

By the Committee on Judiciary; and Senator Martin

590-02868-23

2023600c1

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; authorizing  
7           courts to determine compliance with a specified rule;  
8           amending s. 727.105, F.S.; authorizing assignees to  
9           rely on certain orders, judgments, decrees, rules, and  
10          documents; specifying that the assignee is not  
11          personally liable for certain good faith compliance,  
12          acts, or omissions; limiting the assets a creditor or  
13          other party in interest may pursue in an action  
14          against an assignee; providing requirements for a  
15          creditor or other party in interest in certain actions  
16          against an assignee; providing requirements for claims  
17          against an assignee or any agent or professional of  
18          the assignee; providing construction; amending s.  
19          727.106, F.S.; excluding certain creditors from being  
20          required to turn over assets of the estate upon notice  
21          of an assignment proceeding; amending s. 727.110,  
22          F.S.; requiring assignees to serve a copy of a notice  
23          of rejection by negative notice; authorizing the court  
24          to specify an effective date of rejection in its order  
25          of rejection; providing an effective date.

26  
27   Be It Enacted by the Legislature of the State of Florida:

28  
29          Section 1. Section 727.101, Florida Statutes, is amended to

590-02868-23

2023600c1

30 read:

31 727.101 Intent of chapter.—The intent of this chapter is to  
32 provide a uniform procedure for the administration and orderly  
33 liquidation of insolvent estates, and to ensure full reporting  
34 to creditors and equal distribution of assets according to  
35 priorities as established under this chapter.

36 Section 2. Paragraph (a) of subsection (2) of section  
37 727.104, Florida Statutes, is amended, and subsection (3) is  
38 added to that section, to read:

39 727.104 Commencement of proceedings.—

40 (2) Within 10 days after delivery of the assignment to the  
41 assignee, the assignee shall:

42 (a) Record the original assignment, with or without the  
43 schedules, in the official ~~public~~ records of the county in which  
44 the assignor had its principal place of business and shall  
45 thereafter promptly record a certified copy of the assignment,  
46 with or without the schedules, in each county in this state in  
47 which real property ~~where~~ assets of the estate are located. The  
48 assignee shall promptly record a certified copy of the  
49 assignment, without schedules, in the land records of each  
50 recording jurisdiction outside of this state in which real  
51 property assets of the estate are located. If a certified copy  
52 of the assignment is not acceptable for recording in a  
53 particular jurisdiction, the assignee shall record a lis pendens  
54 or similar notice of action permitted in that jurisdiction  
55 referencing the pendency of the proceedings under this chapter.  
56 In either instance, the recorded original assignment, certified  
57 copy of the assignment, or lis pendens or similar notice of  
58 action shall include the legal description of any real property

590-02868-23

2023600c1

59 located in the recording jurisdiction.

60 (3) The court may determine proper compliance with Rule  
61 1.200, Florida Rules of Civil Procedure, in an action filed  
62 under this chapter, including, but not limited to, scheduling a  
63 case management conference and requiring a periodic status  
64 report as warranted by the circumstances of the case.

65 Section 3. Section 727.105, Florida Statutes, is amended to  
66 read:

67 727.105 Actions ~~Proceedings~~ against assignee.—

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

77 (2) The assignee may:

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

82 (b) Rely on, and shall be protected in any action by, any  
83 resolution, certificate, statement, opinion, report, notice,  
84 consent, or other document believed by the assignee to be  
85 genuine and to have been signed or presented by the proper  
86 parties.

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

590-02868-23

2023600c1

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

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

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

94 2. Were grossly negligent; or

95 3. Constitute malfeasance.

96 (4) (a) Except for matters in paragraph (3) (b), any creditor  
97 or party in interest seeking to assert a claim against the  
98 assignee must look only to the assignment estate assets and any  
99 bond posted by the assignee to satisfy any liability, and the  
100 assignee is not personally liable to satisfy any such  
101 obligation.

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

106 (5) Any claim against the assignee, or any agent or  
107 professional of the assignee who assists the assignee in the  
108 administration of the estate, must be brought before the  
109 discharge of the assignee under s. 727.116 to the extent the  
110 claim has accrued and is predicated upon facts that are known or  
111 reasonably should have been known at the time of the discharge,  
112 at which point all such claims are deemed released and forever  
113 barred.

114 (6) This section does not alter or limit any other immunity  
115 otherwise held by the assignee or any agent or professional of  
116 the assignee who assists the assignee in the administration of

590-02868-23

2023600c1

117 the estate.

118 Section 4. Section 727.106, Florida Statutes, is amended to  
119 read:

120 727.106 Turnover.—Any person or entity, ~~other than a~~  
121 ~~creditor,~~ in possession, custody, or control of assets of the  
122 estate, other than a creditor holding a lien or a right of  
123 setoff or recoupment with respect to the subject assets, shall,  
124 upon notice by the assignee of the assignment proceeding,  
125 promptly turn such assets over to the assignee or the assignee's  
126 duly authorized representative.

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

129 727.110 Actions by assignee and other parties in interest.—

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

133 (a) The assignee shall file a notice of rejection with the  
134 court and serve a copy, by negative notice as defined in s.  
135 727.103, on the owner or lessor of the affected property and,  
136 for personal property, on the landlord of the premises on which  
137 the property is located. A notice of rejection relating to  
138 personal property must identify the affected property, the  
139 address at which the affected property is located, the name and  
140 telephone number of the person in possession of the affected  
141 property, and the deadline for removal of the affected property.

142 (b) The effective date of the rejection is the date of  
143 entry of a court order authorizing such rejection, unless the  
144 court orders otherwise.

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