

A BILL

FOR AN ACT REGULATING ASSIGNMENTS FOR BENEFIT OF CREDITORS, AND THE DISTRIBUTION OF AN INSOLVENT'S ESTATE.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, Chapter seven, sections 2115 to 2128 inclusive, of the Code, is hereby repealed, and in lieu thereof is enacted the following:

SEC. 2. Every assignment of property for the benefit of creditors, by a debtor who is insolvent, or in contemplation of insolvency, shall be considered as a general assignment for the benefit of all the creditors of said debtor, in proportion to the amount of their respective claims; and no assignment shall be declared void because it is accompanied with, or preceded by, other conveyances of property.

SEC. 3. In the case of such an assignment of property for the benefit of creditors the assent of all the creditors shall be presumed.

SEC. 4. The debtor shall annex to such an assignment an inventory, under oath, of his estate, real and personal, according to the best of his knowledge; and also a list of his creditors, and the amount of their respective demands; but such inventory shall not be conclusive as to the amount of the debtor's estate; and such assignment shall vest in the assignee the title to any other property belonging to the debtor at the time of making the assignment. Every assignment shall be duly acknowledged in the same manner as conveyances of real estate, and recorded in the county where the person making the same resides, or where the business in respect of which the same has been carried on.

SEC. 5. The assignee shall also forthwith file with the clerk of the circuit court of the county where such assignment shall be recorded, a true and full inventory and valuation of said estate, under oath, so far as the same has come to his knowledge, and shall then and there enter into bond to said clerk, for the use of the creditors, in double the amount of the inventory and valuation, with one or more sufficient sureties, to be approved by said clerk, for the faithful performance of said trust; and the assignee may thereupon proceed to perform any duty necessary to carry into effect said assignment.

SEC. 6. The assignee shall forthwith give notice of such assignment, by publication in
 2 some newspaper in the county, if any, and if none, then in the nearest county thereto, which
 3 publication shall be continued at least six weeks; and shall also forthwith send a notice by
 4 mail to each creditor of whom he shall be informed, directed to their usual place of resi-
 5 dence, and notifying the creditors to present their claims, under oath, to him within three
 6 months thereafter.

SEC. 7. At the expiration of three months from the time of first publication of said notice
 2 the assignee shall report and file with the clerk of the court a true and full list, under oath,
 3 of all such creditors of the assignor as shall have claimed to be such, with a statement of
 4 their claims, and also an affidavit of publication of said notice and a list of the creditors, with
 5 their places of residence, to whom notice has been sent by mail, and the date of mailing, duly
 6 verified.

SEC. 8. Any person interested may appear within three months after filing such report
 2 and file with said clerk any exceptions to the claim or demand of any creditor, and the clerk
 3 shall forthwith cause notice thereof to be given to the creditor, which shall be served as in
 4 case of an original notice, returnable at the next term, and the said court shall at such term
 5 proceed to hear the proofs and allegations of the parties in the premises, and shall render
 6 such judgment thereon as shall be just, and may allow a trial by jury thereon.

SEC. 9. If no exception be made to the claim of any creditor, or if the same have been
 2 adjudicated, the court shall order the assignee to make, from time to time, fair and equal
 3 dividends among the creditors of the assets in his hands, in proportion to their claims, and as
 4 soon as may be to render a final account of said trust to said court, who may allow such com-
 5 missions to said assignee in the final settlement as may be considered just and right.

SEC. 10. The assignee shall, at all times, be subject to the order and supervision of the
 2 court or judge, and the said court or judge may, by citation and attachment, compel the
 3 assignee from time to time to file reports of his proceedings and of the situation and condi-
 4 tion of the trust, and to proceed in the faithful execution of the duties required by this act.

SEC. 11. No assignment shall be declared fraudulent or void for want of any list or
 2 inventory as provided in this act. The court or judge may, upon the application of the
 3 assignee or any creditor, compel the appearance in person of the debtor before such court or
 4 judge, or referee appointed by such court or judge, forthwith or at the next term, to answer
 5 under oath such matters as may then and there be inquired of him, and such debtor may
 6 then and there be fully examined as to the amount and situation of his estate, or any dispo-
 7 sition of the same, and the names of the creditors and amounts due to each, with their places
 8 of residence, and may compel the delivery to the assignee of any property or estate embraced
 9 in the assignment.

SEC. 12. The assignee shall, from time to time, file with the clerk of the court an inventory and valuation of any additional property which may come into his hands under said assignment after the filing of the first inventory, and the clerk may thereupon require him to give additional security.

SEC. 13. Any creditor may claim debts to become due, as well as debts due, but on debts not due a reasonable abatement shall be made when the same are not drawing interest, and all creditors who shall not exhibit their claims within the term of three months from the first publication of notice as aforesaid, shall not participate in the dividends until after the payment in full of all claims presented within said term and allowed by the court.

SEC. 14. Any assignee as aforesaid shall have full power to sue for and recover everything belonging or appertaining to said estate; but all sales or conveyances of any property, whether real or personal, by such assignee shall be by the order and direction of said court or judge.

SEC. 15. Upon the petition of one or more of the creditors of said debtor, whose claims amount in the aggregate to two-thirds of all the indebtedness of such debtor, the court shall remove the assignee named in the assignment, and shall appoint another fit person having due regard to the interests of all the creditors. An assignee so appointed shall give bond as may be required by the court, and shall proceed in like manner as if said assignment had been originally executed to him.

SEC. 16. Any person residing or carrying on business within this state who, after the passage of this act, shall depart from this state with intent to defraud his creditors, or, being absent, shall, with such intent, remain absent, or shall conceal himself to avoid the service of legal process, or shall make any assignment, gift, sale, conveyance or transfer of his property with intent to hinder, delay or defraud his creditors, or who, being insolvent or in contemplation of insolvency, shall make any payment, gift, grant, sale or transfer of money or other property, or confess judgment, or procure his property to be taken on legal process with intent to give a preference to one or more of his creditors, or to any person or persons who are or may be liable for him as indorsers, sureties, or otherwise, or who, being a bank, banker, broker, merchant, trader, manufacturer or miner, has fraudulently stopped payment, or who, being a bank, banker, broker, merchant, trader, manufacturer or miner, has stopped or suspended, and not resumed payment of his commercial paper (made and passed in the course of his business as such) within a period of thirty days, or who, being a bank or banker, shall fail for ten days to pay any depositor upon demand of payment lawfully made, may, upon the petition of any creditor whose demand exceeds three hundred dollars and arises upon contract express or implied, such petition being filed within four months after the act or omission complained of, be declared by the said circuit court or judge insolvent, and all his

18 property not exempt from execution conveyed by the court or judge to an assignee as herein-
19 after provided.

SEC. 17. Upon the filing in the circuit court of the petition, duly verified, as provided in
2 the foregoing section, the court or judge shall order a rule to be issued, commanding the
3 debtor to appear within ten days after the service of the same and show cause, if any he has,
4 why he should not be declared insolvent, and his estate so conveyed to an assignee. Said
5 rule shall be served in the manner provided for the service of an original notice.

SEC. 18. If, upon the return day of said rule, the debtor appears and pleads to said peti-
2 tion, the issue, if one of law, shall forthwith be tried by the court or judge. If an issue of
3 fact be made, and a trial by jury demanded, the cause shall, if in term time, be at once
4 brought on for trial, unless good cause be shown for a continuance: if in vacation, such causes
5 shall be first tried at the next term after issue is so made. If upon an issue of fact a jury be
6 not demanded, such cause shall be tried by the court or judge as soon as practicable. Such
7 causes shall be tried as actions at law. In either case, if the allegations of the petition be
8 sustained, the court shall thereupon enter an order declaring said debtor insolvent, and ap-
9 pointing a suitable person assignee of his estate and effects. The like order shall be entered
10 if default be made by said debtor.

SEC. 19. The order appointing such assignee shall vest in the assignee all of the prop-
2 erty, both real and personal, of the debtor, as of the date of filing said petition. Said as-
3 signee shall give a bond, in a penal sum to be fixed by the court, with the usual conditions,
4 and shall, after his appointment and qualification, proceed in the management, collection
5 and distribution of such estate in like manner as if the assignment had been executed by
6 such debtor, as hereinbefore provided.

SEC. 20. Either party may appeal to the supreme court from such order: but no such
2 appeal shall operate as a supersedeas unless the appellant shall file a bond, with good and
3 sufficient sureties, to be approved by the clerk, for the use and benefit, in case the debtor is
4 appellant, of all the creditors who may prove their claims in such proceeding, and in case
5 the creditor is appellant, for the use and benefit of the debtor. Said bond shall be condi-
6 tioned as in other cases of appeal, and shall be in a penal sum to be fixed by the court or
7 judge, but shall in no case be greater than one and a half times the value of the property so
8 to be conveyed to the assignee.

SEC. 21. The petition provided for in section sixteen of this act shall be filed in the
2 county in which the debtor resides, or in which he carries on business.

SEC. 22. At any time after the filing of such petition the court or judge may, upon proper
2 showing that the property of the debtor has been or is about to be fraudulently transferred

3 or placed beyond the reach of creditors, after due notice, issue an injunction preserving the
4 *statu quo* until the controversy is determined: *provided*, that the creditor so applying shall
5 give bond in a sum to be fixed by the court, with good and sufficient sureties, conditioned to
6 pay all damages and costs resulting from such injunction, if such petition should upon trial
7 not be sustained.

SEC. 23. If any person, being insolvent or in contemplation of insolvency, within four
2 months before the execution of the assignment hereinbefore provided for, or within two
3 months before the filing of the petition mentioned in section sixteen of this act, with a view
4 to give a preference to any creditor or person having a claim against him, or who is under
5 any liability for him, procures, or suffers any part of his property to be attached or seized on
6 execution, or makes any payment, pledge, assignment, transfer or conveyance of any of his
7 property, either directly or indirectly, absolutely or conditionally, the person receiving such
8 payment, pledge, assignment, transfer or conveyance, or to be benefited thereby, or by such
9 attachment, having reasonable cause to believe such person is insolvent, and that such at-
10 tachment, seizure, payment, pledge, assignment or conveyance, is made in fraud of the pro-
11 visions of this act, the same shall be void, and the assignee may recover the same, or its
12 value, from the person so receiving it, or so to be benefited.

SEC. 24. The fact that such a payment, pledge, sale, assignment, transfer, conveyance, or
2 other disposition of a debtor's property as is described in the preceding section is not made
3 in the usual and ordinary course of business of the debtor shall be *prima facie* evidence of
4 fraud.

SEC. 25. The assignee may sue for and recover in any court of competent jurisdiction any
2 property, or its value, that has been sold, assigned, conveyed or transferred in fraud of
3 creditors.

SEC. 26. The execution and delivery of the assignment mentioned in section 1 of this act,
2 or the entry of the order mentioned in section 18 of this act, shall dissolve any attachment
3 levied on the property of the debtor within four months before the execution of such assign-
4 ment or the filing of such petition, and the assignee shall be entitled to take and receive any
5 property so levied upon for the equal benefit of all the creditors of said debtor.

SEC. 27. The provisions of this act shall apply to partnerships and corporations.

SEC. 28. In case any assignee shall die before the closing of his trust, or in case any as-
2 signee shall fail or neglect, for the period of twenty days after the making of any assignment,
3 to file an inventory and valuation and give bonds as required by this act, the court or judge,
4 on the application of any person interested, shall appoint some person to execute the trust
5 embraced in such assignment, and such person, on giving bond with sureties as required

6 above, shall possess all the powers conferred upon such assignee, and shall be subject to all
7 the duties hereby imposed as fully as though named in the assignment; and in case any se-
8 curity shall be discovered to be insufficient, or on complaint before the court or judge it should
9 be made to appear that any assignee is guilty of wasting or misapplying the trust estate, said
10 court or judge may direct and require additional security, and may remove such assignee and
11 may appoint others instead, and such person so appointed, on giving bond, shall have full
12 power to execute such duties, and to demand and sue for all estate in the hands of the per-
13 son removed, and to demand and recover the amount and value of all moneys and property
14 or estate so wasted or misapplied, which he may neglect or refuse to make satisfaction for,
15 from such person and his sureties.