

\\FIRST REGULAR SESSION

# HOUSE BILL NO. 1020

## 101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE RIGGS.

2085H.011

DANA RADEMAN MILLER, Chief Clerk

### 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, 2 426.080, 426.090, 426.100, 426.110, 426.120, 426.130, 426.140, 426.150, 426.160, 426.170, 3 426.180, 426.190, 426.200, 426.210, 426.220, 426.230, 426.240, 426.250, 426.260, 426.270, 4 426.280, 426.290, 426.300, 426.310, 426.320, 426.330, 426.340, 426.350, 426.360, 426.370, 5 426.380, 426.390, 426.400, and 426.410, RSMo, are repealed and forty-eight new sections 6 enacted in lieu thereof, to be known as sections 426.500, 426.510, 426.513, 426.516, 426.519, 7 426.522, 426.525, 426.550, 426.553, 426.556, 426.559, 426.562, 426.565, 426.568, 426.600, 8 426.603, 426.606, 426.609, 426.612, 426.615, 426.650, 426.653, 426.656, 426.659, 426.662, 9 426.665, 426.668, 426.671, 426.674, 426.677, 426.680, 426.683, 426.686, 426.689, 426.692, 10 426.695, 426.700, 426.703, 426.706, 426.709, 426.712, 426.715, 426.718, 426.750, 426.753, 11 426.756, 426.759, and 426.762, to read as follows:

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

2       **(1) "Abandon", to file and obtain the court's approval of a renunciation of assigned**  
3 **assets, rights, claims, and causes of action. An abandonment shall be effective to the extent**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

4 approved by the court as if the assets, rights, claims, and causes of action so abandoned  
5 were never assigned to the assignee;

6 (2) "Affiliate":

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

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

16 (3) "Assets":

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

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

21 (c) Exempt property waived under section 426.606;

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

24 (5) "Claim":

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

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

32 (6) "Conveyance", every payment of moneys; assignment, release, transfer, lease,  
33 mortgage, or pledge of tangible or intangible property; or the creation of any lien or  
34 encumbrance;

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

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

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

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

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

45           (10) "Governmental unit", a subdivision, agency, department, county, parish,  
46 municipality, or other unit of a county, a state, the United States, or a foreign country.  
47 "Governmental unit" includes a political subdivision or an organization having a separate  
48 corporate existence if the organization is eligible to issue debt on which interest is exempt  
49 from income taxation under the laws of the United States;

50           (11) "Insider":

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

75           (13) "Prime lending rate", the prime lending rate as published in the Wall Street  
76 Journal. In the event that the Wall Street Journal does not then or ceases to report a prime  
77 lending rate, the judge assigned to the main case shall, upon motion, designate another  
78 financial or governmental publication of national circulation to be used to determine the  
79 prime lending rate;

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

83           (15) "Statutory lien", a lien arising solely by force of a statute on specified  
84 circumstances or conditions or a lien of distress for rent, regardless of whether statutory.  
85 "Statutory lien" shall not include a security interest or judicial lien, regardless if such  
86 interest or lien is provided by or is dependent on a statute and regardless of whether such  
87 interest or lien is made fully effective by statute;

88           (16) "Transfer", every mode, direct or indirect, absolute or conditional, voluntary  
89 or involuntary, of disposing of or parting with property or with an interest in property,  
90 including retention of title as a security interest;

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

          426.510. All proceedings under this chapter shall be subject to the order and  
2 supervision of the circuit court for the county of the assignor's residence. The court in all  
3 cases shall have exclusive authority over the assignee; the exclusive possession and right  
4 of control with respect to all real property and all tangible and intangible personal  
5 property so assigned to the assignee, wherever located; and the exclusive authority to  
6 determine all controversies relating to the collection, preservation, application, and  
7 distribution of all property and to determine all claims against the assignee arising out of  
8 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  
2 be considered, for the purposes of this chapter, a resident of the county in which its  
3 principal office is located. Venue for an individual making a general assignment shall be  
4 the county in which the individual resides.

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

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

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

7           (3) An action by the assignee to avoid any conveyance or transfer that is void or  
8 voidable by law under section 426.692;

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

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

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

14           (1) The Missouri rules of civil procedure shall apply to adjunct actions, except if  
15 inconsistent with the provisions of this chapter;

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

20           (3) All pleadings and other papers filed in an adjunct action shall contain a  
21 separate subcaption and the adjunct action number in addition to the caption and case  
22 number applicable to the main case.

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

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

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

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

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

          426.556. An assignment of assets under the provisions of this chapter shall be  
2 subject to chapter 428, as well as the provisions of the law relative to alter ego liability,  
3 piercing the corporate or other entity veil, and other like equitable principles. An  
4 assignment shall not be subject to the provisions of chapter 456, but assignees shall be

5 fiduciaries of the creditors and any other parties in interest of the estate to the extent  
6 consistent with the provisions of this chapter. This chapter shall supersede the common  
7 law of assignments for the benefit of creditors, and all assignments for the benefit of  
8 creditors shall comply with such sections.

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

2 **426.562.** Except as otherwise provided in this chapter, no assignment shall be void  
or set aside because of any defect, informality, or mistake therein or in the bond, inventory,  
3 or list of creditors accompanying the same. An assignment may be amended, and any such  
4 amendment shall relate back to the time of the execution of the assignment. No mistake  
5 or inadvertent failure to comply with the provisions of this chapter shall void the  
6 assignment.

2 **426.565.** An assignment shall not be cancelled or rescinded except 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 arising before the  
3 commencement of the assignment;

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

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

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

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

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

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

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

5 (3) An inventory of all of the assignor's estate, real or personal, and its location;

6 and

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

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

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

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

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

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

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

          426.612. The bond required under section 426.609 shall be conditioned on the  
2 assignee's faithful discharge of the assignee's duties in accordance with orders of the court  
3 and state law. Unless otherwise ordered by the court, the assignee's bond runs in favor of

4 all persons having an interest in the assignment proceeding or property held by the  
5 assignee.

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

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

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

9 (3) In the notices given under this section, the assignee shall establish a date by  
10 which creditors are required to file their claims to be able to share in the distribution of  
11 proceeds of the liquidation of the assignor's assets. The date shall be no later than one  
12 hundred eighty days after the date of the first giving of the written notice to creditors and  
13 parties in interest.

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

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

426.659. The assignee may:

2 (1) Sue in his or her representative capacity as such assignee and recover all the  
3 estate, debts, and assets belonging or due to such assignor in the manner and with like  
4 effect as the assignor might or could have done if an assignment had not been made;

5 (2) Take control of all of the estate of such assignor, whether delivered to him or  
6 her or afterwards discovered, and all books, vouchers, and papers relating thereto;



7           (3) Upon motion, notice, and approval by the court, settle any and all assigned  
8 claims and causes of action, with full power to, in the discretion of the assignee,  
9 compromise, sue or be sued, and prosecute or defend any of the assigned claim or claims;

10           (4) Redeem all mortgages and conditional contracts or other encumbrances and  
11 pledges of personal property;

12           (5) Sell property subject to encumbrances, contracts, or pledges;

13           (6) Sell property free and clear of all encumbrances under section 426.662;

14           (7) Exercise any powers that are granted to a trustee or assignee for the benefit of  
15 creditors under the laws of this state;

16           (8) Upon motion, notice, and approval by the court, borrow moneys secured by the  
17 assigned assets;

18           (9) Receive at the assignee's address, as he or she directs in writing, all mail of all  
19 classes, hand deliveries, parcel posts and express delivery materials, fax transmissions, and  
20 telegrams directed or addressed to the assignor;

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

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

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

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

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

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

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

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

426.671. Every assignee, at least quarterly, shall file a written report with the court stating the condition of the remaining assets of the assignment, reporting the disposition of any and all assets of the assignment since commencement of the assignment, all sums received therefrom, all disbursements made from the funds so received, and such other information as shall be reasonably requested by the court, a creditor, or other party in interest. Upon request of a creditor or other party in interest, the assignee shall make an electronic copy of the most recent report available to such creditor or party in interest.

426.674. The proceeds arising from the sales of the property assigned shall be deposited for safekeeping in a national bank within this state, or a banking institution incorporated under the laws of this state, in the name of the assignee or assignees and in trust for the benefit of the assignor's creditors.

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

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

- (1) If the assignee has not executed and filed the bond required by section 426.609;
- (2) If the assignee resigns, refuses, or fails to serve for any reason; or
- (3) For good cause.

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

11           **3. If the court is satisfied that the assignee so removed or replaced has fully**  
12 **accounted for and turned over to the replacement assignee appointed by the court all of**  
13 **the property of the estate and has filed a report of all receipts and disbursements during**  
14 **his or her tenure as assignee, the court shall enter an order discharging the assignee from**  
15 **all further duties, liabilities, and responsibilities as assignee after notice and a hearing.**

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

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

4           **(1) Seeking avoidance of transfers, recovery of property, or declarations of**  
5 **priorities in assets;**

6           **(2) Defending against claims of third persons in estate assets or against the**  
7 **assignee; or**

8           (3) Seeking any other relief or asserting any other defense, offset, or counterclaim  
9 that the assignee is otherwise authorized to seek or assert by applicable law.

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

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

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

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

11           (2) Expenses incurred during the administration of the estate, including:

12           (a) Allowed fees and reimbursements of all expenses of the assignee and  
13 professional persons employed by the assignee under section 426.656; and

14           (b) Rent incurred by the assignee, as provided under section 426.683, for occupying  
15 any premises in which the assets of the assignment estate are located or the business of the  
16 assignor is conducted, from and after the date of the assignment through and until the date  
17 on which the lease for such premises is rejected pursuant to an order of the court or the  
18 date of termination of such lease, whichever occurs first;

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

21           (4) Claims for wages, salaries, or commissions, including vacation, severance, and  
22 sick leave pay, or contributions to an employee benefit plan earned by employees of the  
23 assignor within one hundred eighty days before the filing date or the cessation of the

24 assignor's business, whichever occurred first. However, claims shall only extend to ten  
25 thousand dollars per employee. Any amount in excess of ten thousand dollars shall be a  
26 general unsecured claim;

27 (5) Allowed unsecured claims, to the extent of two thousand two hundred twenty-  
28 five dollars for each individual, arising from the deposit of moneys with the assignor before  
29 the filing date in connection with the purchase, lease, or rental of property or the purchase  
30 of services for personal, family, or household use by such individuals that were not  
31 delivered or provided; and

32 (6) Unsecured claims.

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

35 3. For the purpose of distributions under this chapter, a claim arising from  
36 rescission of a purchase or sale of a security of the assignor or of an affiliate of the assignor  
37 for damages arising from the purchase or sale of the security or for reimbursement or  
38 contribution allowed under this chapter on account of such a claim shall be subordinated  
39 to all claims or interests that are senior to or equal to the claim or interest represented by  
40 such security, except that if the security is common stock, the claim shall have the same  
41 priority as common stock.

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

44 5. Notwithstanding any provision of law to the contrary, nothing contained herein  
45 shall excuse the assignee from compliance with 31 U.S.C. Section 3713.

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

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

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

14           **4. If a claim or an interest in property of the assignor securing the claim is based**  
15 **on a writing, the original or a copy of such writing shall be filed with the proof of claim,**  
16 **together with evidence of perfection of any security interest, if applicable.**

17           **5. A proof of claim executed and delivered in accordance with this section shall**  
18 **constitute prima facie evidence of the validity and amount of the claim.**

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

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

23           **(a) The date of assignment; or**

24           **(b) The date on which the lessor repossessed, or the lessee surrendered, the leased**  
25 **property; and**

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

28           **(b) Reasonable attorney's fees and costs incurred by the lessor in connection with**  
29 **the lease; and**

30           **(c) The lessor's reasonable costs incurred in reletting the premises previously leased**  
31 **by the assignor.**

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

34           **(1) The compensation provided for by the contract, without acceleration, for one**  
35 **hundred eighty days following the earlier of either:**

36           **(a) The date of assignment; or**

37           **(b) The date on which the assignor directed the employee to terminate, or such**  
38 **employee terminated, performance under the contract; and**

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

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

7           **2. The assignee, as well as any creditor or any party in interest, shall have standing**  
8 **to challenge the validity, extent, or priority of any claim filed by a creditor against the**  
9 **assignor's estate; the reasonableness of any expense under subdivision (2) of subsection 1**

10 of section 426.695; or any claims of governmental units within sixty days following  
11 expiration of the claims bar date and may file an objection to any such claim or expense  
12 in the circuit court where the assignment was filed. The assignee may file omnibus  
13 objections if the assignee is objecting to multiple claims or expenses.

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

19       4. A creditor whose claim is secured by a lien against property of the estate shall  
20 have sixty days following the sale or disposition of the property securing his or her claim  
21 to file a claim for an unsecured deficiency, notwithstanding the passage of the last date on  
22 which a proof of claim may be served upon the assignee as set forth in section 426.650. If  
23 such a creditor fails to file a deficiency claim with the assignee within ten days after the  
24 filing and service by mail of the assignee's final report of all receipts and disbursements,  
25 the creditor's deficiency claim shall be disallowed as untimely and the creditor shall not be  
26 entitled to share in any distribution made to holders of unsecured claims under section  
27 426.695 on account of its deficiency claim.

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

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

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

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

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

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

3       2. If a creditor holds collateral to secure his or her claim that is worth less than  
4 such claim, the assignee may estimate the value of the collateral and allow the creditor, as

5 an unsecured claim against the assigned estate, only the difference between the value of the  
6 collateral and the amount of the claim.

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

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

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

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

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

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

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

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

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

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

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

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

18 5. Unless otherwise ordered by a court, the levying officer shall release the  
19 attachment pursuant to the request for release of attachment after the expiration of ten



20 days from the date of mailing the papers referred to in subsection 4 of this section to the  
21 plaintiff.

22 6. If the attached property has been taken into custody, it shall be released to the  
23 assignee or some other person designated in the request for release of the attachment. If  
24 the attached property has not been taken into custody, it shall be released as provided in  
25 subsection 3 of this section or other applicable law.

26 7. The levying officer shall not be liable for releasing an attachment in accordance  
27 with this section nor shall any other person be liable for acting in conformity with the  
28 release.

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

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

8 (2) The termination is the result of the filing of a petition that commenced a case  
9 under Title 11 of the United States Code, and the petition was dismissed; or

10 (3) The termination is the result of the filing of a petition that commenced a case  
11 under Title 11 of the United States Code and the trustee abandoned property that was  
12 subject to the lien of the prejudgment attachment.

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

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

4 2. Upon the filing of a petition that commences a case under Title 11 of the United  
5 States Code, a lien terminated under this chapter shall be preserved for the benefit of the  
6 estate.

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

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

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

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

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

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

2 [426.060. If, after making the first inventory, any other property, effects  
3 and things conveyed by the deed of assignment shall come to the possession or  
4 knowledge of the assignee, his duty in relation thereto, and the duty of the court  
5 or judge, and the 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 of the execution  
3 of the deed of assignment, shall make a statement, in writing, verified by  
4 affidavit, setting forth the general nature and full value of the estate and effects  
5 assigned, which statement shall be filed with the deed of assignment for record;  
6 and the assignee shall, within three days after the filing of such deed and  
7 statement, give bond with at least two good and sufficient securities, to be  
8 approved by the court or judge, or clerk thereof in vacation, in double the amount

8 of the estate and effects assigned, and if the appraised value of such estate and  
9 effects, when appraised, shall be greater than the value given in such statement,  
10 or if the securities in such bond should in any way become impaired or  
11 insufficient, the assignee shall, at the time of filing the appraisement, give another  
12 bond with at least two good and sufficient securities, to be approved by the court  
13 or judge, or the clerk thereof in vacation, in double the amount of the appraised  
14 value of the estate and effects assigned.]  
15

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

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

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

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

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

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

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

2 [426.140. Every assignee shall exhibit, on oath, a statement of the  
accounts of the trust, with proper vouchers, to the circuit court within sixty days  
3 after the execution of the assignment, unless for good cause postponed, and shall  
4 file a like statement every ninety days thereafter until such assigned estate is fully  
5 settled; and if such assignee shall fail to make such settlement within such times,  
6 then on the application of any person interested, the court shall order a citation

7 to issue to such assignee, requiring him to appear in court within a time to be  
8 therein named, and exhibit, on oath, a statement of his said accounts; and if said  
9 assignee shall neglect and fail to exhibit such accounts within the time named in  
10 said citation, the said court shall, on motion, unless for good cause shown,  
11 dismiss said assignee from his trust.]  
12

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

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

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

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

21 may be allowed, and the remaining dividends paid thereon, as in the case of other  
22 allowed claims.]  
23

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

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

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

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

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

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

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

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

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

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

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

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

2       ~~[426.310. The circuit court shall make an order for the sale of all the real~~  
3       ~~and personal estate conveyed by any deed of assignment, either for cash in hand,~~

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

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

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

2 [426.340. Upon petition in behalf of any such person to the circuit court  
3 in whose clerk's office the inventory is filed, showing good cause therefor,  
4 verified by affidavit, such court shall cause any assignee to be cited to appear  
5 before it at such time as may be designated, to answer the allegations in such  
petition, and to do and abide such order as shall be made by such court in the

6 premises; and upon the hearing, such court shall make such order as to it shall  
7 seem fit and lawful in the premises for enforcing the provisions of this chapter.]  
8

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

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

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

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

2 [426.390. When, in any case of assignment now or hereafter pending, the  
3 temporary assignee appointed according to section 426.250, has failed or shall  
4 fail to act, or to make the report upon claims allowed by him as in said section  
mentioned, then it shall be the duty of the circuit court, at any session during the



5 pendency of the matter of such assignment, to hear such evidence touching the  
6 action of such temporary assignee in the premises, or touching the validity of the  
7 claims of the general assignee, as he may offer; and if it appear that said claims  
8 had been, in fact, regularly allowed, or that they are just, the court shall allow the  
9 same, and order them to be paid as other claims.]

10

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

11

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

21

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

✓