

By the Committee on Judiciary; and Senator Joyner

590-2500-07

1 A bill to be entitled
2 An act relating to debts and debtors; amending
3 s. 222.25, F.S.; providing that personal
4 property of a specified value is exempt from
5 legal process if the debtor does not receive a
6 homestead exemption; providing limitations;
7 amending s. 702.035, F.S.; permitting
8 foreclosure notices to be published in certain
9 newspapers that publish at least 5 days a week
10 except during legal holidays; amending s.
11 727.103, F.S.; redefining the terms "asset" and
12 "assignee"; defining the term "consensual
13 lienholder"; amending s. 727.104, F.S.;
14 revising the assignment and schedule forms;
15 providing forms for verification and acceptance
16 under oath for assignments and schedules;
17 amending s. 727.105, F.S.; authorizing a
18 consensual lienholder only to enforce a
19 security interest against the assets of an
20 estate; amending s. 727.108, F.S.; revising and
21 providing additional duties for the assignee;
22 amending s. 727.109, F.S.; providing additional
23 powers of the court; amending s. 727.110, F.S.;
24 conforming cross-references; amending s.
25 727.111, F.S.; requiring the assignee to give
26 notice of the assignee's continued operation of
27 the assignor's business; authorizing the
28 assignee to take action as described in the
29 notice by order of the court; requiring that
30 notice be given to all consensual lienholders
31 and counsel; amending s. 727.112, F.S.;

1 providing limitations on a claim for damages;
2 amending s. 727.113, F.S.; authorizing a
3 creditor of the assignor to file an objection
4 to a claim; requiring an assignee to create a
5 claims register; providing that an assignee or
6 any creditor has standing to challenge any
7 claim by another creditor; authorizing certain
8 creditors to file a claim for an unsecured
9 deficiency within a certain time; amending s.
10 727.114, F.S.; providing that certain creditors
11 are unsecured creditors for purpose of priority
12 of distribution; revising the type and amount
13 of claims receiving a priority distribution;
14 providing that a subordination agreement is
15 enforceable; providing that certain claims are
16 subordinate to other claims; providing an
17 exception for a claim for common stock;
18 providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 222.25, Florida Statutes, is
23 amended to read:

24 222.25 Other individual property of natural persons
25 exempt from legal process.--The following property is exempt
26 from attachment, garnishment, or other legal process:

27 (1) A debtor's interest, not to exceed \$1,000 in
28 value, in a single motor vehicle as defined in s. 320.01.

29 (2) A debtor's interest in any professionally
30 prescribed health aids for the debtor or a dependent of the
31 debtor.

1 (3) A debtor's interest in a refund or a credit
2 received or to be received, or the traceable deposits in a
3 financial institution of a debtor's interest in a refund or
4 credit, pursuant to s. 32 of the Internal Revenue Code of
5 1986, as amended. This exemption does not apply to a debt owed
6 for child support or spousal support.

7 (4) A debtor's interest in personal property, not to
8 exceed \$4,000, if the debtor does not claim or receive the
9 benefits of a homestead exemption under s. 4, Art. X of the
10 Florida Constitution. This exemption does not apply to a debt
11 owed for child support or spousal support.

12 Section 2. Section 702.035, Florida Statutes, is
13 amended to read:

14 702.035 Legal notice concerning foreclosure
15 proceedings.--Whenever a legal advertisement, publication, or
16 notice relating to a foreclosure proceeding is required to be
17 placed in a newspaper, it is the responsibility of the
18 petitioner or petitioner's attorney to place such
19 advertisement, publication, or notice. For counties with more
20 than 1 million total population as reflected in the 2000 most
21 ~~recent~~ Official Decennial Census of the United States Census
22 Bureau as shown on the official website of the United States
23 Census Bureau, any notice of publication required by this
24 section shall be deemed to have been published in accordance
25 with the law if the notice is published in a newspaper that
26 has been entered as a periodical matter at a post office in
27 the county in which the newspaper is published, is published a
28 minimum of 5 days a week, exclusive of legal holidays, and has
29 been in existence and published a minimum of 5 days a week,
30 exclusive of legal holidays, for 1 year or is a direct
31 successor to a newspaper that has been in existence for 1 year

1 that has been published a minimum of 5 days a week, exclusive
2 of legal holidays. The advertisement, publication, or notice
3 shall be placed directly by the attorney for the petitioner,
4 by the petitioner if acting pro se, or by the clerk of the
5 court. Only the actual costs charged by the newspaper for the
6 advertisement, publication, or notice may be charged as costs
7 in the action.

8 Section 3. Section 727.103, Florida Statutes, is
9 amended to read:

10 727.103 Definitions.--As used in this chapter, unless
11 the context requires a different meaning, the term:

12 (1) "Asset" means a legal or equitable interest of the
13 assignor in property, which includes ~~shall include~~ anything
14 that may be the subject of ownership, whether real or
15 personal, tangible or intangible, including claims and causes
16 of action, whether arising by contract or in tort, wherever
17 located, and by whomever held at the date of the assignment,
18 except property exempt by law from forced sale.

19 (2) "Assignee" means a natural person solely in such
20 person's capacity as an assignee for the benefit of creditors
21 under the provisions of this chapter, which assignee shall not
22 be a creditor or an equity security holder or have any
23 interest adverse to the interest of the estate.

24 (3) "Assignor" means the person or entity that ~~which~~
25 has executed and delivered the assignment to the assignee.

26 (4) "Assignment" means an assignment for the benefit
27 of creditors made under this chapter.

28 (5) "Consensual lienholder" means a creditor that has
29 been granted a security interest or lien in personal property
30 or real property of the assignor before the date on which the
31

1 petition is filed with the court, and whose security or lien
2 has been perfected in accordance with applicable law.

3 ~~(6)(5)~~ "Court" means the circuit court where the
4 petition is filed in accordance with s. 727.104(2).

5 ~~(7)(6)~~ "Creditor" means any person having a claim
6 against the assignor, whether such claim is contingent,
7 liquidated, unliquidated, or disputed.

8 ~~(8)(7)~~ "Estate" means all of the assets of the
9 assignor.

10 ~~(9)(8)~~ "Filing date" means the date upon which the
11 original petition is filed in accordance with s. 727.104(2).

12 ~~(10)(9)~~ "Lien" means a charge against or an interest
13 in property to secure payment of a debt or performance of an
14 obligation, and includes a security interest created by
15 agreement, a judicial lien obtained by legal or equitable
16 process or proceedings, a common-law lien, or a statutory
17 lien.

18 ~~(11)(10)~~ "Liquidation value" means the value in cash
19 obtainable upon a forced sale of assets after payment of valid
20 liens encumbering said assets.

21 ~~(12)(11)~~ "Petition" means the initial document filed
22 with the court, as set forth in s. 727.104(2), establishing
23 the court's jurisdiction under this chapter.

24 Section 4. Subsection (1) of section 727.104, Florida
25 Statutes, is amended to read:

26 727.104 Commencement of proceedings.--

27 (1)(a) An irrevocable assignment and schedules shall
28 be made in writing, containing the name and address of the
29 assignor and assignee and providing for an equal distribution
30 of the estate according to the priorities set forth in s.
31 727.114.

1 (b) The assignment shall be in substantially the
2 following form:

3
4 ASSIGNMENT

5
6 ASSIGNMENT, made this day of, ...(year)..., between
7, with a principal place of business at, hereinafter
8 "assignor," and, whose address is, hereinafter
9 "assignee."

10 WHEREAS, the assignor has been engaged in the business
11 of

12 WHEREAS, the assignor is indebted to creditors, as set
13 forth in Schedule A annexed hereto, is unable to pay its debts
14 as they become due, and is desirous of providing for the
15 payment of its debts, so far as it is possible by an
16 assignment of all of its assets for that purpose.

17 NOW, THEREFORE, the assignor, in consideration of the
18 assignee's acceptance of this assignment, and for other good
19 and valuable consideration, hereby grants, assigns, conveys,
20 transfers, and sets over, unto the assignee, her or his
21 successors and assigns, all of its assets, except such assets
22 as are exempt by law from levy and sale under an execution,
23 including, but not limited to, all real property, fixtures,
24 goods, stock, inventory, equipment, furniture, furnishings,
25 accounts receivable, bank deposits, cash, promissory notes,
26 cash value and proceeds of insurance policies, claims and
27 demands belonging to the assignor, and all books, records, and
28 electronic data pertaining to all such assets, wherever such
29 assets may be located, hereinafter the "estate," as which
30 assets are, to the best knowledge and belief of the assignor,
31 set forth on Schedule B annexed hereto.

1 The assignee shall take possession of, and protect and
2 preserve, all such assets and administer the estate in
3 accordance with the provisions of chapter 727, Florida
4 Statutes, and shall liquidate the assets of the estate with
5 reasonable dispatch and convert the estate into money, collect
6 all claims and demands hereby assigned as may be collectible,
7 and pay and discharge all reasonable expenses, costs, and
8 disbursements in connection with the execution and
9 administration of this assignment from the proceeds of such
10 liquidations and collections.

11 The assignee shall then pay and discharge in full, to
12 the extent that funds are available in the estate after
13 payment of administrative expenses, costs, and disbursements,
14 all of the debts and liabilities now due from the assignor,
15 including interest on such debts and liabilities. If funds of
16 the estate shall not be sufficient to pay such debts and
17 liabilities in full, then the assignee shall pay from funds of
18 the estate such debts and liabilities, on a pro rata basis and
19 in proportion to their priority as set forth in s. 727.114,
20 Florida Statutes.

21 ~~If in the event that~~ all debts and liabilities are paid
22 in full, any funds of the estate remaining shall be returned
23 to the assignor.

24 To accomplish the purposes of this assignment, the
25 assignor hereby appoints the assignee its true and lawful
26 attorney, irrevocable, with full power and authority to do all
27 acts and things which may be necessary to execute the
28 assignment hereby created; to demand and recover from all
29 persons all assets of the estate; to sue for the recovery of
30 such assets; to execute, acknowledge, and deliver all
31 necessary deeds, instruments, and conveyances; and to appoint

1 one or more attorneys under her or him to assist the assignee
2 in carrying out her or his duties hereunder.

3 The assignor hereby authorizes the assignee to sign the
4 name of the assignor to any check, draft, promissory note, or
5 other instrument in writing which is payable to the order of
6 the assignor, or to sign the name of the assignor to any
7 instrument in writing, whenever it shall be necessary to do
8 so, to carry out the purpose of this assignment.

9 The assignee hereby accepts the trust created by the
10 assignment, and agrees with the assignor that the assignee
11 will faithfully and without delay carry out her or his duties
12 under the assignment.

13
14
15 Assignor

16
17
18 Assignee

19
20 STATE OF FLORIDA
21 COUNTY OF

22
23 The foregoing assignment was acknowledged before me
24 this day of, ...(year)..., by, as assignor, and
25 by, as assignee, for the purposes therein expressed.

26
27 ...(Signature of Notary Public - State of Florida)...
28 ...(Print, Type, or Stamp Commissioned Name of Notary
29 Public)...

30
31 Personally Known OR Produced Identification

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Type of Identification Produced.....

(c) The assignment shall have annexed thereto as Schedule A a true list of all of the assignor's known creditors, their mailing addresses, the amount and nature of their claims, and whether their claims are disputed; and as Schedule B a true list of all assets of the estate, including the estimated liquidation value of the assets, their location, and, if real property, a legal description thereof, as of the date of the assignment.

(d) The schedules shall be in substantially the following forms:

SCHEDULE A--CREDITOR LIST

1. List all secured creditors showing:

Name	Address	Amount	Collateral	Whether or not disputed
------	---------	--------	------------	-------------------------

2. List all wages owed showing:

Name	Address	Amount	Whether or not disputed
------	---------	--------	-------------------------

3. Consumer deposits:

Name	Address	Amount	Whether or not disputed
------	---------	--------	-------------------------

4. List all taxes owed showing:

Whether or

1 Name Address Amount not disputed

2

3 5. List all unsecured claims showing:

4

Whether or

5

Name Address Amount

not disputed

6

7 6. List all owners or shareholders showing:

8

9

Name Address

Percent of Ownership

10

11 7. List all pending litigation and opposing counsel of

12 record:

13

14

Style

Parties

Opposing Counsel of Record

15

16

SCHEDULE B--LIST OF ASSETS

17

18

List each category of assets and for each give approximate

19

value obtainable for the asset on the date of assignment, and

20

address where asset is located.

21

22

I. Nonexempt Property

23

24

Description and

Liquidation Value

25

Location

at Date of Assignment

26

27

1. Legal description and street address of real estate,

28

including leasehold interests:

29

2. Fixtures:

30

3. Cash and bank accounts:

31

4. Inventory:

- 1 5. Accounts receivable:
2 6. Equipment:
3 7. Prepaid expenses, including deposits, insurance, rents,
4 and utilities:
5 8. Other, including loans to third parties, claims, and
6 choses in action:
7

8 II. Exempt Property
9

10 Description and	Liquidation Value
11 Location	at Date of Assignment

12
13 (e) The assignment and schedules shall be duly
14 verified upon oath by the assignor, and accepted by the
15 assignee under oath in substantially the following form:-
16

17 VERIFICATION OF ASSIGNMENT
18 AND SCHEDULES BY ASSIGNOR
19

20 The undersigned, (name), (position with assignor) of
21 (assignor), hereby verifies the Assignment of all of its
22 rights, title, and interest in and to all of its assets, as
23 indicated on the attached Schedules to that Assignment as
24 filed with this Court on (date), and further verifies each of
25 the facts set forth in the Schedules annexed to the Assignment
26 to the best of my knowledge and belief.

27 _____
28 Name, Position with Assignor
29

30 STATE OF FLORIDA
31 COUNTY OF

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Sworn to and subscribed before me this day of
....., ...(year).....

...(Signature of Notary Public - State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary
Public)...

Personally Known OR Produced Identification

Type of Identification Produced.....

ACCEPTANCE BY ASSIGNEE

The undersigned, (assignee), the Assignee herein, duly
acknowledges that the Assignee accepts delivery of the
assignment and that he or she will duly perform the duties
imposed upon the Assignee pursuant to chapter 727, Florida
Statutes.

Assignee

STATE OF FLORIDA
COUNTY OF

Sworn to and subscribed before me this day of
....., ...(year).....

...(Signature of Notary Public - State of Florida)...

1 ...(Print, Type, or Stamp Commissioned Name of Notary
2 Public)...

4 Personally Known OR Produced Identification

6 Type of Identification Produced.....

8 Section 5. Section 727.105, Florida Statutes, is
9 amended to read:

10 727.105 Proceedings against assignee.--~~Proceedings~~ ~~no~~
11 ~~proceeding~~ may not be commenced against the assignee except as
12 provided in this chapter, but nothing contained in this
13 chapter affects herein shall affect any action or proceeding
14 by a governmental unit to enforce such governmental unit's
15 police or regulatory power. Except in the case of a consensual
16 lienholder secured creditor enforcing its rights in personal
17 property or real property collateral under chapter 679, there
18 shall be no levy, execution, attachment, or the like in
19 respect of any judgment against assets of the estate, ~~other~~
20 ~~than real property~~, in the possession, custody, or control of
21 the assignee.

22 Section 6. Section 727.108, Florida Statutes, is
23 amended to read:

24 727.108 Duties of assignee.--The assignee shall:

25 (1) Collect and reduce to money the assets of the
26 estate, whether by suit in any court of competent jurisdiction
27 or by public or private sale, including, but not limited to,
28 prosecuting any tort claims or causes of action which were
29 previously held by the assignor, regardless of any generally
30 applicable law concerning the nonassignability of tort claims
31 or causes of action, and;

1 (a) With respect to the estate's claims and causes of
2 action, the assignee may prosecute such claims or causes of
3 action as provided in this section or sell and assign, in
4 whole or in part, such claims or causes of action to another
5 person or entity on the terms that the assignee determines are
6 in the best interest of the estate under to s. 727.111(4); and

7 (b) In an action in any court by the assignee or the
8 first immediate transferee of the assignee, other than an
9 affiliate or insider of the assignor, against a defendant to
10 assert a claim or chose in action of the estate, the claim is
11 not subject to, and any remedy may not be limited by, a
12 defense based on the assignor's acquiescence, cooperation, or
13 participation in the wrongful act by the defendant which forms
14 the basis of the claim or chose in action.†

15 (2) Within 30 days after the filing date, examine the
16 assignor, under oath, concerning the acts, conduct, assets,
17 liabilities, and financial condition of the assignor or any
18 matter related to the assignee's administration of the estate,
19 unless excused by the court for good cause shown.†

20 (3) Give notice to creditors of all matters concerning
21 the administration of the estate, pursuant to ~~the provisions~~
22 ~~of~~ s. 727.111.†

23 (4) Conduct the business of the assignor for a limited
24 period that may not exceed 14 calendar days, if in the best
25 interest of the estate, or for a longer period limited
26 ~~periods,~~ if, in the best interest of the estate, upon notice
27 and until such time as an objection, if any, is sustained by
28 the court; however, the assignee may not operate the business
29 of the assignor for longer than 45 calendar days without a
30 court order authorizing such operation if an objection by a
31 party in interest is interposed to the assignee's motion for

1 authority to operate the assignor's business. ~~authorization of~~
2 ~~the court;~~

3 (5) To the extent reasonable in the exercise of the
4 assignee's business judgment, reject an unexpired lease of
5 nonresidential real property or of personal property under
6 which the assignor is the lessee.

7 ~~(6)(5)~~ To the extent reasonable and necessary, pay
8 administrative expenses of the estate, subject, however, to s.
9 727.114(1).~~;~~

10 ~~(7)(6)~~ To the extent necessary, employ at the expense
11 of the estate one or more appraisers, auctioneers,
12 accountants, attorneys, or other professional persons, to
13 assist the assignee in carrying out his or her duties under
14 this chapter.~~;~~

15 ~~(8)(7)~~ Keep regular accounts and furnish such
16 information concerning the estate as may be reasonably
17 requested by creditors or other parties in interest.~~;~~

18 ~~(9)(8)~~ File with the court an interim report of
19 receipts and disbursements within 6 months after the filing
20 date unless excused by the court or unless the estate has been
21 sooner distributed in full.~~;~~

22 ~~(10)(9)~~ Examine the validity and priority of all
23 claims against the estate.~~;~~

24 ~~(11)(10)~~ Abandon assets to duly perfected secured or
25 lien creditors, where, after due investigation, he or she
26 determines that the estate has no equity in such assets or
27 such assets are burdensome to the estate or are of
28 inconsequential value and benefit to the estate.~~;~~

29 ~~(12)(11)~~ Pay dividends and secured or priority claims
30 as often as is compatible with the best interests of the
31 estate and close the estate as expeditiously as possible.~~;~~ ~~and~~

1 ~~(13)(12)~~ File with the court a final report of all
2 receipts and disbursements and file an application for his or
3 her discharge pursuant to ~~the provisions of~~ s. 727.116.

4 Section 7. Section 727.109, Florida Statutes, is
5 amended to read:

6 727.109 Power of the court.--The court shall have
7 power to:

8 (1) Enforce all provisions of this chapter.†

9 (2) Set, approve, or reconsider the amount of the
10 assignee's bond.†

11 (3) Upon notice and a hearing, if requested, authorize
12 the business of the assignor to be conducted ~~for limited~~
13 ~~periods~~ by the assignee for longer than 14 calendar days, if
14 in the best interest of the estate.†

15 (4) Allow or disallow claims against the estate and
16 determine their priority and establish a deadline, upon motion
17 by the assignee, for the filing of all claims against the
18 assignment estate arising on or after the date on which the
19 assignor's petition for assignment was filed with the court.
20 The deadline may not occur less than 30 days before notice is
21 received by mail of the order establishing the deadline.†

22 (5) Determine any claims of exemption by the assignor,
23 if disputed.†

24 (6) Authorize the assignee to reject an unexpired
25 lease of nonresidential real property or of personal property
26 under which the assignor is the lessee pursuant to s.
27 727.108(5).

28 (7) Upon notice as provided under s. 727.111 to all
29 creditors and consensual lienholders, hear and determine a
30 motion brought by the assignee for approval of a proposed sale
31 of assets of the estate other than in the ordinary course of

1 business, or the compromise or settlement of a controversy,
2 and enter an order granting such motion notwithstanding the
3 lack of objection if the assignee reasonably believes that
4 such order is necessary to proceed with the action
5 contemplated by the motion.

6 ~~(8)(6)~~ Hear and determine any of the following actions
7 brought by the assignee, which she or he is ~~hereby~~ empowered
8 to maintain:

9 (a) Enforce the turnover of assets of the estate
10 pursuant to s. 727.106.~~+~~

11 (b) Determine the validity, priority, and extent of a
12 lien or other interests in assets of the estate, or to
13 subordinate or avoid an unperfected security interest pursuant
14 to the assignee's rights as a lien creditor under s. 679.301.~~+~~

15 (c) Avoid any conveyance or transfer void or voidable
16 by law.~~+~~

17 ~~(9)(7)~~ Approve the assignee's final report and interim
18 and final distributions to creditors.~~+~~

19 ~~(10)(8)~~ Approve reasonable fees and the reimbursement
20 of expenses for the assignee and all professional persons
21 retained by the assignee, upon objection of a party in
22 interest or upon the court's own motion.~~+~~

23 ~~(11)(9)~~ Hear and determine any motion brought by a
24 party in interest or by the court to close the estate after
25 the passage of 1 year from the date of filing of the
26 petition.~~+~~

27 ~~(12)(10)~~ Discharge the assignee and the assignee's
28 surety from liability upon matters included in the assignee's
29 final report.~~+~~

30 ~~(13)(11)~~ Reopen estates for cause shown.~~+~~

31

1 ~~(14)(12)~~ Punish by contempt any failure to comply with
2 the provisions of this chapter or any order of the court made
3 pursuant to this chapter. ~~;~~ ~~and~~

4 ~~(15)(13)~~ Exercise any ~~such~~ other ~~and further~~ powers
5 that ~~as~~ are necessary to enforce or carry out the provisions
6 of this chapter.

7 Section 8. Subsection (1) of section 727.110, Florida
8 Statutes, is amended to read:

9 727.110 Actions by assignee and other parties in
10 interest.--

11 (1) All matters requiring court authorization under
12 this chapter shall be brought by motion, except for the
13 following matters, which shall be brought by supplemental
14 proceeding, as provided in subsection (2):

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

17 (b) An action by the assignee to determine the
18 validity, priority, or extent of a lien or other interest in
19 property or to subordinate or avoid an unperfected security
20 interest under s. 727.109(8)(b) ~~s. 727.109(6)(b)~~; and

21 (c) An action by the assignee to avoid any conveyance
22 or transfer void or voidable by law under s. 727.109(8)(c) ~~s.~~
23 ~~727.109(6)(c)~~.

24 Section 9. Subsections (4) and (8) of section 727.111,
25 Florida Statutes, are amended to read:

26 727.111 Notice.--

27 (4) The assignee shall give the assignor and all
28 creditors not less than 20 days' notice by mail of a proposed
29 sale of assets of the estate other than in the ordinary course
30 of business, the assignee's continued operation of the
31 assignor's business for longer than 14 calendar days, the

1 | compromise or settlement of a controversy, and the payment of
2 | fees and expenses to the assignee and to professional persons
3 | employed by the assignee pursuant to s. 727.108(7) ~~s.~~
4 | ~~727.108(6)~~. Any ~~and all~~ objections to the proposed action must
5 | be filed and served upon the assignee and the assignee's
6 | attorney, if any, not less than 3 days before the date of the
7 | proposed action. The notice must ~~shall~~ include a description
8 | of the proposed action to be taken, ~~and~~ the date of the
9 | proposed action, and ~~shall set forth~~ the date and place for
10 | the hearing at which any objections will ~~shall~~ be heard. If
11 | ~~no~~ objections are not timely filed and served, the assignee
12 | may take ~~such~~ action as described in the notice without
13 | further order of the court or may obtain an order of the court
14 | granting such motion if the assignee reasonably believes that
15 | the order is necessary to proceed with the action contemplated
16 | by the motion.

17 | (8) Wherever notice is required to be given under this
18 | chapter, a certificate of service of such notice shall be
19 | filed with the court and notice shall be given to all
20 | consensual lienholders and counsel who have filed a notice of
21 | appearance with the court or who are identified in the
22 | assignor's schedules.

23 | Section 10. Subsections (6) and (7) are added to
24 | section 727.112, Florida Statutes, to read:

25 | 727.112 Proof of claim.--

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

29 | (a) The rent reserved by such lease, without
30 | acceleration, for the greater of 1 year or 15 percent of the
31 | remaining term of the lease, following the earlier of the date

1 of assignment or the date on which the lessor repossessed, or
2 the lessee surrendered, the leased property; and

3 (b)1. Any unpaid rent due under the lease, without
4 acceleration, on the earlier of the dates specified in
5 paragraph (a);

6 2. Reasonable attorney's fees and costs incurred by
7 the lessor in connection with the lease; and

8 3. The lessor's reasonable costs incurred in reletting
9 the premises previously leased by the assignor.

10 (7) If a claim for damages results from the
11 termination of an employment contract, the claim shall be
12 limited to:

13 (a) The compensation provided by the contract, without
14 acceleration, for 1 year following the earlier of the date of
15 assignment or the date on which the assignor or assignee, as
16 applicable, directed the employee to terminate, or such
17 employee terminated, performance under the contract; and

18 (b) Any unpaid compensation due under the contract,
19 without acceleration, on the earlier of the dates specified in
20 paragraph (a).

21 Section 11. Section 727.113, Florida Statutes, is
22 amended to read:

23 727.113 Objections to claims.--

24 (1) At any time prior to the entry of an order
25 approving the assignee's final report, the assignee or any
26 party in interest, including another creditor of the assignor,
27 may file with the court an objection to a claim, which
28 objection ~~must~~ ~~shall~~ be in writing and ~~shall~~ set forth the
29 nature of the objection. A copy of the objection, together
30 with notice of hearing thereon, shall be mailed to the
31 creditor at least 20 days prior to the hearing. All claims

1 properly filed with the assignee and not disallowed by the
2 court ~~shall~~ constitute all claims entitled to distribution
3 from the estate.

4 (2) Following the last day in which a proof of claim
5 may be served upon the assignee pursuant to s. 727.112(2), the
6 assignee shall create a register of all creditors that have
7 filed claims against the assignor's estate and shall make the
8 register available upon request to any creditor or other party
9 in interest.

10 (3) The assignee, as well as any creditor or any party
11 in interest, has standing to challenge the validity, extent,
12 or priority of any claim filed by a creditor against the
13 assignor's estate.

14 (4) A creditor whose claim is secured by a lien
15 against property of the estate has 60 days following the sale
16 or disposition of the property securing his or her claim to
17 file a claim for an unsecured deficiency, notwithstanding the
18 passage of the last date in which a proof of claim may be
19 served upon the assignee set forth in s. 727.112(2). If such a
20 creditor fails to file with the assignee a deficiency claim
21 within 10 days after the filing and service by mail of the
22 assignee's final report of all receipts and disbursements, the
23 creditor's deficiency claim shall be disallowed as untimely
24 and the creditor is not entitled to share in any distribution
25 made to holders of unsecured claims under s. 727.114(1)(f) on
26 account of its deficiency claim.

27 Section 12. Section 727.114, Florida Statutes, is
28 amended to read:

29 727.114 Priority of claims.--Allowed claims shall
30 receive distribution under this chapter in the following order
31

1 of priority and, with the exception of paragraph (1)(a)
2 ~~subsection (1)~~, on a pro rata basis:
3 (1)(a) Creditors with liens on assets of the estate,
4 which liens are duly perfected pursuant to applicable law,
5 shall receive the proceeds from the disposition of their
6 collateral, less the reasonable, necessary expenses of
7 preserving or disposing of such collateral to the extent of
8 any benefit to such creditors. If and to the extent that such
9 proceeds are less than the amount of a creditor's claim or a
10 creditor's lien is avoided pursuant to s. 727.109(8)(c) ~~s.~~
11 ~~727.109(6)(c)~~, such a creditor shall be deemed to be an
12 unsecured creditor for such deficiency pursuant to paragraph
13 ~~(f) subsection (6) of this section.~~
14 (b)(2) Expenses incurred during the administration of
15 the estate, other than those expenses allowable under
16 paragraph (a) subsection (1), including allowed fees and
17 reimbursements of all expenses of the assignee and
18 professional persons employed by the assignee under s.
19 727.108(7), and rent incurred by the assignee in occupying any
20 premises in which the assets of the assignment estate are
21 located or the business of the assignor is conducted, from and
22 after the date of the assignment, through and until the
23 earlier of the date on which the lease for such premises is
24 rejected pursuant to an order of the court or the date of
25 termination of such lease pursuant to s. 727.108(6).
26 (c)(3) Unsecured claims of governmental units for
27 taxes ~~that~~ which accrued within 3 years before ~~prior to~~ the
28 filing date.
29 (d)(4) Claims for wages, salaries, or commissions,
30 including vacation, severance, and sick leave pay, or
31 contributions to an employee benefit plan earned by employees

1 ~~of the assignor the individual~~ within 180 ~~90~~ days before ~~of~~
2 the filing date or the cessation of the assignor's business,
3 whichever occurs first, but only to the extent of \$10,000 per
4 individual employee ~~\$2,000~~.

5 ~~(e)(5)~~ Allowed unsecured claims, to the extent of
6 ~~\$2,225\$900~~ for each individual, arising from the deposit with
7 the assignor before the filing date of money in connection
8 with the purchase, lease, or rental of property or the
9 purchase of services for personal, family, or household use by
10 such individuals that were not delivered or provided.

11 ~~(f)(6)~~ Unsecured claims.

12 (2) A subordination agreement is enforceable under
13 this chapter to the same extent that such agreement is
14 enforceable under applicable law.

15 (3) For the purpose of distributions under this
16 chapter, a claim arising from rescission of a purchase or sale
17 of a security of the assignor or of an affiliate of the
18 assignor for damages arising from the purchase or sale of the
19 security or for reimbursement or contribution allowed under
20 this chapter on account of such a claim shall be subordinated
21 to all claims or interests that are senior to or equal to the
22 claim or interest represented by such security, except that if
23 the security is common stock, the claim has the same priority
24 as common stock.

25
26 ~~If all of the above classes have been paid in full, any~~
27 ~~residue shall be paid to the assignor.~~

28 Section 13. This act shall take effect July 1, 2007.
29
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 2118

This committee substitute differs from the underlying bill in that it:

- Provides that the provision of law making certain personal property exempt from creditor claims applies only to natural persons;
- Provides that a person's personal property that is exempt from creditor claims is not exempt from claims for spousal or child support;
- Expands the group of newspapers in which foreclosure notices may be advertised to include certain newspapers that publish at least five days per week except during weeks with a legal holiday; and
- Clarifies that the \$10,000 figure for employee claims for wages and benefits entitled to payment priority from an assignment estate is per employee.