

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 courts
7 with judicial discretion to determine compliance with
8 specified Florida Rules of Civil Procedure; amending
9 s. 727.105, F.S.; providing for an assignee's ability
10 to rely on, and a defense for good faith compliance
11 with, court orders, judgments, decrees, and rules of
12 law; providing for an assignee's ability to rely on,
13 and be protected by, certain documents believed to be
14 genuine and to have been signed or presented by the
15 proper parties; establishing nonliability of assignee
16 when certain requirements are met; establishing an
17 exception to nonliability of an assignee when certain
18 requirements are met; limiting the assets a creditor
19 or other party in interest may pursue in an action
20 against an assignee; providing requirements for a
21 creditor or other party in interest in certain actions
22 against an assignee; providing requirements for claims
23 against an assignee or any agent or professional of
24 the assignee; providing construction; amending s.
25 727.106, F.S.; excluding certain creditors from being

26 required to turn over assets of the estate upon notice
 27 of an assignment action or proceeding; amending s.
 28 727.110, F.S.; requiring negative notice in an
 29 assignment action by an assignee upon the filing of a
 30 notice of rejection; authorizing the court to specify
 31 an effective date of rejection in its order of
 32 rejection; providing an effective date.
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34 Be It Enacted by the Legislature of the State of Florida:

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 36 Section 1. Section 727.101, Florida Statutes, is amended
 37 to read:

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

43 Section 2. Paragraph (a) of subsection (2) of section
 44 727.104, Florida Statutes, is amended, and subsection (3) is
 45 added to that section, to read:

46 727.104 Commencement of proceedings.—

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

49 (a) Record the original assignment, with or without the
 50 schedules, in the official ~~public~~ records of the county in which

51 the assignor had its principal place of business and shall
 52 thereafter promptly record a certified copy of the assignment,
 53 with or without the schedules, in each county in this state in
 54 which real property ~~where~~ assets of the estate are located. The
 55 assignee shall promptly record a certified copy of the
 56 assignment, without schedules, in the land records of each
 57 recording jurisdiction outside of this state in which real
 58 property assets of the estate are located. If a certified copy
 59 of the assignment is not acceptable for recording in a
 60 particular jurisdiction, the assignee shall record a lis pendens
 61 or similar notice of action permitted in that jurisdiction
 62 referencing the pendency of the proceedings under this chapter.
 63 In either instance, the recorded original assignment, certified
 64 copy of the assignment, or lis pendens or similar notice of
 65 action shall include the legal description of any real property
 66 located in the recording jurisdiction.

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:

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.