

1 A bill to be entitled
2 An act relating to an assignment for the benefit of
3 creditors; amending s. 727.101, F.S.; revising
4 legislative intent; amending s. 727.104, F.S.;
5 revising requirements for the commencement of
6 proceedings for general assignments; providing for the
7 filing or publishing of an assignment to give notice
8 to interested parties in certain instances; providing
9 courts with judicial discretion to determine
10 compliance with specified Florida Rules of Civil
11 Procedure; amending s. 727.105, F.S.; providing for an
12 assignee's ability to rely on, and a defense for good
13 faith compliance with, court orders, judgments,
14 decrees, and rules of law; providing for an assignee's
15 ability to rely on, and be protected by, certain
16 documents believed to be genuine and to have been
17 signed or presented by the proper parties;
18 establishing nonliability of assignee when certain
19 requirements are met; establishing an exception to
20 nonliability of an assignee when certain requirements
21 are met; limiting the assets a creditor or other party
22 in interest may pursue in an action against an
23 assignee; providing requirements for a creditor or
24 other party in interest in certain actions against an
25 assignee; providing requirements for claims against an

26 assignee or any agent or professional of the assignee;
 27 providing construction; amending s. 727.106, F.S.;
 28 excluding certain creditors from being required to
 29 turn over assets of the estate upon notice of an
 30 assignment action or proceeding; amending s. 727.110,
 31 F.S.; requiring negative notice in an assignment
 32 action by an assignee upon the filing of a notice of
 33 rejection; authorizing the court to specify an
 34 effective date of rejection in its order of rejection;
 35 providing an effective date.

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 37 Be It Enacted by the Legislature of the State of Florida:

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 39 Section 1. Section 727.101, Florida Statutes, is amended
 40 to read:

41 727.101 Intent of chapter.—The intent of this chapter is
 42 to provide a uniform procedure for the administration and
 43 orderly liquidation of insolvent estates, and to ensure full
 44 reporting to creditors and equal distribution of assets
 45 according to priorities as established under this chapter.

46 Section 2. Paragraph (a) of subsection (2) of section
 47 727.104, Florida Statutes, is amended, and subsection (3) is
 48 added to that section, to read:

49 727.104 Commencement of proceedings.—

50 (2) Within 10 days after delivery of the assignment to the

51 assignee, the assignee shall:

52 (a)1. Record the original assignment, with or without the
 53 schedules, in the public records of the county in which the
 54 assignor had its principal place of business ~~and shall~~
 55 ~~thereafter promptly record;~~ or

56 2. If recording in a county outside the state is not
 57 possible, file or publish in a manner reasonably calculated,
 58 under all the circumstances, to apprise interested parties of
 59 the pendency of the assignment, a certified copy of the
 60 assignment, with or without the schedules, in each county where
 61 assets of the estate are located.

62
 63 The assignee's good faith effort to record, file, or publish in
 64 accordance with this paragraph is effective even if a minor
 65 error or omission exists that renders the assignee's effort
 66 incomplete or seriously misleading.

67 (3) The court, at its discretion, may determine proper
 68 compliance with Rule 1.200, Florida Rules of Civil Procedure, in
 69 an action filed under this chapter, including, but not limited
 70 to, scheduling a case management conference and requiring a
 71 periodic status report as warranted by the circumstances of the
 72 case.

73 Section 3. Section 727.105, Florida Statutes, is amended
 74 to read:

75 727.105 Actions ~~Proceedings~~ against assignee.-

76 (1) An action ~~Proceedings~~ may not be commenced against the
77 assignee except as provided in this chapter, but nothing
78 contained in this chapter affects any action or proceeding by a
79 governmental unit to enforce such governmental unit's police or
80 regulatory power. Except in the case of a consensual lienholder
81 enforcing its rights in personal property or real property
82 collateral, there shall be no levy, execution, attachment, or
83 the like in respect of any judgment against assets of the estate
84 in the possession, custody, or control of the assignee.

85 (2) The assignee may:

86 (a) Rely on any outstanding court orders, judgments,
87 decrees, and rules of law, and is not personally liable for the
88 assignee's own good faith compliance with any such orders,
89 judgments, decrees, or rules of law.

90 (b) Rely on, and shall be protected in any action by, any
91 resolution, certificate, statement, opinion, report, notice,
92 consent, or other document believed by the assignee to be
93 genuine and to have been signed or presented by the proper
94 parties.

95 (3) The assignee is not personally liable for:

96 (a) The assignee's good faith compliance with his or her
97 duties and responsibilities as an assignee.

98 (b) The assignee's acts or omissions, except upon a
99 finding by the court presiding over an action or proceeding
100 under this chapter that the assignee's acts or omissions:

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101 1. Were outside the scope of his or her duties;

102 2. Were grossly negligent; or

103 3. Constitute malfeasance.

104 (4)(a) Except for matters in paragraph (3)(b), any
105 creditor or party in interest seeking to assert a claim against
106 the assignee must look only to the assignment estate assets and
107 any bond posted by the assignee to satisfy any liability, and
108 the assignee is not personally liable to satisfy any such
109 obligation.

110 (b) Any creditor or party in interest seeking to assert a
111 claim against the assignee under paragraph (3)(b) must first
112 obtain leave of the court presiding over the assignment action
113 or proceeding based on a finding set forth in paragraph (3)(b).

114 (5) Any claim against the assignee, or any agent or
115 professional of the assignee who assists the assignee in the
116 administration of the estate, must be brought before the
117 discharge of the assignee under s. 727.116 to the extent the
118 claim has accrued and is predicated upon facts that are known or
119 reasonably should have been known at the time of the discharge,
120 at which point all such claims are deemed released and forever
121 barred.

122 (6) This section does not alter or limit any other
123 immunity otherwise held by the assignee or any agent or
124 professional of the assignee who assists the assignee in the
125 administration of the estate.

126 Section 4. Section 727.106, Florida Statutes, is amended
 127 to read:

128 727.106 Turnover.—Any person or entity, ~~other than a~~
 129 ~~creditor,~~ in possession, custody, or control of assets of the
 130 estate, other than a creditor holding a lien or a right of
 131 setoff or recoupment with respect to the subject assets, shall,
 132 upon notice by the assignee of the assignment proceeding,
 133 promptly turn such assets over to the assignee or the assignee's
 134 duly authorized representative.

135 Section 5. Paragraphs (a) and (b) of subsection (3) of
 136 section 727.110, Florida Statutes, are amended to read:

137 727.110 Actions by assignee and other parties in
 138 interest.—

139 (3) As to an assignee's rejection of an unexpired lease of
 140 nonresidential real property or of personal property, as
 141 provided under ss. 727.108(5) and 727.109(6):

142 (a) The assignee shall file a notice of rejection with the
 143 court and serve a copy, by negative notice as defined in s.
 144 727.103, on the owner or lessor of the affected property and,
 145 for personal property, on the landlord of the premises on which
 146 the property is located. A notice of rejection relating to
 147 personal property must identify the affected property, the
 148 address at which the affected property is located, the name and
 149 telephone number of the person in possession of the affected
 150 property, and the deadline for removal of the affected property.

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151 (b) The effective date of the rejection is the date of
152 entry of a court order authorizing such rejection, unless the
153 court orders otherwise.

154 Section 6. This act shall take effect July 1, 2023.