

By Senator Martin

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

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32 Section 1. Section 727.101, Florida Statutes, is amended to
33 read:

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

39 Section 2. Paragraph (a) of subsection (2) of section
40 727.104, Florida Statutes, is amended, and subsection (3) is
41 added to that section, to read:

42 727.104 Commencement of proceedings.—

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

45 (a) 1. Record the original assignment, with or without the
46 schedules, in the public records of the county in which the
47 assignor had its principal place of business and shall
48 thereafter promptly record; or

49 2. If recording in a county outside this state is not
50 possible, file or publish in a manner reasonably calculated,
51 under all the circumstances, to apprise interested parties of
52 the pendency of the assignment a certified copy of the
53 assignment, with or without the schedules, in each county where
54 assets of the estate are located.

55
56 The assignee's good faith effort to record, file, or publish in
57 accordance with this paragraph is effective even if a minor
58 error or omission exists that renders the assignee's effort

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59 incomplete or seriously misleading.

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:

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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

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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.