

By the Committees on Rules; and Judiciary; and Senator Martin

595-03703-23

2023600c2

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

595-03703-23

2023600c2

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

595-03703-23

2023600c2

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:

595-03703-23

2023600c2

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 upon good cause shown.

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

595-03703-23

2023600c2

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.