

FIRST REGULAR SESSION

SENATE BILL NO. 524

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHITE.

2259S.011

ADRIANE D. CROUSE, Secretary

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426.310, 426.320, 426.330, 426.340, 426.350, 426.360, 426.370, 426.380, 426.390, 426.400, and 426.410, RSMo, are repealed and forty-eight new sections enacted in lieu thereof, to be known as sections 426.500, 426.510, 426.513, 426.516, 426.519, 426.522, 426.525, 426.550, 426.553,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:

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

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

(1) "Abandon", to file and obtain the court's approval of a renunciation of assigned assets, rights, claims, and causes of action. An abandonment shall be effective to the extent approved by the court as if the assets, rights, claims, and causes of action so abandoned were never assigned to the assignee;

(2) "Affiliate":

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

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

(3) "Assets":

(a) Any property, real or personal, of a debtor not exempt from liability for its debts;

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

(c) Any exempt property waived pursuant to section 426.606;

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

33 (5) "Claim":

34 (a) A right to payment, regardless if such right is
35 reduced to judgment, liquidated, unliquidated, fixed,
36 contingent, matured, unmatured, disputed, undisputed, legal,
37 equitable, secured, or unsecured; or

38 (b) A right to an equitable remedy for breach of
39 performance if such breach gives rise to a right to payment,
40 regardless if such right to an equitable remedy is reduced
41 to judgment, fixed, contingent, matured, unmatured,
42 disputed, undisputed, secured, or unsecured;

43 (6) "Conveyance", every payment of money, an
44 assignment, release, transfer, lease, mortgage, or pledge of
45 tangible or intangible property, or the creation of any lien
46 or encumbrance;

47 (7) "Creditor", a person that has a claim and includes
48 an assignee of a general assignment for the benefit of
49 creditors against a debtor or assignor;

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

51 (9) "General assignment for the benefit of creditors",
52 an assignment that:

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

56 (b) Is for the benefit of all the debtor's or
57 assignor's creditors and does not create a preference of one
58 creditor or class of creditors over any other creditor or
59 class of creditors except those priorities to which certain
60 classes of creditors are entitled to as provided in sections
61 426.500 to 426.762 or in other provisions of law;

62 (10) "Governmental unit", a subdivision, agency,
63 department, county, parish, municipality, or other unit of a
64 county, a state, the United States, or a foreign country.

The term "governmental unit" includes a political subdivision or an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States;

(11) "Insider":

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

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

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

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

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

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

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

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

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

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

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

a. A general partner in the debtor or assignor;

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

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

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

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

98 (12) "Person", a natural person, partnership,
99 corporation, limited liability company, and any other
100 organization, association, or group of individuals that may
101 voluntarily transfer property or enforce a claim in its own
102 name;

103 (13) "Prime lending rate", the prime lending rate as
104 published in the Wall Street Journal. In the event that the
105 Wall Street Journal does not then or ceases to report a
106 prime lending rate, the judge assigned to the main case
107 shall, upon motion, designate another financial or
108 governmental publication of national circulation to be used
109 to determine the prime lending rate;

110 (14) "Relative", an individual related by blood or
111 marriage within the third degree as determined by the common
112 law, or an individual in a step or adoptive relationship
113 within such third degree;

114 (15) "Statutory lien", a lien arising solely by force
115 of a statute on specified circumstances or conditions or a
116 lien of distress for rent, whether or not statutory. The
117 term "statutory lien" shall not include a security interest
118 or judicial lien, regardless if such interest or lien is
119 provided by or is dependent on a statute and regardless if
120 such interest or lien is made fully effective by statute;

121 (16) "Transfer", every mode, direct or indirect,
122 absolute or conditional, voluntary or involuntary, of
123 disposing of or parting with property or with an interest in
124 property, including retention of title as a security
125 interest;

126 (17) "Wages", all remuneration paid to any employee
127 for his or her employment, including the cash value of all
128 remuneration paid in any medium other than cash.

426.510. All proceedings pursuant to the provisions of this chapter shall be subject to the order and supervision of the circuit court in the county of the assignor's residence. The court in all cases shall have:

(1) The exclusive authority over the assignee;

(2) The exclusive possession and right of control with respect to all real property and all tangible and intangible personal property so assigned to the assignee, wherever located; and

(3) The exclusive authority to determine all controversies relating to the collection, preservation, application, and distribution of all property and to determine all claims against the assignee arising out of the exercise of the assignee's powers or the performance of the assignee's duties.

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

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

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

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

11 (3) An action by the assignee to avoid any conveyance
12 or transfer that is void or voidable by law pursuant to
13 section 426.692;

14 (4) An action by an aggrieved person to assert a claim
15 on the assignee's bond pursuant to section 426.615; or

16 (5) An action to seek a receiver pursuant to sections
17 515.500 to 515.665.

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

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

23 (2) The clerk of the court shall docket an adjunct
24 action under both the case number assigned to the original
25 petition filed by the assignee pursuant to section 426.510
26 and a separate adjunct action case number and shall assign
27 such adjunct action to the same division and judge assigned
28 to the original petition; and

29 (3) All pleadings and other papers filed in an adjunct
30 action shall contain a separate subcaption and the adjunct
31 action case number in addition to the caption and case
32 number applicable to the original petition.

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

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

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

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

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

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

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

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

4 bond, inventory, or list of creditors accompanying the
5 assignment. An assignment may be amended, except any such
6 amendment shall relate back to the time of the execution of
7 the assignment. No mistake or inadvertent failure to comply
8 with the provisions of this chapter shall void the
9 assignment.

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

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

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

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

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

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

18 (5) Any assignment that fails to transfer all assets
19 of the assignor to the assignee or reserves any interest or
20 benefit in such assets to the assignor, except as provided
21 in section 426.606.

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

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

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

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

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

14 2. The assignor shall attach the inventory to the
15 assignment, together with a list of creditors, equity
16 holders, and other parties in interest, which shall include
17 the names, addresses, cities, states, and postal codes for
18 each person and the amount of such person's anticipated
19 claim in the assignment proceedings.

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

27 4. Within seven business days after its execution by
28 both the assignor and assignee, the assignment, together
29 with its attachments, shall be filed in the circuit court
30 where venue is appropriate. A notice of the assignment,
31 identifying the circuit court where the assignment was
32 filed, shall also be recorded by the assignee in the office
33 of the recorder of any county in which any real property
34 being assigned is located. The recording of the notice of

35 the assignment shall have the effect of conveying to the
36 assignee both legal and equitable title to the real property.

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

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

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

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

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

426.650. 1. Within thirty days after an assignment is
2 executed, the assignee shall publish notice of his or her
3 appointment as assignee in a newspaper published in the

4 county where the assignment has been filed with the court.
5 The assignee shall publish notice of his or her appointment
6 as assignee once each week for three consecutive weeks.

7 2. The assignee shall also, within thirty days after
8 the assignment has been accepted in writing, give written
9 notice of the assignment by United States mail or electronic
10 mail to each of the assignor's creditors, equity holders,
11 and other parties in interest as set forth in the list
12 provided by the assignor pursuant to subsection 1 of section
13 426.600.

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

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

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

9 in interest, the court may determine reasonable compensation
10 for services provided by a professional.

426.659. The assignee may:

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

31 (10) Upon motion, notice, and approval by the court,
32 abandon assigned assets, rights, claims, and causes of
33 action; and

34 (11) Perform any and all other acts necessary and
35 proper for the orderly liquidation or other disposition of
36 the assigned rights, claims, and causes of action.

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

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

 426.665. The assignee shall dispose of all real and
2 personal property and divide the proceeds of such property
3 among creditors as the creditors may be entitled thereto
4 within a reasonable time from the date of the assignment and

5 shall make full settlement by that date unless otherwise
6 ordered by the court.

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

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

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

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

426.674. The proceeds arising from the sales of the
2 property assigned shall be deposited for safekeeping in a
3 national bank within this state or a banking institution
4 incorporated pursuant to the laws of this state in the name

5 of the assignee or assignees and in trust for the benefit of
6 the assignor's creditors.

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

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

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

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

8 (3) For good cause.

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

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

22 assignee from all further duties, liabilities, and
23 responsibilities as assignee after notice and a hearing.

426.683. The assignee shall have the right to occupy,
2 for a period of up to ninety days after the date of the
3 assignment, any business premises held under a real estate
4 lease by the assignor, notwithstanding any provision in the
5 lease to the contrary, whether previously or subsequently
6 entered into, for the termination thereof upon the making of
7 the assignment or the insolvency of the lessee or other
8 condition relating to the financial condition of the
9 lessee. The assignee's right to occupy the premises shall
10 be conditioned upon payment when due of the monthly rental
11 reserved in the lease for the period of such occupancy.
12 When the assignee believes that more than ninety days is
13 necessary to complete his or her duties at the leased
14 premises, the assignee may extend the period of occupation
15 mentioned in this section either by agreement with the
16 landlord or by court order entered after appropriate motion,
17 notice, and hearing for such extension for a reasonable time
18 upon conditions that protect the landlord's interests in the
19 premises. In a hearing conducted pursuant to the provisions
20 of this section, the assignee shall have the burden of proof
21 to show good cause for the extension and to show that, under
22 the circumstances, the equities favor the assignee's request
23 for such extension, which may include, but shall not be
24 limited to, all the benefits and burdens that will accrue to
25 both the assignee and the landlord. At any time after the
26 date of the assignment, the landlord may seek from the
27 court, by appropriate motion, notice, and hearing, emergency
28 modification or termination of the assignee's occupation of
29 the premises in the event of threat of damage to the
30 property or other breach of the conditions that the assignee

31 shall satisfy. The assignee's occupation of premises
32 pursuant to the provisions of this section, for the period
33 authorized in this section, shall not be deemed to be a
34 tenant's "holding over", as that term is defined in section
35 441.080. Any security deposit held by the landlord shall
36 only be applied to claims arising from the breach of the
37 lease before the date of the execution of the general
38 assignment.

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

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

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

426.692. The assignee shall succeed to all rights of
2 the assignor, including any attorney-client privilege. An
3 assignee may assert on behalf of the estate any claims to
4 avoid fraudulent transfers that any creditor may assert
5 under state or federal law and may set aside any fraudulent
6 conveyances or recover property conveyed by the assignor for
7 the purpose of hindering, delaying, or defrauding
8 creditors. The assignee's rights in this section shall be
9 exclusive. If the assignee does not exercise such rights,

10 then a creditor may resume the power to exercise such rights
11 upon motion, notice, and court approval. If the assignee
12 exercises such rights, the transferee and any creditor that
13 could have asserted the rights shall be bound by the results.

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

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

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

27 (3) Unsecured claims of governmental units for taxes
28 that accrued within three years before the filing date
29 notwithstanding any provision of law to the contrary;

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

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

46 (6) Unsecured claims.

47 2. A subordination agreement shall be enforceable
48 under this chapter to the same extent that such agreement is
49 enforceable under any other provision of law.

50 3. For the purpose of distributions made pursuant to
51 this chapter, a claim arising from rescission of a purchase
52 or sale of a security of the assignor or of an affiliate of
53 the assignor for damages arising from the purchase or sale
54 of the security or for reimbursement or contribution allowed
55 in this chapter on account of such a claim shall be
56 subordinated to all claims or interests that are senior to
57 or equal to the claim or interest represented by such

58 security, except that if the security is common stock, the
59 claim shall have the same priority as common stock.

60 4. If all claims subject to distribution in this
61 section have been paid in full, any residue shall be paid to
62 the assignor.

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

426.700. 1. All claims other than the reasonable
2 costs of the administration of the assignment under
3 subdivision (2) of subsection 1 of section 426.695 and
4 claims of governmental units, whether secured, unsecured,
5 contingent, liquidated, unliquidated, or disputed, that
6 arose before the filing date of the assignment as provided
7 in section 426.600 shall be filed in accordance with the
8 provisions of this chapter. Except as provided in section
9 426.718, any claim not filed shall be barred from any
10 further recovery against the estate.

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

15 3. Claims shall be in a written form entitled "Proof
16 of Claim" that sets forth the name and address of the
17 creditor and the nature and amount of the claim and shall be
18 executed by the creditor or the creditor's authorized agent.

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

24 5. A proof of claim executed and delivered in
25 accordance with this section shall constitute prima facie
26 evidence of the validity and amount of the claim.

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

30 (1) The rent reserved by the lease, without
31 acceleration, for the greater of one year or fifteen percent
32 of the remaining term of the lease, following the earlier of
33 either:

34 (a) The date of assignment; or

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

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

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

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

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

46 (1) The compensation provided for by the contract,
47 without acceleration, for one hundred eighty days following
48 the earlier of either:

49 (a) The date of assignment; or

50 (b) The date on which the assignor directed the
51 employee to terminate, or such employee terminated,
52 performance under the contract; and

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

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

2. The assignee, as well as any creditor or any party
in interest, shall have standing to challenge:

(1) The validity, extent, or priority of any claim
filed by a creditor against the assignor's estate;

(2) The reasonableness of any expense incurred
pursuant to subdivision (2) of subsection 1 of section
426.695; or

(3) Any claims of governmental units within sixty days
following expiration of the claims bar date.

The assignee, as well as any creditor or party in interest,
may file an objection to any such claim or expense in the
circuit court where the assignment was filed. The assignee
may file omnibus objections if the assignee is objecting to
multiple claims or expenses.

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

31 4. A creditor whose claim is secured by a lien against
32 property of the estate shall have sixty days following the
33 sale or disposition of the property securing his or her
34 claim to file a claim for an unsecured deficiency,
35 notwithstanding the passage of the last date on which a
36 proof of claim may be served upon the assignee as set forth
37 in section 426.650. If a creditor fails to file a
38 deficiency claim with the assignee within ten days after the
39 filing and service by mail of the assignee's final report of
40 all receipts and disbursements, the creditor's deficiency
41 claim shall be disallowed as untimely and the creditor shall
42 not be entitled to share in any distribution made to holders
43 of unsecured claims as provided in section 426.695 on
44 account of its deficiency claim.

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

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

5 2. If a creditor does not file a claim in the time
6 required by this chapter, the creditor shall not be entitled
7 to receive any of the assigned estate.

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

7 2. In the event a claim is contested, the assignee may
8 reserve from the proceeds of the estate an amount sufficient

9 to pay the contested claimant its pro rata share of the
10 estate's assets.

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

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

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

426.715. Any creditor may present any debt due and any
2 debt to become due.

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

426.750. The provisions of section 400.9-309 shall
2 apply for purposes of determining priority of unperfected
3 security interests.

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

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

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

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

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

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

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

(2) A copy of the notice of the bond as provided in subsection 3 of this section.

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

32 6. If the attached property has been taken into
33 custody, it shall be released to the assignee or some other
34 person designated in the request for release of the
35 attachment. If the attached property has not been taken
36 into custody, it shall be released as provided in subsection
37 3 of this section or any other provision of law.

38 7. The levying officer shall not be liable for
39 releasing an attachment in accordance with this section nor
40 shall any other person be liable for acting in conformity
41 with the release.

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

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

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

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

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

 426.762. 1. Upon the making of a general assignment
2 for the benefit of creditors that terminates a lien pursuant

3 to the provisions of this chapter, the assignment shall be
4 subrogated to the rights of the plaintiff in the prejudgment
5 attachment.

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

2 [426.010. Every voluntary assignment of
3 lands, tenements, goods, chattels, effects and
4 credits made by a debtor to any person in trust
5 for his creditors, shall be for the benefit of
6 all the creditors of the assignor in proportion
7 to their respective claims; and every provision
8 in any assignment providing for the payment of
9 one debt or liability in preference to another
10 shall be void, and all debts and liabilities
11 (including judgments entered by confession
12 thirty days previous to such assignment) shall
13 be paid pro rata from the assets thereof; and
14 every such assignment shall be proved or
15 acknowledged, and certified and recorded in the
16 same manner as is prescribed by law in cases
wherein real estate is conveyed.]

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

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

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

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

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

2 [426.070. The assignor, his agent or
3 attorney, at the time of the execution of the
4 deed of assignment, shall make a statement, in
5 writing, verified by affidavit, setting forth
6 the general nature and full value of the estate
7 and effects assigned, which statement shall be
8 filed with the deed of assignment for record;
9 and the assignee shall, within three days after
10 the filing of such deed and statement, give bond
11 with at least two good and sufficient
12 securities, to be approved by the court or
13 judge, or clerk thereof in vacation, in double
14 the amount of the estate and effects assigned,
15 and if the appraised value of such estate and
16 effects, when appraised, shall be greater than
17 the value given in such statement, or if the
18 securities in such bond should in any way become
19 impaired or insufficient, the assignee shall, at
20 the time of filing the appraisement, give
21 another bond with at least two good and
22 sufficient securities, to be approved by the
23 court or judge, or the clerk thereof in
24 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
3 name of the state of Missouri, and the condition
4 shall be as follows:
5 The condition of this obligation is such
6 that if the above bound _____, assignee of
7 _____, shall, in all things, discharge his duty
8 as assignee of _____, aforesaid, and faithfully
9 execute the trust confided to him, then the
10 above obligation to be void; otherwise to remain
 in full force.]

2 [426.090. The bond shall be filed in the
 office of the clerk of the court in which the

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

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

2 [426.110. If the bond be rejected, the
3 court shall order the assignee to give another
4 bond, with sufficient security, to be approved
5 by the court; and if he fail to give such bond
6 within such time as the court shall direct, not
7 exceeding thirty days, his authority further to
act as assignee shall be deemed to be revoked.]

2 [426.120. Such bond shall be valid until
3 such new bond be given and approved,
4 notwithstanding its rejection by the court, and
5 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
3 of the condition of the bond may sue thereon in
4 the name of the state to his use, and the
5 damages shall be assessed as on bonds with
collateral conditions.]

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

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

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

2 [426.170. The assignee shall appoint a
3 day, within three months after the date of the
4 assignment, and a place, which shall be the
5 county seat of the county where the inventory is
6 filed, or such other place in said county most
7 convenient to all the parties in interest, where
8 any court of record may be lawfully held, when
9 and where he will proceed publicly to adjust and
10 allow demands against the estate and effects of
the assignor.]

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

2 [426.190. The assignee shall have power to
3 administer all necessary oaths to debtors,
creditors and witnesses; and may examine them on

4 oath, touching any claim exhibited to him for
5 allowance.】

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

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

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

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

2 [426.240. All judgments rendered in favor
3 of any claimant in the circuit court by virtue
4 of the provisions of this chapter, shall be
certified by the clerk thereof to the assignee,

5 who shall allow the same, and class it as if
6 such judgment had been rendered by him on the
7 original hearing thereof.]

2 [426.250. If the assignee shall have a
3 demand against the assignor, which he desires to
4 have allowed, he may present a petition to the
5 circuit court stating the particulars of his
6 demand and the amount thereof, verified by
7 affidavit, and thereupon such court shall
8 appoint some suitable person to act temporarily
9 as assignee of such estate, for the purpose of
10 hearing and passing upon such demand. The
11 assignee so appointed shall take an oath that he
12 will faithfully discharge the trust confided to
13 him, and shall proceed to examine the claim, and
14 if the same shall be found to be correct, in
15 whole or in part, he shall allow the amount
16 found to be due, and report his action in
17 premises to the proper court, at a date to be
18 fixed by the judge; and the court shall make an
19 order directing the sum allowed to be paid to
20 the claimant as other allowances are paid, and
21 appeals shall be allowed from the decision of
22 such temporary assignee as in other cases
provided for in this chapter.]

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

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

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

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

6 assignee so appointed as are required and given
7 by an assignee appointed by an assignor.]

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

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

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

29 recovered by motion in the court having
30 jurisdiction of said assignment; and any
31 judgment rendered by said court, on the hearing
32 of such motion, shall be against said assignee
33 or assignees and his or their securities on
34 their trust, provided for in this chapter; and
35 such assignee or assignees shall, in addition to
36 such forfeiture, be subject to be dismissed from
37 his or their trust by said court, for such
38 neglect and refusal, on motion and citation for
39 that purpose.]

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

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

2 [426.350. When any assignee becomes
satisfied that it is no longer advantageous to
3 the creditors of his assignor to keep the
4 assignment open, he may apply to the circuit
5 court in whose clerk's office the inventory is
6 filed for a discharge from his trust, upon a
7 notice of his intention to make such
8 application, stating the time thereof, which
9 notice shall be published in the newspaper
10 aforesaid, for at least six weeks next before
11 such time, at which time he may file his
12 petition in said court for such discharge; which
13 petition, verified by his affidavit, shall set
14 forth the disposition made of the assets of the
15 assignment to him; what portion of them remains
16 on hand, and their condition; the amount
17 realized from the assets; the particular
18 disposition of such amount; the demands allowed,
19 particularly, with their respective amounts and
20 owners' names, and the sums paid on each, with
21 an offer to deliver into the charge of the court
22 what remains of the assets and the evidence
23 thereof, and accompanied with all vouchers
24 therewith connected.]

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

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

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

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

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

9 may make an order directing the assignee to
10 release and discharge any vested, contingent or
11 possible right or interest in or to any estate
12 or effects assigned, upon such terms and
13 conditions as the court, or judge thereof in
14 vacation, may deem proper and just for the best
15 interest of the estate.

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

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

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