such neglect or refusal, forfeit and pay to the person
19 aggrieved five percent per month interest on such sum as such
20 person was entitled to at the time of such demand, to be recovered
21 by motion in the court having jurisdiction of said assignment; and
22 any judgment rendered by said court, on the hearing of such
23 motion, shall be against said assignee or assignees and his or their
24 securities on their trust, provided for in this chapter; and such
25 assignee or assignees shall, in addition to such forfeiture, be
26 subject to be dismissed from his or their trust by said court, for
27 such neglect and refusal, on motion and citation for that purpose.]

2 [426.330. Every assignee, upon the reasonable request of
3 any person entitled to any demand allowed, or of his agent, shall
4 exhibit to such person or agent the condition of the assets of the
5 assignment, and give him all reasonable information concerning
6 the same.]

2 [426.340. Upon petition in behalf of any such person to the
3 circuit court in whose clerk's office the inventory is filed, showing
4 good cause therefor, verified by affidavit, such court shall cause
5 any assignee to be cited to appear before it at such time as may be
6 designated, to answer the allegations in such petition, and to do
7 and abide such order as shall be made by such court in the
8 premises; and upon the hearing, such court shall make such order
9 as to it shall seem fit and lawful in the premises for enforcing the
10 provisions of this chapter.]

2 [426.350. When any assignee becomes satisfied that it is no
3 longer advantageous to the creditors of his assignor to keep the
4 assignment open, he may apply to the circuit court in whose clerk's
5 office the inventory is filed for a discharge from his trust, upon a
6 notice of his intention to make such application, stating the time
7 thereof, which notice shall be published in the newspaper
8 aforesaid, for at least six weeks next before such time, at which
9 time he may file his petition in said court for such discharge; which
10 petition, verified by his affidavit, shall set forth the disposition
11 made of the assets of the assignment to him; what portion of them
12 remains on hand, and their condition; the amount realized from the
assets; the particular disposition of such amount; the demands

13 allowed, particularly, with their respective amounts and owners'
14 names, and the sums paid on each, with an offer to deliver into the
15 charge of the court what remains of the assets and the evidence
16 thereof, and accompanied with all vouchers therewith connected.]

[426.360. If no person interested shall, within one week
2 after the filing of such petition, file written objections to such
3 discharge, accompanied by specified reasons, the court shall refer
4 the application to the commissioners of the court, or one appointed
5 for the case, to examine the merits of the application, and report to
6 the court with all convenient speed thereon; and upon the filing of
7 such report, the court shall make such further order in the
8 premises as it shall adjudge right, and may discharge such
9 assignee from all further duty or obligations under the assignment;
10 and, thereupon, shall order such assignee to deliver into the charge
11 and custody of such court such portion of the assets and the
12 evidences thereof as remain in his hands, where they shall be kept
13 with all other papers, connected with such assignment, in such
14 courts and its clerk's office, subject to its future control and
15 disposition.]

[426.370. If objections be made as aforesaid, to such
2 application, the court shall cause the same to be considered, and
3 shall determine the same, as provided for by rules of the court or
4 special orders made therein.]

[426.380. In any proceeding under this chapter, appeals
2 may be taken from the judgment of the court in the same manner
3 as appeals are now allowed by law from judgments of circuit courts
4 in this state.]

[426.390. When, in any case of assignment now or hereafter
2 pending, the temporary assignee appointed according to section
3 426.250, has failed or shall fail to act, or to make the report upon
4 claims allowed by him as in said section mentioned, then it shall
5 be the duty of the circuit court, at any session during the pendency
6 of the matter of such assignment, to hear such evidence touching
7 the action of such temporary assignee in the premises, or touching
8 the validity of the claims of the general assignee, as he may offer;
9 and if it appear that said claims had been, in fact, regularly

10 allowed, or that they are just, the court shall allow the same, and
11 order them to be paid as other claims.]

[426.400. 1. Whenever it may appear for the best interest
2 of the estate assigned, the court, or judge thereof in vacation, may
3 make an order directing the assignee to sell, compound or
4 compromise all bad or doubtful debts upon such terms and
5 conditions as appear proper and most beneficial to the estate; and
6 in like manner the court, or judge thereof in vacation, may make
7 an order directing the assignee to release and discharge any vested,
8 contingent or possible right or interest in or to any estate or effects
9 assigned, upon such terms and conditions as the court, or judge
10 thereof in vacation, may deem proper and just for the best interest
11 of the estate.

12 2. The assignee shall report his proceedings under this
13 section to the court at its first term, and within the first three days
14 thereof after such proceedings, for approval or rejection, and for
15 such further and other orders as may be deemed proper; provided,
16 any creditor may appear and file his objections to such report
17 within three days after the filing of the report, if the term shall so
18 long continue, if not, within such time as the court may direct, and
19 such objections shall be heard and determined without delay, and
20 nothing in this section authorized to be done by the assignee shall
21 be final until the approval of the court as herein provided; and
22 provided further, that the assignee, before procuring said order,
23 shall give such notice of his application therefor as the court or
24 judge thereof in vacation may direct.]

[426.410. Every assignee under the general assignment law
2 of this state is hereby declared to be a trustee for the benefit of the
3 creditors of his assignor. Any such assignee shall have the power
4 and authority to prosecute such actions for property and make such
5 defense to claims against the assigned property as a trustee in a
6 deed of trust, or an attachment or execution creditor with a writ
7 levied on such property could prosecute or make.]

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