## Florida State University College of Law

# Scholarship Repository

Staff Analysis

Florida Legislative Documents

1987

# Session Law 87-174

Florida Senate & House of Representatives

Follow this and additional works at: https://ir.law.fsu.edu/staff-analysis



Part of the Legislation Commons

### **Recommended Citation**

House of Representatives, Florida Senate &, "Session Law 87-174" (1987). Staff Analysis. 681. https://ir.law.fsu.edu/staff-analysis/681

This Article is brought to you for free and open access by the Florida Legislative Documents at Scholarship Repository. It has been accepted for inclusion in Staff Analysis by an authorized administrator of Scholarship Repository. For more information, please contact efarrell@law.fsu.edu.

MF .9/1624

18/1682 V

By Representative Canady

1

2 3

This publication was produced at rerage cost of 1.5 cents per single page in compliance with the Rules and for the information members of the Legislature and 15 16 17 18 19 20 21 22

23

24

25 26

27

28

29

30

31

A bill to be entitled

An act relating to assignments for the benefit of creditors; amending s. 727.01, F.S.; deleting language with respect to general requirements for assignments; providing legislative intent; amending s. 727.02, F.S.; deleting language relating to the oath of assignor; providing for jurisdiction of proceedings and venue; amending s. 727.03, F.S.; deleting language with respect to record of assignment and oath; providing definitions; amending s. 727.04, F.S.: deleting language with respect to qualifications of assignee; providing for commencement of proceedings: amending s. 727.05, F.S.; deleting language with respect to notice of assignment; providing for proceedings against the assignee; amending s. 727.06, F.S.; deleting language with respect to disposition of property; providing for turnover; amending s. 727.07, F.S.; deleting language with respect to semiannual statements; providing for duties of the assignor; amending s. 727.08, F.S.; deleting language with respect to application for discharge of assignee; providing for duties of the assignee; creating s. 727.09, F.S.; providing for power of the court; creating s. 727.10, F.S.; providing for actions by assignees and other parties in interest; creating s. 727.11, F.S.; providing for notice; creating s. 727.12, F.S.; providing for proof of claim; creating s. 727.13, F.S.;

1	providing for objections to claims; creating s.	1.18
2	727.14. F.S.; providing for priority of claims;	
3	creating s. 727.15, F.S.; providing for	
4	resignation or removal of assignee; creating s.	1.19
5	727.16, F.S.; providing for the assignee's	
6	final report and discharge; providing an	1.20
7	effective date.	
9	Be It Enacted by the Legislature of the State of Florida:	l:enc
11	Section 1. Section 727.01, Florida Statutes, is	1.21
12	amended to read:	
13	727.01 <u>Intent of chapterThe intent of this chapter</u>	1.22
4	is to provide a uniform procedure for the administration of	1.23
15	insolvent estates, and to ensure full reporting to creditors	
16	and equal distribution of assets according to priorities as	1.24
17	established under this chapter. General-requirements-for	1:los
18	assignments:No-assignment-made-for-the-benefit-of-creditors	1.27
19	shell-be-valid-in-this-state;-except-the-same-shell-be-made-in	1.28
20	writing-and-shall-provide-for-an-equal-distribution-of-all-the	1.29
21	essignor's-reel-end-personel-property;-except-such-as-is	1.30
22	exempted-by-law-from-forced-sale;-emong-the-several-creditors	
23	of-the-said-assignor-in-equal-proportion-to-their-respective	1.31
24	demends:	
25	Section 2. Section 727.02, Florida Statutes, is	1.32
26	amended to read:	
27	727.02 Jurisdiction of proceedings and venue All	1 33
28	proceedings under this chapter shall be subject to the order	1.34
29	and supervision of the circuit court for the county where the	
30	petition is filed in accordance with s. 727.04(2). Oath-of	1:105
,	consensThe model consens abolt make and subsembe at ash	1 22

in-writing-before-any-officer-authorized-to-administer-oaths 2 in-the-county-in-which-he-lives-and-does-business;-or-of-the 1. 3 county-or-counties-wherein-is-situated-the-property-assigned; 1. not-more-than-10-days-after-the-assignment;-that-he-has-placed 1.4 or-assigned;-and-that-the-true-intention-of-his-assignment-was 5 1.4 6 to-place-in-the-hands-of-his-assignee-all-of-his-property-of 7 every-description;-except-such-as-is-exempt-by-law-from-forced 1. 8 sale;-to-be-divided-among-the-creditors-in-proportion-to-their ٩ respective-demands: 1. 10 Section 3. Section 727.03. Florida Statutes, is 1. amended to read: 11 12 727.03 Definitions. -- As used in this chapter, unless 1. 13 the context requires a different meaning, the term: ı. (1) "Asset" means a legal or equitable interest of the 14 1: assignor in property, which shall include anything that may be 15 1. the subject of ownership, whether real or personal, tangible 16 ı. or intangible, wherever located and by whomever held at the 17 18 date of the assignment, except property exempt by law from 1. 19 forced sale. 20 (2) \_\_\_\_\_\_ "Assignee" means an assignee for the benefit of 1: 21 creditors under the provisions of this chapter, which assignee 1. 22 shall not be a creditor or an equity security holder or have 1. 23 any interest adverse to the interest of the estate. 24 (3) "Assignor" means the person or entity which has 1: 25 executed and delivered the assignment to the assignee. 1. 26 (4) "Assignment" means an assignment for the benefit l: 27 of creditors made under this chapter. ı. 28 (5) "Court" means the circuit court where the petition 1: 29 is filed in accordance with s. 727.04(2). l. 30 31

1	(6) "Creditor" means any person having a claim against	l:lus
2	the assignor, whether such claim is contingent, liquidated,	1.6~
3	unliquidated, or disputed.	
4	(7) "Estate" means all of the assets of the assignor.	1:lus
5	(8) "Filing date" means the date upon which the	l:lus
6	original petition is filed in accordance with s. 727.04(2).	1.65
7	(9) "Lien" means a charge against or an interest in	1:lus
8	property to secure payment of a debt or performance of an	2.1
9	obligation, and includes a security interest created by	
10	agreement, a judicial lien obtained by legal or equitable	2.2
11	process or proceedings, a common-law lien, or a statutory	2.3
12	lien.	
13	(10) "Liquidation value" means the value in cash	1:1us
14	obtainable upon a forced sale of assets.	2.5
15	(11) "Petition" means the initial document filed with	1:10
16	the court, as set forth in s. 727.04(2), establishing the	2.8
17	court's jurisdiction under this chapter. Record-of-essignment	l:los
18	and-oath;Both-the-soid-deed-of-assignment-ond-oath-of	}
19	assignor-shell-be-recorded-in-the-office-or-offices-of-the	2.11
20	clerk-or-clerks-of-the-county-or-countres-in-which-the	2,12
21	property-essigned-is-situated.	ļ
22	Section 4. Section 727.04, Florida Statutes, is	2.13
23	amended to read:	
24	727.04 Commencement of proceedings	2.14
25	(1)(a) An irrevocable assignment and schedules shall	2.15
26	be made in writing, containing the name and address of the	2.16
27	assignor and assignee and providing for an equal distribution	
28	of the estate according to the priorities set forth in s.	2.17
29	727.14,	
30	(b) The assignment shall be in substantially the	l:lus
31	following form:	

1	ASSIGNMENT	]
2	ASSIGNMENT, made this day of	3
3	19, between with a principal	1
4	place of business at	2
5	hereinafter "assignor," and whose	1
6	address is, hereinafter "assignee."	
7	WHEREAS, the assignor has been engaged in the business	1
в	of;	1
9	WHEREAS, the assignor is indebted to creditors, as set	1
10	forth in Schedule A annexed hereto, is unable to pay its debts	1
11	as they become due, and is desirous of providing for the	
12	payment of its debts, so far as it is possible by an	ŀ
13	assignment of all of its assets for that purpose.	1
14	NOW, THEREFORE, the assignor, in consideration of the	1
15	assignee's acceptance of this assignment, and for other good	:
16	and valuable consideration, hereby grants, assigns, conveys,	l
17	transfers, and sets over, unto the assignee, his successors	ŀ
18	and assigns, all of its assets, except such assets as are	1
19	exempt by law from levy and sale under an execution,	
20	including, but not limited to, all real property, fixtures,	ŀ
21	goods, stock, inventory, equipment, furniture, furnishings,	ı
22	accounts receivable, bank deposits, cash, promissory notes,	l
23	cash value and proceeds of insurance policies, claims and	١
24	demands belonging to the assignor, wherever such assets may be	
25	located, hereinafter the "estate," as which assets are, to the	
26	best knowledge and belief of the assignor, set forth on	
27	Schedule B annexed hereto.	ĺ
28	The assignee shall take possession and administer the	
29	estate in accordance with the provisions of chapter 727,	
30	Florida Statutes, and shall liquidate the assets of the estate	
31	with reasonable dispatch and convert the estate into money,	

1	collect all claims and demands hereby assigned as may be	2.43
2	collectible, and pay and discharge all reasonable expenses,	
3	costs, and disbursements in connection with the execution and	2.44
4	administration of this assignment from the proceeds of such	2.45
5	liquidations and collections.	1
6	The assignee shall then pay and discharge in full, to	l:lus
7	the extent that funds are available in the estate after	2.47
8	payment of administrative expenses, costs, and disbursements,	
9	all of the debts and liabilities now due from the assignor,	2.48
10	including interest on such debts and liabilities. If funds of	2.50
11	the estate shall not be sufficient to pay such debts and	
12	liabilities in full, then the assignee shall pay from funds of	2.51
13	the estate such debts and liabilities, on a pro rata basis and	ļ
14	in proportion to their priority as set forth in s. 727.14,	2.52
15	Plorida Statutes.	
16	in the event that all debts and liabilities are paid in	1:lus
17	full, any funds of the estate remaining shall be returned to	2.54
18	the assignor.	
19	To accomplish the purposes of this assignment, the	l:lus
20	assignor hereby appoints the assignee its true and lawful	2.56
21	attorney, irrevocable, with full power and authority to do all	1
22	acts and things which may be necessary to execute the	2.57
23	assignment hereby created; to demand and recover from all	2.58
24	persons all assets of the estate; to sue for the recovery of	
25	such assets; to execute, acknowledge, and deliver all	2.59
26	necessary deeds, instruments, and conveyances; and to appoint	
27	one or more attorneys under him to assist him in carrying out	2.60
28	his duties hereunder.	
29	The assignor hereby authorizes the assignee to sign the	1:lus
30	name of the assignor to any check, draft, promissory note, or	2.62
31	other instrument in writing which is payable to the order of	

1	the assignor, or to sign the name of the assignor to any	2.6
2	instrument in writing, whenever it shall be necessary to do	2.6
3	so, to carry out the purpose of this assignment.	
4	The assignee hereby accepts the trust created by the	1:1
5	assignment, and agrees with the assignor that the assignee	2.6
6	will faithfully and without delay carry out his duties under	
7	the assignment.	3.1
В	· <u>z</u>	
9	<u>Assignor</u>	
10	***************************************	
11	<u>Assignee</u>	
12	STATE OF FLORIDA	1:1
13	COUNTY OF SS:	3.7
14	The foregoing assignment was acknowleded before me this	1:1
15	day of, 19, by	3.9
16	as assignor, and by as assignee, for	
17	the purposes therein expressed.	3.1
18	<u></u>	
19	Notary Public	
20	My Commission Expires:	1:3
21	(c) The assignment shall have annexed thereto as	1:3
22	Schedule A a true list of all of the assignor's known	3.
23	creditors, their mailing addresses, the amount and nature of	
24	their claims, and whether their claims are disputed, and as	3.
25	Schedule B a true list of all assets of the estate, including	
26	the estimated liquidation value of the assets, their location,	3.3
27	and, if real property, a legal description thereof, as of the	3.
28	date of the assignment.	
29	(d) The schedules shall be in substantially the	1.
30	following forms:	
31		i

1	SCHEDULE ACREDITOR LIST	1:lus
2	2 1. List all secured creditors showing:	3.23
3	Whether or	3.28
4	Name Address Amount Collateral not disputed	3.30
5	2. List all wages owed showing:	l:lus
6	Whether or	3.35
7	Name Address Amount not disputed	3.37
8	3. Consumer deposits:	l:lus
9	Whether or	3.43
10	Name Address Amount not disputed	3.45
11	4. List all taxes owed showing:	l:lus
12	Whether or	3.50
13	Name Address Amount not disputed	3.52
14	5. List all unsecured claims owed showing:	l:lus
15	Whether or	3.58
16	Name Address Amount not disputed	3.60
17	6. List all owners or shareholders showing:	l:lus
18	Name Address Percent of Ownership	3.66
19	SCHEDULE BLIST OF ASSETS	1:lus
20	List each category of assets and for each give approxim	nate 4.3
21	value obtainable for the asset on the date of assignmen	it, and
22	address where asset is located.	4.4
23	I. Nonexempt Property	1:lus
24	Description and Liquidation	n Value
25	Location at Date of Ass	ignment
26	1. Legal description and street address of real estate	1:105
27	including leasehold interests:	4.10
28	2. Fixtures:	1·lus
29	3. Cash and bank accounts:	1:1us
30	4. Inventory:	l:lus
31	5. Accounts receivable:	4.14

1	6. Equipment:	1::
2	<ol> <li>Prepaid expenses, including deposits, insurance, rents,</li> </ol>	4.3
3	and utilities:	
4	8. Other, including loans to third parties, claims, and	4.3
5	choses in action;	
6	II. Exempt Property	1::
7	Description and Liquidation Value	1
В	Location at Date of Assignment	
9	(e) The assignment and schedules shall be duly	4.:
10	verified upon oath by the assignor, and accepted by the	
11	assignee under oath.	
12	(2) Within 10 days after delivery of the assignment to	1:
13	the assignee, the assignee shall:	4.
14	(a) Record the original assignment in principal place	1:
15	of business and shall thereafter promptly record a certified	4.
16	copy of the assignment in each county where assets of the	
17	state are located;	4.
18	(b) File a certified copy of the assignment in the	1:
19	office of the Secretary of State; and	4.
20	(c) File, in the office of the clerk of the court in	1:
21	the county of the assignor's place of business if it has one,	4.
22	in the county of its chief executive office if it has more	4.
23	than one place of business, or in the county of the assignor's	
24	residence if the assignor is an individual not engaged in	4.
25	business, in accordance with the procedures for filing $\underline{a}$	1
26	company as set forth in the Florida Rules of Civil Procedure,	4.
27	a petition setting forth the name and address of the assignor	4.
28	and the name and address of the assignee; a copy of the	1
29	assignment, together with Schedules A and B; and a request	4.
30	that the court fix the amount of a bond to be filed with the	
31	clerk of the court. This bond shall be subject to	

1	reconsideration upon the motion of any party in interest after	4.38
2	notice and hearing. The bond shall be payable to the clerk of	4.40
3	the court, in an amount not less than double the liquidation	4.41
- 4	value of the assets of the estate as set forth in Schedule B.	
5	conditioned upon the assignee's faithful discharge of his	4.42
6	duties. Within 10 days after the court enters an order	4.43
7	setting the amount of such bond, the assignee shall file the	4.44
a	bond with the clerk of the court, who shall approve the bond.	6
9	Qualifications-of-assigneeNo-one-shall-be-selected-and	4.46
10	appointed-as-assignee-by-the-assignor;-in-such-assignment;-who	4.47
11	does-not-gave-bond-to-be-approved-by-the-clerk-of-the-carcuat	4.48
12	court-of-the-county-wherein-the-assignor-lives-or-does	
13	business;-or-of-the-county-wherein-is-situated-the-property	4.49
14	assigned;-payable-to-the-Governor-of-Plorida;-in-double-the	4.50
15	value-of-the-property-assigned,-conditioned-for-the-faithful	4.51
16	discharge-of-the-dutres-devolved-on-hrm-as-such-assignee,-said	Si .
17	bond-to-be-filed-in-the-office-aforesaid; -immediately-upon-the	4.52
18	assignee's-taking-possession-of-the-assigned-property-	4.53
19	Section 5. Section 727.05, Florida Statutes, is	4.54
20	amended to read:	
21	727.05 Proceedings against assignee No proceeding	4.55
22	may be commenced against the assignee except as provided in	4.56
23	this chapter, but nothing contained herein shall affect any	
24	action or proceeding by a governmental unit to enforce such	4.57
25	<pre>qovernmental unit's police or regulatory power. Except in the</pre>	4.59
26	case of a secured creditor enforcing its rights in collateral	
27	under chapter 679, there shall be no levy, execution,	4.60
28	attachment, or the like in respect of any judgment against	
29	assets of the estate, other than real property, in the	4.61
30	possession, custody, or control of the assigner. Notice-of	1:109
31	essignment:Seid-essignee-immediately-upon-taking-possession	

```
1
    of-the-assigned-property-shall-give-notice-by-publication-in-a
                                                                     4.6
 2
    Newspaper;-published-in-the-county-where-the-assigned-property
                                                                      4.6
 3
    is-situated-or-wherein-a-portion-of-the-same-is--once-a-week
                                                                      5.1
 4
    for-4-consecutive-weeks--to-all-the-creditors-of-the-assignor-
 5
    of-the-fact-of-the-essignment;-and-calling-upon-said-creditors
                                                                      5.2
    to-file-with-him-within-60-days;-if-such-creditors-reside-in
 6
                                                                      5.3
 7
    the-state; or-if-beyond-the-limits-of-the-state; within-4
                                                                      5.4
 8
    months;-sworn-statements-of-their-claims-against-said
 9
    assignor,-and-he-shall-send-by-mail-a-copy-of-the-newspaper
                                                                      5.5
10
    containing-said-notice-to-each-of-the-said-creditors;-as-far
                                                                      5.6
11
    as-he-may-know-them-
12
           Section 6. Section 727.06, Florida Statutes, is
                                                                      5.7
13
    amended to read:
14
                   Turnover . -- Any person or entity, other than a
                                                                      5.8
15
    creditor. in possession, custody, or control of assets of the
                                                                      5.9
16
    estate shall, upon notice by the assignee of the assignment,
17
    proceeding, promptly turn such assets over to the assignee or
                                                                      5.1
    his duly authorized representative. Bisposition-of
18
                                                                      1:1
19
    property:--The-said-assignee-shall;-as-soon-as-the-foregoing
20
    provisions-have-been-complied-with;-proceed-to-dispose-of-all
                                                                      5 -
21
    the-property-mentioned-in-the-deed-of-assignment-to-him;-to
                                                                      5.
22
    the-best-interest-of-ail-the-parties-concerned;-either-at
23
    public-or-private-sale,-as-to-him-may-seem-best,-and-to
                                                                      5.
                                                                      5.
24
    collect-and-to-recover-by-law;-or-otherwise;-all-debts-due-the
25
    assignor-in-the-same-manner-as-said-assignor-might-or-could-do
                                                                      5.
26
    in-his-own-right-if-such-assignment-had-not-been-made,-and-for
                                                                      5.,
27
    this-purpose-said-assignee-may-employ-an-attorney-to-prosecute
    such-claims.
28
                                                                      5.
29
           Section 7. Section 727.07, Florida Statutes, is
                                                                      5.,
30
    amended to read:
31
           727.07 Duties of assignor. -- The assignor shall:
                                                                      5.
```

1	(1) Assist the assignee in the administration of the	5.23
2	estate and comply with all orders of the court;	5.24
3	(2) Upon delivery of the assignment to the assignee,	1:lus
4	deliver to the assignee all of the assets of the estate in the	5.25
5	assignor's possession, custody, or control, including, but not	5.26
6	limited to, all accounts, books, papers, records, and other	
7	documents; and	5.27
8	(3) Within 30 days after the filing date, submit to	1:105
9	examination by the assignee, under oath, concerning the acts,	5.28
10	conduct, assets, liabilities, and financial condition of the	5.29
11	assignor or any matter related to the assignee's	
12	administration of the estate. Seminumual-statements:	1:105
13	Semiannually;-as-long-as-shall-be-necessary-after-his	
	appointmenty-said-essignee-shall-file-his-sworm-statement-in	5.31
15	the-office-of-the-clerk-of-the-circuit-court;-of-all-his	5.32
16	doings-end-financial-trensactions-es-said-assignee-	5.33
17	Section 8. Section 727.08, Florida Statutes, is	5.34
8	amended to read:	
9	727.08 <u>Duties of assigneeThe assignee shall:</u>	5.35
20	(1) Collect and reduce to money the assets of the	5.36
1	estate, whether by suit in any court of competent jurisdiction	5.37
22	or by public or private sale:	
23	(2) Within 30 days after the filing date, examine the	5.38
24	assignor, under oath, concerning the acts, conduct, assets,	
25	liabilities, and financial condition of the assignor or any	5 39
26	matter related to the assignee's administration of the estate,	5.40
27	unless excused by the court for good cause shown;	
28	(3) Give notice to creditors of all matters concerning	5.41
29	the administration of the estate, pursuant to the provisions	
30	of s. 727.11;	5.42
31		

1	(4) Conduct the business of the assignor for limited	1:lus
2	periods, if in the best interest of the estate, upon	5.43
3	authorization of the court;	5.44
4	(5) To the extent reasonable and necessary, pay	l:lus
5	administrative expenses of the estate, subject, however, to s.	5.45
6	727.16(1);	
7	(6) To the extent necessary, employ at the expense of	5.46
8	the estate one or more appraisers, auctioneers, accountants,	
9	attorneys, or other professional persons, to assist the	5.47
10	assignee in carrying out his duties under this chapter;	5.48
11	(7) Keep regular accounts and furnish such information	l:lus
12	concerning the estate as may be reasonably requested by	5.49
13	creditors or other parties in interest;	5.50
4	(8) File with the court an interim report of receipts	1:105
.5	and disbursements within 6 months after the filing date unless	5.51
16	excused by the court or unless the estate has been sooner.	5.52
7	distributed in full;	
18	(9) Examine the validity and priority of all claims.	5.53
9	against the estate;	0.7
20	(10) Abandon assets to duly perfected secured or lien	l:lus
21	creditors, where, after due investigation, he determines that	5.54
22	the estate has no equity in such assets or such assets are	5.55
23	burdensome to the estate or are of inconsequential value and	
24	benefit to the estate;	5.56
25	(11) Pay dividends and secured or priority claims as	l:lus
26	often as is compatible with the best interests of the estate	5.57
27	and close the estate as expeditiously as possible; and	5.58
8 8	(12) File with the court a final report of all	l:lus
29	receipts and disbursements and file an application for his	5.59
30	discharge pursuant to the provisions of s. 727.16.	5.60
31	Appl:cat:on-for-discharge-of-assigneeAfter-the-final	l:los

1	statement-of-the-massignee-of-all-the-matters-pertaining-to-his	5.63
2	position,-he-may,-after-publication-for-30-days-in-a-newspaper	
3	in-the-county-where-he-published-his-notice-mentioned-in-s.	5.65
4	727:05;-apply-by-petition-to-the-judge-of-the-circuit-court-of	
5	said-circuit-for-his-letters-of-discharge-as-said-assignee;	5.66
6	end-if-the-said-circuit-judge-shell-be-satisfied-that-the-said	6.1
7	essignee-has-complied-with-his-duties-as-such-assignee,-he	6.2
8	shall-then-grant-him-such-letters-as-prayed-for-	ĺ
9	Section 9. Section 727.09, Florida Statutes, is	6.3
10	created to read:	6.4
11	727.09 Power of the court The court shall have power	l:lus
12	to:	6.5
13	(1) Enforce all provisions of this chapter;	1:lus
14	(2) Set, approve, or reconsider the amount of the	6.7
15	assignee's bond;	
16	(3) Authorize the business of the assignor to be	6.8
17	conducted for limited periods by the assignee, if in the best	
LB	interest of the estate;	6.9
19	(4) Allow or disallow claims against the estate and	l:lus
20	determine their priority:	6.10
21	(5) Determine any claims of exemption by the assignor,	l:lus
22	if disputed;	6.11
23	(6) Hear and determine any of the following actions	1:lus
24	brought by the assignee, which he is hereby empowered to	6.12
25	maintain;	
26	(a) To enforce the turnover of assets of the estate	6.13
27	pursuant to s. 727.06;	
28	(b) To determine the validity, priority, and extent of	6.14
25	a lien or other interests in assets of the estate, or to	
30	subordinate or avoid an unperfected security interest pursuant	6.15
31		

1	to the assignee's rights as a lien creditor under s, 679.301;	6.16
2	and	
3	(c) To avoid any conveyances or transfer void or	6.17
4	voidable by law;	
5	(7) Approve the assignee's final report and interim	6.18
6	and final distributions to creditors:	
7	(8) Approve reasonable fees and the reimbursement of	6.19
8	expenses for the assignee and all professional persons	
9	retained by the assignee, upon objection of a party in	6.20
10	interest or upon the court's own motion;	6.21
11	(9) Hear and determine any motion brought by a party	l:lus
12	in interest or by the court to close the estate after the	6.22
13	passage of 1 year from the date of filing of the petition;	6.23
14	(10) Discharge the assignee and his surety from	l:lus
15	liability upon matters included in the assignee's final	6.24
16	report;	
17	(11) Reopen estates for cause shown;	6.25
18	(12) Punish by contempt any failure to comply with the	l:lus
19	provisions of this chapter or any order of the court made	6.26
20	pursuant to this chapter; and	6.27
21	(13) Exercise such other and further powers as are	1:1us
22	necessary to enforce or carry out the provisions of this	6.28
23	chapter,	
24	Section 10. Section 727.10, Florida Statutes, is	6.29
25	created to read:	6.30
26	727.10 Actions by assignee and other parties in	l:lus
27	interest	6.31
28	(1) All matters regulring court authorization under	l:lus
29	this chapter shall be brought by motion, except for the	6.32
30	following matters, which shall be brought by supplemental	6.33
31	proceeding, as provided in subsection (2):	

1	(a) An action by the assignee to recover money or	6.34
2	other assets of the estate;	
3	(b) An action by the assignee to determine the	6.35
4	validity, priority, or extent of a lien or other interest in	
5	property or to subordinate or avoid an unperfected security	6.36
6	interest under s. 727.09(6)(b); and	6.37
7	(c) An action by the assignee to avoid any conveyance	l:lus
8	or transfer void or voidable by law under s. 727.09(6)(c).	6.38
9	(2) A supplemental proceeding is an action of the type	6.39
10	designated in paragraphs (1)(a), (b), and (c) and shall be	
11	brought as follows:	6.40
12	(a) The Florida Rules of Civil Procedure shall apply	1:lus
13	to the supplemental proceedings, except where inconsistent	6.41
14	with the provisions of this chapter.	6.42
15	(b) The clerk of the court shall docket a supplemental	l:lus
16	proceeding under both the same case number assigned to the	6.43
17	original petition filed by the assignee pursuant to s. 727.04	6.44
18	and a separate supplemental proceeding number, and shall	
19	assign such supplemental proceeding to the same division and	6.45
20	judge assigned to the main case.	
21	(c) All pleadings and other papers filed in a	1:lus
22	supplemental proceeding shall contain a separate subsection	6.47
23	and the supplemental proceeding number in addition to the	1
24	caption and case number applicable to the main case.	6.48
25	Section 11. Section 727.11, Florida Statutes, is	6.49
26	created to read:	
27	727,11 Notice,	1:lus
28	(1) The assignee shall give notice of the assignment	6.50
29	by publication in a newspaper of general circulation published	
30	in the county where the petition is filed and in any other	6 51
31	county or counties where the assignment is required to be	6.52

1	recorded pursuant to s. 727.04(2), once a week for 4	
2	consecutive weeks, the first notice to be published within 10	6.53
3	days after filing of the petition; and by mailing notice to	ĝ.
4	all known creditors within 20 days after filing of the	6.54
5	petition. The notice of the assignment shall include the date	6.55
6	of filing of the petition; the name of the court where the	6.56
7	petition is filed and the case number assigned to the	
8	petition; the last day on which a proof of claim may be served	6.57
9	upon the assignee, to be determined in accordance with s.	6.58
10	727.12(2); and the name and address of the assignor, the	
11	assignee, and the assignee's attorney, if any.	6.59
12	(2) The notice of assignment shall be in substantially	l:lus
13	the following form:	
14	NOTICE OF ASSIGNMENT	6.62
15	IN THE CIRCUIT COURT	6.63
16	OF THE	6.64
17	CIRCUIT, IN AND FOR	6.65
18	COUNTY,	6.66
19	<u>FLORIDA</u>	7.1
20	IN RE:	l·lus
21	Assignor,	7.3
22	to	l:lus
23	Assignee.	7.5
24	TO CREDITORS AND OTHER INTERESTED PARTIES:	l:lus
25	PLEASE TAKE NOTICE that on a petition	7.9
26	commencing an assignment for the benefit of creditors pursuant	
27	to chapter 727, Florida Statutes, made by	7.10
28	assignor, with principal place of business at	7.11
29	to, assignee, whose address is	
30	,, was filed on, 19	7.12
31		1

1	YOU ARE HEREBY further notified that in order to	l:lus
2	receive any dividend in this proceeding you must file a proof	7.14
3	of claim with the assignee or his attorney on or	
4	before(120 days from the date of the filing of	7.15
5	the petition).	7.16
6	111.1.1.1.1.1.1.1.1.1.1.1.1.1.1.1.1.	
7	<u>ASS I GNEE</u>	
в	Attorney for assignee (if any):	7.19
9	Address:	l:lus
10	(3) The assignee shall give the assignor and all	7.20
11	creditors not less than 10 days' notice by mail of an	
12	examination of the assignor pursuant to s. 727.08(2).	7.21
13	(4) The assignee shall give the assignor and all	1:lus
ч	creditors not less than 20 days' notice by mail of a proposed	7.22
.5	sale of assets of the estate other than in the ordinary course	7.24
6	of business, the compromise or settlement of a controversy,	7.25
.7	and the payment of fees and expenses to the assignee and to	7.26
	professional persons employed by the assignee pursuant to s.	
او.	727.08(6). Any and all objections must be filed and served	7.27
20	upon the assignee and the assignee's attorney, if any, not	7.28
21	less than 3 days before the date of the proposed action. The	7.29
22	notice shall include a description of the proposed action to	
23	be taken and the date of the proposed action, and shall set	7.30
4	forth the date and place for the hearing at which any	
5	objections shall be heard. If no objections are timely filed	7.32
6	and served, the assignee may take such action as described in	
27	the notice without further order of the court.	7.33
28	(5) The assignee shall give the assignor and all	l:lus
29	creditors not less than 20 days' notice by mail of the filing	7.35
30	of his petition for discharge and the final report of receipts	
n	and disbursements pursuant to s. 727.16. The notice shall	7.37

1	include a summary of all receipts and disbursements of the	
2	estate and shall set forth the date and place of the final	7.38
3	hearing.	
4	(6) For good cause shown and without notice of	7.39
5	hearing, the court may shorten the notice period or limit the	
6	parties to whom notice need be given, pursuant to subsection	7.40
7	(3) or subsection (4).	
8	(7) Wherever notice is required to be given under this	7.41
9	chapter and the period of such notice is not specified, the	
10	court shall fix such period of notice as is appropriate in the	7.42
11	particular circumstances.	7.43
12	(8) Wherever notice is required to be given under this	l:lus
13	chapter, a certificate of service of such notice shall be	7.44
14	filed with the court.	
15	(9) Wherever notice is not specifically required to be	l:lus
16	given under this chapter, the court in its discretion may	7.46
17	consider motions and grant or deny relief without notice or	
18	hearing.	7.47
19	Section 12 Section 727.12, Florida Statutes, is	7.47
20	created to read:	7.48
21	727.12 Proof of claim	1:lus
22	(1) All claims other than claims of creditors with	7.49
23	liens on assets of the estate, whether contingent, liquidated,	
24	unliquidated, or disputed, which arose prior to the filing	7.50
25	date, must be filed in accordance with the provisions of this	7.51
26	chapter, and any such claim not so filed is barred from any	
27	further recovery against the estate.	7.52
28	(2) Claims shall be filed by delivering the claim to	1 · 1 us
29	the assignee within 120 days from the filing date unless for	7.54
30	cause shown.	
31		

1	(3) Claims shall be in written form, entitled "proof	7.55
2	of claim, " setting forth the name and address of the creditor	1
3	and the nature and amount of the claim, and executed by the	7.56
4	creditor or the creditor's authorized agent.	7.57
5	(4) When a claim, or an interest in property of the	l:lus
6	assignor securing the claim is based on a writing, the	7.58
7	original or a copy of such writing shall be filed with the	
8	proof of claim, together with evidence of perfection of any	7.59
9	security interest, if applicable.	7.60
10	(5) A proof of claim, executed and delivered in	l:lus
11	accordance with this section, shall constitute prima facie	7.61
12	evidence of the validity and amount of the claim.	7.62
13	Section 13. Section 727.13, Florida Statutes, is	7.62
14	Created to read:	
15	727.13 Objections to claims At any time prior to the	1:1:
16	entry of an order approving the assignee's final report, the	7.64
17	assignee or any party in interest may file with the court an	7.65
18	objection to a claim, which objection shall be in writing and	
19	shall set forth the nature of the objection. A copy of the	8.2
20	objection, together with notice of hearing thereon, shall be	
21	mailed to the creditor at least 20 days prior to the hearing.	8.3
22	All claims properly filed with the assignee and not disallowed	8.4
23	by the court shall constitute all_claims_entitled to	8.5
24	distribution from the estate.	
25	Section 14. Section 727.14, Florida Statutes, is	8.6
26	created to read:	
27	727.14 Priority of claims Allowed claims shall	1:lus
85	receive distribution under this chapter in the following order	8.7
29	of priority and, with the exception of subsection (1), on a	8.8
30	pro rata basis:	
31		1

1	(1) Creditors with liens on assets of the estate,	8.9
2	which liens are duly perfected pursuant to applicable law,	
3	shall receive the proceeds from the disposition of their	8.10
4	collateral, less the reasonable, necessary expenses of	
5	preserving or disposing of such collateral to the extent of	8.11
6	any benefit to such creditors. If and to the extent that such	8.12
7	proceeds are less than the amount of a creditor's claim or a	
8	creditor's liem is avoided pursuant to s. 727.09(6)(c), such a	8.13
9	<u>creditor shall be deemed to be an unsecured creditor pursuant</u>	8.14
10	to subsection (6) of this section.	
11	(2) Expenses incurred during the administration of the	1:lus
12	estate, other than those expenses allowable under subsection	8.16
13	(1), including allowed fees and reimbursements of all expenses	Ì
14	of the assignee and professional persons employed by the	8.18
15	assignee pursuant to s. 727.08(6).	8.19
16	(3) Unsecured claims of governmental units for taxes	l:lus
17	which accrued prior to the filing date.	8.20
18	(4) Claims for wages, salaries, or commissions,	l:lus
19	including vacation, severance and sick leave pay, or	8.21
20	contributions to an employee benefit plan earned by the	
21	individual within 90 days of the filing date or the cessation	8.22
22	of the assignor's business, whichever occurs first, but only	8.23
23	to the extent of \$2,000.	
24	(5) Allowed unsecured claims, to the extent of \$930	8.24
25	for each individual, arising from the deposit with the	
26	assignor before the filing date of money in connection with	8.25
27	the purchase, lease, or rental of property or the purchase of	8.26
28	services for personal, family, or household use by such	
29	individuals that were not delivered or provided.	8.27
30	(6) Unsecured claims.	l:lus
31		

1	If all of the above classes have been paid in full, any	8.29
2	residue shall be paid to the assignor.	
3	Section 15. Section 727.15, Florida Statutes, is	8.30
4	created to read:	
5	727.15 Resignation or removal of assignee	B.31
6	(1) The court shall remove or replace the assignee on	l:lus
7	application of the assignor, the assignee, any creditor, or on	8.32
8	its own motion, if the assignee has not executed and filed the	8.33
9	bond required by s. 727.04(2), if the assignee resigns,	B.34
10	refuses, or fails to serve for any reason, or for good cause.	8.35
11	(2) Upon removal, resignation, or death of the	l:lus
12	assignee, the court shall appoint a replacement assignee if	8.36
13	the court deems in its discretion that further administration	8.37
14	of the estate is required. Upon executing and filing a bond	8.38
15	pursuant to s. 727,04(2), the replacement assignee shall	
16	forthwith take possession of the estate and assume his duties	8.39
17	as assigner,	
18	(3) Whenever the court shall be satisfied that the	8.40
19	assignee so removed or replaced has fully accounted for and	
20	turned over to the replacement assignee appointed by the court	8.41
21	all of the property of the estate and has filed a report of	B.42
22	all receipts and disbursements during his tenure as assignee,	
23	the court shall enter an order discharging him from all	8.43
24	further duties, liabilities, and responsibilities as assignee	8.44
25	after notice and a hearing.	
26	Section 16. Section 727.16, Florida Statutes, is	8.44
27	created to read:	8.45
28	727,16 Assignee's final report and discharge,	8.46
29	(1) Upon distribution of all assets of the estate, the	1:lus
30	assignee shall petition the court for his discharge upon	8.47
31	notice and a hearing in accordance with s. 727.11(5),	8.48

1	(2) The assignee's final report setting forth all	1:10
2	receipts and disbursements of the estate shall be annexed to	8.50
3	the petition for discharge and filed with the court.	8.51
4	(3) Upon approval of the final report, the court shall	1:10
5	discharge the assignee and release his bond.	8.52
6	(4) The assignee's discharge shall have the effect of	8.53
7	releasing him from any duties, liabilities, and	ļ
8	responsibilities as assignee pursuant to the provisions of the	8.54
9	assignment and this chapter.	8.55
10	Section 17. This act shall take effect July 1, 1987.	8.55
11		
12		
13		
14	*******	
15	HOUSE SUMMARY	
16	Eliminates present provisions of law governing general	
17	assignments. Provides that it is the intent of the act to provide a uniform procedure for the administration of	
18	insolvent estates and to ensure full reporting to creditors and equal distribution of assets according to	
19	priorities as provided for in the act. See bill for details.	
20	de tuxis.	
21		
22		
23		
24		
25		
26		
27		1
28		
29		
30		
31		

This publication was produced at an average cost of 1.5 cents per single page in complance with the Rules and for the information of members of the Legislature and the public. 1 2

3

5

6

7

8

.

10 11

12

13

14

15

16 17

18

19

20

21 22

23

24 25

26

27

28

29

30

31

By the Committee on Judiciary and Representative Canady

A bill to be entitled An act relating to assignments for the benefit of creditors; amending s. 727.01, F.S.; deleting language with respect to general requirements for assignments; providing legislative intent; amending s. 727.02, F.S.; deleting language relating to the oath of assignor; providing for jurisdiction of proceedings and venue; amending s. 727.03, F.S.; deleting language with respect to record of assignment and oath; providing definitions; amending s. 727.04, F.S.; deleting language with respect to qualifications of assignee; providing for commencement of proceedings; amending s. 727.05, F.S.; deleting language with respect to notice of assignment; providing for proceedings against the assignse; amending s. 727.06, F.S.; deleting language with respect to disposition of property; providing for turnover; amending s. 727.07, F.S.; deleting language with respect to semiannual statements; providing for duties of the assignor; amending s. 727.08, F.S.; deleting language with respect to application for discharge of assignee; providing for duties of the assignee; creating s. 727.09, F.S.; providing for power of the court; creating s. 727.10, F.S.; providing for actions by assignees and other parties in interest; creating s. 727.11, F.S.; providing for notice; creating s. 727.12, F.S.; providing for proof of claim; creating s. 727.13, F.S.;

1	providing for objections to claims; creating s.	1.18
2	727.14, F.S.; providing for priority of claims;	
3	creating m. 727.15, F.S.; providing for	
4	resignation or removal of assignee; creating s.	1.19
5	727.16, F.S.; providing for the assignee's	
6	final report and discharge; providing an	1.20
7	effective date.	
•		
,	Be It Enacted by the Legislature of the State of Florida:	1:enc
10		
11	Section 1. Section 727.01, Florida Statutes, is	1.21
12	amended to read:	
13	727.01 Intent of chapter The intent of this chapter	1.22
14	is to provide a uniform procedure for the administration of	1.23
15	insolvent estates, and to ensure full reporting to creditors	
16	and equal distribution of assets according to priorities as	1.24
17	established under this chapter. General-requirements-for	1:los
18	assignments:No-assignment-made-for-the-benefit-of-creditore	1.27
19	shell-be-walid-in-this-state;-except-the-same-shell-be-made-in	1.28
20	writing-and-shall-provide-for-an-aqual-distribution-of-all-the	1.29
21	essignor's-real-and-personal-propertyy-except-such-as-is	1.30
22	exempted-by-law-from-forced-saley-among-the-several-creditors	
23	of-the-said-assignor-in-equal-proportion-to-their-respective	1.31
24	denends v	
25	Section 2. Section 727.02, Florida Statutes, is	1.32
26	amended to read:	
27	727.02 Jurisdiction of proceedings and venue All	1.33
28	proceedings under this chapter shall be subject to the order	1.34
29	and supervision of the circuit court for the county where the	
30	petition is filed in accordance with s. 727.04(2). Geth-of	1:105
31	assignorThe-seid-essignor-shall-make-and-subscribe-an-oath	1.37

1	in-writing-before-any-officer-authorized-to-administer-oaths	1
2	in-the-county-in-which-he-lives-and-does-businessy-or-of-the	1.38
3	county-or-counties-wherein-is-situated-the-property-assignedy	1.39
4	not-more-than-10-days-after-ths-assignmenty-that-he-has-placed	1.40
5	or-assignedy-and-that-the-true-intention-of-his-assignment-was	1.41
6	to-place-in-the-hands-of-his-assignee-all-of-his-property-of	1
7	every-description;-except-such-as-is-exempt-by-law-from-forced	1.42
8	sale,-to-be-divided-emong-the-creditors-in-proportion-to-their	1.43
9	respective-demends:	1.44
10	Section 3. Section 727.03, Florida Statutes, is	1.45
11	amended to read:	
12	727.03 Definitions As used in this chapter, unless	1.46
13	the context requires a different meaning, the term:	1.47
14	(1) "Asset" means a legal or equitable interest of the	l:lus
15	assignor in property, which shall include anything that may be	1.49
16	the subject of ownership, whether real or personal, tangible	1.50
17	or intangible, wherever located and by whomever held at the	6
18	date of the assignment, except property exempt by law from	1.51
19	forced sale.	
20	(2) "Assignee" means an assignee for the benefit of	1:lus
21	creditors under the provisions of this chapter, which assignee	1.53
22	shall not be a creditor or an equity security holder or have	1.54
23	any interest adverse to the interest of the estate.	
24	(3) "Assignor" means the person or entity which has	1:lus
25	executed and delivered the assignment to the assignee.	1.56
26	(4) "Assignment" means an assignment for the benefit	1:lus
27	of creditors made under this chapter.	1.58
28	(5) "Court" means the circuit court where the petition	1:lus
29	is filed in accordance with s. 727.04(2).	1.60
30		1
31		

1	(6) "Creditor" means any person having a claim against	1:lus
2	the assignor, whether such claim is contingent, liquidated,	1.62
3	unliquidated, or disputed.	
4	(7) "Estate" means all of the assets of the assignor.	1:lus
5	(8) "Filing date" means the date upon which the	1:lus
6	original petition is filed in accordance with s. 727.04(2).	1.65
7	(9) "Lien" means a charge against or an interest in	1:1us
	property to secure payment of a debt or performance of an	1.67
•	obligation, and includes a security interest created by	
10	agreement, a judicial lien obtained by legal or equitable	1.68
11	process or proceedings, a common-law lien, or a statutory	1.69
12	lien.	
13	(10) "Liquidation value" means the value in cash	1:lus
14	obtainable upon a forced sale of assets.	1.71
15	(11) "Petition" means the initial document filed with	1:lu <b>s</b>
16	the court, as set forth in s. 727.04(2), establishing the	1.74
17	court's jurisdiction under this chapter. Record-of-assignment	1:108
18	and-oathrBoth-the-said-deed-of-essignment-and-oath-of	
19	assignor-shall-be-recorded-in-the-effice-or-offices-of-the	1.77
20	clerk-or-clerks-of-the-county-or-counties-in-which-the	1.78
21	property-essigned-is-situated:	
22	Section 4. Section 727.04, Florida Statutes, is	1.79
23	amended to read:	
24	727.04 Commencement of proceedings	1.80
25	(1)(a) Am irrevocable assignment and schedules shall	1.81
26	be made in writing, containing the name and address of the	1.82
27	assignor and assignee and providing for an equal distribution	
28	of the estate according to the priorities set forth in s.	1.83
29	727.14.	l
30	(b) The assignment shall be in substantially the	1:lus
31	following form:	

### 186-550-4-7

<u>assignment</u>	1:lus
ASSIGNMENT, made this day of	1:lus
19, between with a principal	2.3
place of business at	2.4
hereinafter "assignor," and whose	2.5
address is hereinafter "assignee."	
MELDREAS, the assignor has been engaged in the business	l:lus
ofj	2.7
MHEREAS, the assignor is indebted to creditors, as set	1:lus
forth in Schedule A annexed hereto, is unable to pay its debts	2.10
as they become due, and is desirous of providing for the	
payment of its debts, so far as it is possible by an	2.11
assignment of all of its assets for that purpose.	2.12
NOW, THEREFORE, the assignor, in consideration of the	1:1us
assignee's acceptance of this assignment, and for other good	2.14
and valuable consideration, hereby grants, assigns, conveys,	
transfers, and sets over, unto the assignee, his successors	2.15
and assigns, all of its assets, except such assets as are	2.16
exempt by law from levy and sale under an execution,	
including, but not limited to, all real property, fixtures,	2.17
goods, stock, inventory, equipment, furniture, furnishings,	
accounts receivable, bank deposits, cash, promissory notes,	2.18
cash value and proceeds of insurance policies, claims and	2.19
demands belonging to the assignor, wherever such assets may be	
located, hereinafter the "estate," as which assets are, to the	2.20
best knowledge and belief of the assignor, set forth on	2.21
Schedule B annexed hereto.	
The assignee shall take possession and administer the	1:lu <b>s</b>
estate in accordance with the provisions of chapter 727.	2.23
Florida Statutes, and shall liquidate the assets of the estate	
with reasonable dispatch and convert the estate into money,	2.24
	ASSIGNMENT, made this

1	collect all claims and demands hereby assigned as may be	2.25
2	collectible, and pay and discharge all reasonable expenses,	
3	costs, and disbursements in connection with the execution and	2.26
4	administration of this assignment from the proceeds of such	2.27
5	liquidations and collections.	
6	The assignee shall then pay and discharge in full, to	1:lus
7	the extent that funds are available in the estate after	2.29
	payment of administrative expenses, costs, and disbursements,	
9	all of the debts and liabilities now due from the assignor,	2.30
10	including interest on such debts and liabilities. If funds of	2.32
11	the estate shall not be sufficient to pay such debts and	
12	liabilities in full, then the assignee shall pay from funds of	2.33
13	the estate such debts and liabilities, on a pro rata basis and	
14	in proportion to their priority as set forth in s. 727.14,	2.34
15	Florida Statutes.	
16	In the event that all debts and liabilities are paid in	1:lus
17	full, any funds of the estate remaining shall be returned to	2.36
18	the assignor.	
19	To accomplish the purposes of this assignment, the	1:lus
20	assignor hereby appoints the assignee its true and lawful	2.38
21	attorney, irrevocable, with full power and authority to do all	
22	acts and things which may be necessary to execute the	2.39
23	assignment hereby created; to demand and recover from all	2.40
24	persons all assets of the estate; to sue for the recovery of	
25	such assets; to execute, acknowledge, and deliver all	2.41
26	necessary deeds, instruments, and conveyances; and to appoint	
27	one or more attorneys under him to assist him in carrying out	2.42
28	his duties hereunder.	
29	The assignor hereby authorizes the assignee to sign the	1:1us
30	name of the assignor to any check, draft, promissory note, or	2.44
31	other instrument in writing which is payable to the order of	

1	the assignor, or to sign the name of the assignor to any	2.45
2	instrument in writing, whenever it shall be necessary to do	2.46
3	so, to carry out the purpose of this assignment.	0
4	The assignee hereby accepts the trust created by the	1:1us
5	assignment, and agrees with the assignor that the assignee	2.48
6	will faithfully and without delay carry out his duties under	
7	the assignment.	2.49
8		
9	Assignor	
10		9
11	Assignee	
12	STATE OF FLORIDA	1:1us
13	COUNTY OF \$8:	2.55
14	The foregoing assignment was acknowleded before me this	1:lus
15	day of 19, by	2.57
16	as assignor, and by as assignee, for	3
17	the purposes therein expressed.	2.58
18		
19	Notary Public	
20	My Commission Expires:	1:lus
21	(c) The assignment shall have annexed thereto as	1:lus
22	Schedule A a true list of all of the assignor's known	2.64
23	creditors, their mailing addresses, the amount and nature of	
24	their claims, and whether their claims are disputed; and as	2.65
25	Schedule B a true list of all assets of the estate, including	1
26	the estimated liquidation value of the assets, their location,	2.66
27	and, if real property, a legal description thereof, as of the	2.67
28	date of the assignment.	
29	(d) The schedules shall be in substantially the	(1:1us
30	following forms:	
31		

### 186-550-4-7

1	SCHEDOLE ACREDITOR LIST	lilus
2	List all secured creditors showing:	2.71
3	Whether or	2.76
4	Name Address Amount Collateral not disputed	2.78
5	2. List all wages owed showing:	1:lus
	Whether or	2.83
7	Name Address Amount not disputed	3.1
٠į	3. Consumer deposits:	1:lus
9	Whether or	3.7
ا ٥.	Mase Address Amount not disputed	3.9
ıιį	4. List all taxes owed showing:	l:lus
2	Whather or	3.14
.3	Kame Address Amount not disputed	3.16
4	5. List all unsecured claims owed showing:	l:lus
.5	Whether or	3.22
اء.	Name Address Asount not disputed	3.24
17	6. List all owners or shareholders showing:	1:lus
18	Name Address Percent of Ownership	3.30
.9	SCHEDULE BLIST OF ASSETS	1:lus
20	List each category of assets and for each give approximate	3.33
11	value obtainable for the asset on the date of assignment, and	
22	address where asset is located.	3.34
23	I. Monexempt Property	1:lus
24	Description and Liquidation Valu	•
25	Location at Date of Assignmen	t.
26	1. Legal description and street address of real estate,	1:1us
27	including lessehold interests:	3.40
	2. Fixtures:	1:lus
	3. Cash and bank accounts:	1:lus
30	4. Inventory:	1:lus
1	5. Accounts receivable:	3.44
11	5. Accounts receivable:	

•

CODING: Words stricken are deletions; words underlined are additions.

1	6. Equipment:	1:lus
2	7. Prepaid expenses, including deposits, insurance, rents,	3.47
3	and utilities:	
4	8. Other, including loans to third parties, claims, and	3.48
5	choses in action:	
6	II. Exempt Property	1:145
7	Description and Liquidation Value	
	Location at Dats of Assignment	
9	(e) The assignment and schedules shall be duly	3.52
10	verified upon oath by the assignor, and accepted by the	
11	assignee under oath.	
12	(2) Within 10 days after delivery of the assignment to	1:14:
13	the assignee, the assignee shall:	3.54
14	(a) Record the original assignment in the public	1:lus
15	records of the county in which the assignor had its principal	3.56
16	place of business and shall thereafter promptly record a	3.57
17	certified copy of the assignment in each county where assets	
18	of the stats are located;	3.58
و،	(b) File a certified copy of the assignment in the	1:lus
20	office of the Secretary of State; and	3.60
21	(c) File, in the office of the clerk of the court in	1:lus
22	the county of the assignor's place of business if it has one,	3.61
23	in the county of its chief executive office if it has more	3.62
24	than one place of business, or in the county of the assignor's	
25	residence if the assignor is an individual not engaged in	3.63
26	business, in accordance with the procedures for filing a	1
27	complaint as set forth in the Florida Rules of Civil	3.64
28	Procedure, a petition setting forth the name and address of	3.66
29	the assignor and the name and address of the assignee; a copy	
30	of the assignment, together with Schedules A and B; and a	3.68
31	request that the court fix the amount of the assignee's bond	

1	to be filed with the clerk of the court. This bond shall be	3.71
2	subject to reconsideration upon the motion of any party in	[
3	interest after notice and hearing. The bond shall be payable	3.73
4	to the clerk of the court, in an amount not less than double	
5	the liquidation value of the assets of the estate as set forth	3.74
6	in Schedule B, conditioned upon the assignee's faithful	3.75
7	discharge of his duties. Within 10 days after the court	3.76
	enters an order setting the amount of such bond, the assignee	
9	shall file the bond with the clerk of the court, who shall	3.77
10	approve the bond. Qualifications-of-assigneerNo-one-shall	3.79
11	be-selected-and-appointed-as-assignee-by-the-assignor;-in-such	3.80
12	assignmenty-who-does-not-give-bond-to-be-approved-by-the-clerk	İ
13	of-the-circuit-court-of-the-county-wherein-the-assignor-lives	3.81
14	or-does-business,-or-of-the-county-wherein-is-situated-the	3.82
15	property-assigned,-payable-to-the-Governor-of-Piorida,-in	3.83
16	double-the-velue-of-the-property-assigned;-conditioned-for-the	
17	faithful-discharge-of-the-duties-devolved-on-him-mas-such	3.84
18	assignee;-said-bond-to-be-filed-in-the-office-aforesaid;	4.1
19	immediately-upon-the-assignee's-taking-possession-of-the	4.2
20	essigned-property:	
21	Section 5. Section 727.05, Florida Statutes, is	4.3
22	amended to read:	
23	727.05 Proceedings against assignee No proceeding	4.4
24	may be commenced against the assignee except as provided in	4.5
25	this chapter, but nothing contained herein shall affect any	
26	action or proceeding by a governmental unit to enforce such	4.6
27]	governmental unit's police or regulatory power. Except in the	4.8
28	case of a secured creditor enforcing its rights in collateral	
29	under chapter 679, there shall be no levy, execution,	4.9
30	attachment, or the like in respect of any judgment against	
31	assets of the estate, other than real property, in the	4.10

1	possession, custody, or control of the assignee. Notice-of	1:105
2	sssignmentSaid-assignee-immediately-upon-taking-possession	
3	of-the-assigned-property-shall-give-notice-by-publication-xn-a	4.14
4	newspapery-published-in-the-county-where-the-assigned-property	4.15
5	is-aituated-or-wherein-a-portion-of-the-same-isy-once-a-week	4.16
6	for-4-consecutive-weeksy-to-all-the-creditors-of-the-assignory	
7	of-the-fact-of-the-assignment; -and-calling-upon-said-creditors	4.17
8	to-file-with-him-within-69-days;-if-such-creditors-reside-in	4.18
9	the-state;-or-if-beyond-the-limits-of-the-state;-within-4	4.15
10	months;-sworn-statements-of-their-claims-against-said	
11	assignory-and-he-shall-send-by-mail-a-copy-of-the-newspaper	4.20
12	containing-said-notice-to-each-of-the-said-creditors7-as-far	4.21
13	as-he-may-know-themt	
14	Section 6. Section 727.06, Florida Statutes, is	4.22
15	amended to read:	
16	727.06 TurnoverAny person or entity, other than a	4.23
17	creditor, in possession, custody, or control of assets of the	4.24
18	estate shall, upon notice by the assignee of the assignment	
19	proceeding, promptly turn such assets over to the assignee or	4.25
20	his duly authorized representative. Disposition-of	1:105
21	property:The-said-assignee-shall;-as-soon-as-the-foregoing	
22	provisions-have-been-complied-withy-proceed-to-dispose-of-all	4.29
23	the-property-mentioned-in-the-deed-of-assignment-to-him7~to	4.30
24	the-bast-interest-of-ait-the-parties-concerned,-either-at	
25	public-or-private-sale;-es-to-him-may-seem-best;-end-to	4.31
26	collect-and-to-recover-by-law,-or-otherwise,-all-debts-dwe-the	4.32
27	assignor-zn-the-same-manner-as-said-assignor-might-or-cowld-do	4.33
28	in-his-own-right-if-such-assignment-had-not-been-madey-and-for	4.34
29	this-purpose-serd-essignee-may-employ-en-attorney-to-prosecute	
30	auch-claims-	4.35
31		

1	Section 7. Section 727.07, Florida Statutes, is	4.36
2	amended to read:	
3	727.07 Duties of assignor The assignor shall:	4.37
4	(1) Assist the assignee in the administration of the	4.38
5	estate and comply with all orders of the court;	4.39
6	(2) Upon delivery of the assignment to the assignee,	1:lus
7	deliver to the assignee all of the assets of the estate in the	4.40
•	assignor's possession, custody, or control, including, but not	4.41
•	limited to, all accounts, books, papers, records, and other	
10	documents; and	4.42
11	(3) Within 30 days after the filing date, submit to	1:lus
12	examination by the assignee, under oath, concerning the acts,	4.43
13	conduct, assets, liabilities, and financial condition of the	4.44
14	assignor or any matter related to the assignee's	
15	administration of the estate. Semiannual-statements	1:108
16	Semiannually;-ae-long-as-shall-be-neceseary-after-his	
17	appointmenty-said-essignee-shall-file-his-sworn-statement-in	4.46
18	the-office-of-the-clerk-of-the-circuit-courty-of-all-his	4.47
19	deings-end-finencial-transactions-as-said-assigneer	4.48
20	Section 8. Section 727.08, Plorida Statutes, is	4.49
21	amended to read:	
22	727.08 Duties of assignee The assignee shall:	4.50
23	(1) Collect and reduce to money the assets of the	4.51
24	estate, whether by suit in any court of competent jurisdiction	4.52
25	or by public or private sale;	ĺ
26	(2) Within 30 days after the filing date, examine the	4.53
27	assignor, under oath, concerning the acts, conduct, assets,	
28	liabilities, and financial condition of the assignor or any	4.54
29	matter related to the assignee's administration of the estate,	4.55
30	unless excused by the court for good cause shown;	
31		

1	(3) Give notice to creditors of all matters concerning	4.56
2	the administration of the estate, pursuant to the provisions	
3	of s. 727.11;	4.57
4	(4) Conduct the business of the assignor for limited	1:lus
5	periods, if in the best interest of the estate, upon	4.58
6	authorization of the court;	4.59
7	(5) To the extent reasonable and necessary, pay	1:1us
8	administrative expenses of the estate, subject, however, to s.	4.60
9	727.14(1)1	
10	(6) To the extent necessary, employ at the expense of	4.61
11	the estate one or more appraisers, auctioneers, accountants,	
12	attorneys, or other professional persons, to assist the	4.62
13	assignee in carrying out his duties under this chapter;	4.63
14	(7) Reep regular accounts and furnish such information	1:lus
15	concerning the estate as may be reasonably requested by	4.64
16	creditors or other parties in interest;	4.65
17	(8) File with the court an interim report of receipts	1:1us
18	and disbursements within 6 months after the filing date unless	4.66
19	excused by the court or unless the estate has been sooner	4.67
20	distributed in full;	
21	(9) Examine the validity and priority of all claims	4.68
22	against the estate;	
23	(10) Abandon assets to duly perfected secured or lien	1:lus
24	creditors, where, after due investigation, he determines that	4.69
25	the estate has no equity in such assets or such assets are	4.70
26	burdensome to the estate or are of inconsequential value and	
27	benefit to the estate;	4.71
28	(11) Pay dividends and secured or priority claims as	1:lus
29	often as is compatible with the best interests of the estate	4.72
30	and close the estate as expeditiously as possible; and	4.73
31		

-1	(12) File with the court a final report of all	1:102
2	receipts and disbursements and file an application for his	4.74
3	discharge pursuant to the provisions of s. 727.16.	4.75
4	Application-for-discharge-of-assigneerAfter-the-final	1:108
5	statement-of-the-assignee-of-all-the-matters-pertaining-to-his	4.78
6	positiony-he-mayy-after-publication-for-38-days-in-a-newspaper	
7	in-the-county-where-he-published-his-notice-mentioned-in-st	4.80
8	727v05y-apply-by-patition-to-the-judge-of-the-circuit-court-of	
,	said-circuit-for-his-letters-of-discharge-as-said-assignee;	4.81
10	and-in-the-said-circuit-judge-shall-be-satisfied-thet-the-said	4.82
11	assignee-has-complied-with-his-duties-as-such-assigneey-he	4.83
12	shall-then-grant-him-such-latters-as-prayed-for-	
13	Section 9. Section 727.09, Florida Statutes, is	4.84
14	created to read:	5.1
15	727.09 Power of the court The court shall have power	1:1us
16	to:	5.2
17	(1) Enforce all provisions of this chapter;	1:lus
18	(2) Set, approve, or reconsider the amount of the	5.4
19	assignee's bond;	ļ
20	(3) Authorize the business of the assignor to be	5.5
21	conducted for limited periods by the assignee, if in the best	
22	interest of the estate;	5.6
23	(4) Allow or disallow claims against the estate and	1:lus
24	determine their priority;	5.7
25	[5] Determine any claims of exemption by the assignor,	1:lus
26	if disputed;	5.8
27	(6) Hear and determine any of the following actions	1:1us
28	brought by the assignee, which he is hereby empowered to	5.9
29	maintain:	
30	(a) To enforce the turnover of assets of the estate	5.10
31	pursuant to s. 727.06;	

1	(b) To determine the validity, priority, and extent of	5.11
2	a lien or other interests in assets of the estate, or to	
3	subordinate or avoid an unperfected security interest pursuant	5.12
4	to the assignee's rights as a lien creditor under s. 679.301;	5.13
5	and	1
6	(c) To avoid any conveyances or transfer void or	5.14
7	voidable by law;	
•	(7) Approve the assignee's final report and interim	5.15
9	and final distributions to creditors;	
10	(8) Approve reasonable fees and the reimbursement of	5.16
11	expenses for the assignee and all professional persons	
12	retained by the assignee, upon objection of a party in	5.17
13	interest or upon the court's own motion;	5.18
14	(9) Rear and determine any motion brought by a party	1:lus
15	in interest or by the court to close the estate after the	5.19
16	passage of 1 year from the date of filing of the petition;	5.20
17	(10) Discharge the assignee and his surety from	1:lus
18	liability upon matters included in the assignee's final	5.21
19	report;	1
20	(11) Reopen estates for cause shown;	5.22
21	(12) Punish by contempt any failure to comply with the	1:lus
22	provisions of this chapter or any order of the court made	5.23
23	pursuant to this chapter; and	5.24
24	(13) Exercise such other and further powers as are	1:lu
25	necessary to enforce or carry out the provisions of this	5.25
26	chapter.	
27	Section 10. Section 727.10, Florida Statutes, is	5.26
28	created to read:	5.27
29	727.10 Actions by assignee and other parties in	1:1us
30	interest	5.28
31 l		

1	(1) All matters requiring court authorization under	1:lus
2	this chapter shall be brought by motion, except for the	5.29
3	following matters, which shall be brought by supplemental	5.30
4	proceeding, as provided in subsection (2):	
5	(a) An action by the assignee to recover money or	5.31
6	other assets of the estate;	1
7	(b) An action by the assignee to determine the	5.32
•	walidity, priority, or extent of a lien or other interest in	
9	property or to subordinate or avoid an unperfected security	5.33
10	interest under s. 727.09(6)(b); and	5.34
11	(c) An action by the assignee to avoid any conveyance	1:lus
12	or transfer woid or woidable by law under s. 727.09(6)(c).	5.35
13	(2) A supplemental proceeding is an action of the type	5.36
14	designated in paragraphs (1)(a), (b), and (c) and shall be	
15	brought as follows:	5.37
16	(a) The Florida Rules of Civil Procedure shall apply	1:lus
17	to supplemental proceedings, except where inconsistent with	5.38
18	the provisions of this chapter.	5.39
19	(b) The clerk of the court shall docket a supplemental	1:lus
20	proceeding under both the same case number assigned to the	5.40
21	original petition filed by the assignee pursuant to s. 727.04	5.41
22	and a separate supplemental proceeding number, and shall	
23	assign such supplemental proceeding to the same division and	5.42
24	judge assigned to the main case.	1
25	(c) All pleadings and other papers filed in a	1:1us
26	supplemental proceeding shall contain a ssparate subcaption	5.44
27	and the supplemental proceeding number in addition to the	
20	caption and case number applicable to the main case.	5.45
29	Section 11. Section 727.11, Florida Statutes, is	5.46
30	created to read:	
31	727.11 Notice	1:1us

1	(1) The assignee shall give notice of the assignment	5.47
2	by publication in a newspaper of general circulation published	
3	in the county where the petition is filed and in any other	5.48
4	county or counties where the assignment is required to be	5.49
5	recorded pursuant to s. 727.04(2), once a week for 4	
6	consecutive weeks, the first notice to be published within 10	5.50
7	days after filing of the petition; and by mailing notice to	
	all known creditors within 20 days after filing of the	5.51
9	petition. The notice of the assignment shall include the date	5.52
10	of filing of the petition; the name of the court where the	5.53
11	petition is filed and the case number assigned to the	
12	petition; the last day on which a proof of claim may be served	5.54
13	upon the assignee, to be determined in accordance with s.	5.55
14	727.12(2); and the name and address of the assignor, the	
15	assignee, and the assignee's attorney, if any.	5.56
16	(2) The notice of assignment shall be in substantially	1:1us
17	the following form:	1
18	NOTICE OF ASSIGNMENT	5.59
19	IN THE CIRCUIT COURT	5.60
20	OF THE	5.61
21	CIRCUIT, IN AMD FOR	5.62
22		5.63
23	FLORIDA	5.64
24	IN RE:	1:lus
25	Assignor,	5.66
26	to	1:lus
27	Assignee.	5.68
28	TO CREDITORS AND OTHER INTERESTED PARTIES:	1:lus
29	PLEASE TAKE NOTICE that on a petition	5.72
30	commencing an assignment for the benefit of creditors pursuant	
31	to chapter 727, Florida Statutes, made by	5.73

1	assignor, with principal place of business at	5.74
2	to assignee, whose address is	
3	, was filed on 19	5.75
4	YOU ARE HEREBY further notified that in order to	1:lu#
5	receive any dividend in this proceeding you must file a proof	5.77
6	of claim with the assignee or his attorney on or	
7	before(120 days from the date of the filing of	5.78
*	the petition).	5.79
9	<del></del>	
10	ASSIGNEE	
11	Attorney for assignee (if any):	5.82
12	Address:	1:1us
13	(3) The assignee shall give the assignor and all	5.83
14	creditors not less than 10 days' notice by mail of an	
15	examination of the assignor pursuant to s. 727.08(2).	5.84
16	(4) The assignee shall give the assignor and all	1:1us
17	creditors not less than 20 days' notice by mail of a proposed	6.1
18	sale of assets of the estate other than in the ordinary course	6.3
19	of business, the compromise or settlement of a controversy,	6.4
20	and the payment of fees and expenses to the assignee and to	6.5
21	professional persons employed by the assignee pursuant to s.	
22	727.08(6). Any and all objections to the proposed action must	6.6
23	be filed and served upon the assignee and the assignee's	6.7
24	attorney, if any, not less than 3 days before the date of the	6.8
25	proposed action. The notice shall include a description of	6.9
26	the proposed action to be taken and the date of the proposed	6.10
27	action, and shall set forth the date and place for the hearing	
28	at which any objections shall be heard. If no objections are	6.12
29	timely filed and served, the assignee may take such action as	
30	described in the notice without further order of the court.	6.13
31	SANACE FORMER COMMITTEE AND SECURIOR STATES OF THE SECURIOR STATES O	

1	(5) The assignee shall give the assignor and all	1:lus
2	creditors not less than 20 days' notice by mail of the filing	6.15
3	of his petition for discharge and the final report of receipts	
4	and disbursements pursuant to s. 727.16. The notice shall	6.17
5	include a summary of all receipts and disbursements of the	
6	estate and shall set forth the date and place of the final	6.18
7	hearing.	
	(6) For good cause shown and without notice of	6.19
,	hearing, the court may shorten the notice period or limit the	ļ
10	parties to whom notice need be given, pursuant to subsection	6.20
11	(3) or subsection (4).	1
12	(7) Wherever notice is required to be given under this	6.21
13	chapter and the period of such notice is not specified, the	
14	court shall fix such period of notice as is appropriate in the	6.22
15	particular circumstances.	6.23
16	(8) Wherever notice is required to be given under this	1:105
17	chapter, a certificate of service of such notice shall be	6.24
18	filed with the court.	
19	(9) Wherever notice is not specifically required to be	1:lus
20	given under this chapter, the court in its discretion may	6.26
21	consider motions and grant or deny relief without notice or	
22	hearing.	6.27
23	Section 12. Section 727.12, Florida Statutes, is	6.27
24	created to read:	6.28
25	727.12 Proof of claim	1:lus
26	(1) All claims other than claims of creditors with	6.29
27	liens on assets of the estate, whether contingent, liquidated,	
28	unliquidated, or disputed, which arose prior to the filing	6.30
29	date, must be filed in accordance with the provisions of this	6.31
30	chapter, and any such claim not so filed is barred from any	
31	further recovery against the estate.	6.32

1	(2) Claims shall be filed by delivering the claim to	1:1us
2	the assignee within 120 days from the filing date unless for	6.34
3	cause shown.	
4	[3] Claims shall be in written form, entitled "proof	6.35
5	of claim," setting forth the name and address of the creditor	
6	and the nature and amount of the claim, and executed by the	6.36
7	creditor or the creditor's authorised agent.	6.37
•	(4) When a claim, or an interest in property of the	1:1us
•	assignor securing the claim is based on a writing, the	6.38
10	original or a copy of such writing shall be filed with the	ĺ
22	proof of claim, together with evidence of perfection of any	6.39
12	security interest, if applicable.	6.40
13	(5) A proof of claim, executed and delivered in	1:lus
14	accordance with this section, shall constitute prima facie	6.41
15	evidence of the validity and amount of the claim.	6.42
16	Section 13. Section 727.13, Florida Statutes, is	6.42
17	created to read:	
18	727.13 Objections to claims At any time prior to the	1:148
19	entry of an order approving the assignee's final report, the	6.44
20	assignee or any party in interest may file with the court an	6.45
21	objection to a claim, which objection shall be in writing and	1
22	shall set forth the nature of the objection. A copy of the	6.48
23	objection, together with notice of hearing thereon, shall be	
24	mailed to the creditor at least 20 days prior to the hearing.	6.49
25	All claims properly filed with the assignee and not disallowed	6.50
26	by the court shall constitute all claims entitled to	6.51
27	distribution from the estate.	
28	Section 14. Section 727.14, Florida Statutes, is	6.52
29	created to read:	
30	727.14 Priority of claims Allowed claims shall	l :lus
31	receive dietribution under this chapter in the following order	6.53

1	of priority and, with the exception of subsection (1), on a	6.54
2	pro rata basis:	
3	<ol> <li>Creditors with liens on assets of the estate,</li> </ol>	6.55
4	which liens are duly perfected pursuant to applicable law,	l
5	shall receive the proceeds from the disposition of their	6.56
6	collateral, less the reasonable, necessary expenses of	
7	preserving or disposing of such collateral to the extent of	6.57
•	any benefit to such creditors. If and to the extent that such	6.58
9	proceeds are less than the amount of a creditor's claim or a	ļ
10	creditor's lien is avoided pursuant to s. 727.09(6)(c), such a	6.59
11	creditor shall be deemed to be an unsecured creditor pursuant	6.60
12	to subsection (6) of this section.	l
13	(2) Expenses incurred during the administration of the	1:1us
14	estate, other than those expenses allowable under subsection	6.62
15	(1), including allowed fees and reimbursements of all expenses	1
16	of the assignee and professional persons employed by the	6.64
17	assignee pursuant to s. 727.08(6).	6.65
18	[3] Unsecured claims of governmental units for taxes	1:lus
19	which accrued prior to the filing date.	6.66
20	(4) Claims for wages, salaries, or commissions,	1:100
21	including vacation, severance and sick leave pay, or	6.67
22	contributions to an employee benefit plan earned by the	İ
23	individual within 90 days of the filing date or the cessation	6.68
24	of the assignor's business, whichever occurs first, but only	6.69
25	to the extent of \$2,000.	1
26	(5) Allowed unsecured claims, to the extent of \$900	6.70
27	for each individual, arising from the deposit with the	
28	assignor before the filing date of money in connection with	6.71
29	the purchase, lease, or rental of property or the purchase of	6.72
30	services for personal, family, or household use by such	
31	individuals that were not delivered or provided.	6.73

1	(6) Unsecured claims.	l:lus
2		1
3	If all of the above classes have been paid in full, any	6.75
4	residue shall be paid to the assignor.	1
5	Section 15. Section 727.15, Florida Statutes, is	6.76
6	created to read:	
7	727.15 Resignation or removal of assignee	6.77
•	(1) The court shall remove or replace the assignee on	1:1us
•	application of the assignor, the assignee, any creditor, or on	6.78
ro	its own motion, if the assignee has not executed and filed the	6.79
11	bond required by s. 727.04(2), if the assignee resigns,	6.80
12	refuses, or fails to serve for any reason, or for good cause.	6.81
13	(2) Upon removal, resignation, or death of the	1:lus
4	assignee, the court shall appoint a replacement assignee if	6.82
15	the court deems in its discretion that further administration	6.83
16	of the estate is required. Upon executing and filing a bond	6.84
17	pursuant to s. 727.04(2), the replacement assignee shall	İ
Le	forthwith take possession of the estate and assume his duties	7.1
	as assignee.	
20	(3) Whenever the court shall be satisfied that the	7.2
21	assignes so removed or replaced has fully accounted for and	
22	turned over to the replacement assignee appointed by the court	7.3
23	all of the property of the estate and has filed a report of	7.4
24	all receipts and disbursements during his tenure as assignee,	
25	the court shall enter an order discharging him from all	7.5
26	further duties, liabilities, and responsibilities as assignee	7.6
27	after notice and a hearing.	
28	Section 16. Section 727.16, Florida Statutes, is	7.6
29	created to read:	7.7
30	727.16 Assignee's final report and discharge	7.8
31		l

1	(1) Upon distribution of all assets of the estate, the	1:lus
2	assignee shall petition the court for his discharge upon	7.9
3	notice and a hearing in accordance with s. 727.11(5).	7.10
4	(2) The assignee's final report setting forth all	1:lu <b>s</b>
5	receipts and disbursements of the estate shall be annexed to	7.12
6	the petition for discharge and filed with the court.	7.13
7	(3) Upon approval of the final report, the court shall	1:lus
•	discharge the assignee and release his bond.	7.14
9	(4) The assignee's discharge shall have the effect of	7.15
10	releasing him from any duties, liabilities, and	ļ
11	responsibilities as assignee pursuant to the provisions of the	7.16
12	assignment and this chapter.	7.17
13	Section 17. This act shall take effect July 1, 1987.	7.17
14		l
15	*************************	
16	HOUSE SUMMARY	
17	Eliminates present provisions of law governing general assignments. Provides that it is the intent of the act	
18	to provide a uniform procedure for the administration of	ĺ
19	insolvent estates and to ensure full reporting to creditors and equal distribution of assets according to	
20	priorities as provided for in the act. See bill for details.	
21		
22		
23		
24		
25		Ì
26		
27		l
28		
29		1
30		
31		

BILL NO. SB 808 REVISED: April 30, 1987

DATE: May 18, 1987

Page <u>1</u>

#### SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. 2. 3.	Jones Cochran MTC	Fort Lester	COM JCI	Fav/l amend.
SU	BJECT:		BILL NO. AND	SPONSOR:
	Assignments for Creditors	or the Benefit	SB 808 by Senator Craw	ford

### I. SUMMARY:

### A. Present Situation:

Chapter 727, F.S., governs the general requirements for assignments. Currently, a party may assign all assets which could normally be reached by creditors to a designated person. However, such a transfer must be for the "benefit of creditors." The party who transfers the assets to the assignee must give up all control of the assets. The proceeds of the subsequent liquidation are then distributed to creditors "in equal proportion to their respective demands."

Presently, ch. 727, F.S., is generally silent as to the details concerning assignments for the benefit of creditors. The statute makes no mention of the procedures to be used in creating the assignment, filing the notice, or accounting for the assets.

#### Effect of Proposed Changes:



The bill creates ss. 727.101 - 727.128, F.S., establishing uniform procedures to govern the actions of the assignor, the assignee, the creditors and the courts. Pursuant to the bill, the court's enforcement powers would be delineated, including the method by which an assignee could be dismissed. addition, the authority and responsibilities of the assignee would be defined.

The bill's procedures set forth the method of assignment to the assignee, the accounting of the assignor's assets, and the notice requirements to creditors. The procedures establish both the method by which a creditor is to file or dispute a claim, and the order of priority of competing claims.

The bill, provides standard forms which the assignor may use to help assure that the assignment will not be declared void. Furthermore, the bill explicitly permits any money which remains after the creditors claims are satisfied to be returned to the assignor. Finally, the bill repeals ss. 727.01 -727.08, F.S.

#### II. ECONOMIC IMPACT AND FISCAL NOTE:

### A. Public:

The bill primarily clarifies and updates existing Florida law as it relates to assignments.

#### B. Government:

The additional filing requirements of s. 727.104(2)(b), F.S., may result in additional costs to the Department of State, Division of Corporations.

REVISED: April 30, 1987 BILL NO. SB 808

DATE: May 18, 1987 Page 2

# III. COMMENTS:

Similar to CS/HB 383.

# IV. AMENDMENTS:

#1 by Commerce:
Technical amendment clarifying that "insolvent estates" pertains to
assignments for the benefit of creditors.

(Amerdment No. \_\_\_\_ Adopted \_\_\_ Failed \_\_\_ Date \_\_/\_/\_)

	НВ	DO NOT USE FEL		TYPEWRIT	E IF POSSIBLE
	Senator, VV 21	F 10 10		which was adopt	ved the following ted: which failed:
	Amendment				
	⊙n page		line.	17, 18 , stri	re e
a	all of s	aid lines.		1 is 1 is 1	
р		1 8 4			
С		e e e		: \$104.02	p 4 a/
d					*
е			** * *	15 N ST ST ST ST	26 (46)
		If amendment	is text from	another cill inser	rt:
		Bill No.	Draft No		
	and insert:				
1	32 3 XXXX X X			N. (\$1555) 180 (\$11)	ran ne r rig
2	E18 :25114355E613		• 14 8069 541	**** * ******	
3	e oka serke beka	6 - 1081 26 2001 85 38	* * * ***	(#C) 34 (1#G (#)	( ) ( ) ( ) ( ) ( ) ( ) ( ) ( ) ( ) ( )
4	*** ******			55 K (60K) *Sec.	
5					
6	*** * * * * *	कु स्था कु कु कु	F 5 F		*** ** *** ***
7	28 SE S 2 2 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5			******* ***	
8	Ser cre c	26 NG - 18 NG	2 19 2 V 22 18		** ** * * * * * *
9	8 (9: 8 s		60		
10	:*: :*		an a s	5 <b>+</b> 00 <b>*</b> 0	(4) (4):
11	(*)	200		37 , 40 35	79590 (46) W (41)
12		27. 27.2	, ,	2 8	*
13					6 0 i se
14	7 4		¥ # 241		
15			· · · · · · · · · · · · · · · · · · ·	\$ 100 m	
16		£		eur v	1 m 1 m 1 m 1 m 1 m 1 m 1 m 1 m 1 m 1 m
17	343		Sin	a ** *	N 9
18	S.**S				
19			e a - 2233	5 <b>6 8</b> 56 20 20 30 30 30 30 30 30 30 30 30 30 30 30 30	
20		50 B (80 B (80)		. č#8	* 6 %
			97) (3 <u>9</u> )		:#: £
	(Amendment No.	Add	opted	Failed Da	te)

Sl-81

SENATE COMMITTEE AMENDMENT SB 808 (reported favorably) HB \_\_\_\_ The Committee on.....Commerce....recommended the following amendment which was moved by Senator.....and adopted: and failed: Senate Amendment 2 On page 1...... line 30...... 3 after "estates" 5 б 7 8 If amendment is text from another bill insert: 9 No \_ 10 Bill No. Draft No. With Changes? Yes and insert: 11 under an assignment for benefit of creditors 12 1 7 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 87s0808/com01 CODING: Words stricken are deletions; words underlined are additions. \* Amendment No. 1 taken up by committee: Adopted x \* 

(Amendment No. \_\_\_\_ Adopted \_\_\_ Failed \_\_\_ Date \_/\_/\_)

DATE:

May 22, 1987

Page \_l \_

#### SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR	PEFERENCE	ACTION
1. 2. 3. 4.	Jones Cochran MTC	Fort Lester B	COM	Fav/l_amend. FAV/CS
SUI	BJECT:		BILL NO. AND	SPONSOR:

Assignments for the Benefit of Creditors

CS/SB 808 by Judiciary-Civil and Senator Crawford

#### I. SUMMARY:

#### A. Present Situation:

Chapter 727, F.S., governs the general requirements for assignments. Currently, a party may assign all assets which could normally be reached by creditors to a designated person. However, such a transfer must be for the "benefit of creditors." The party who transfers the assets to the assignee must give up all control of the assets. The proceeds of the subsequent liquidation are then distributed to creditors "in equal proportion to their respective demands."

Presently, ch. 727, F.S., is generally silent as to the details concerning assignments for the benefit of creditors. The statute makes no mention of the procedures to be used in creating the assignment, filing the notice, or accounting for the assets.

### B. Effect of Proposed Changes:

The Committee Substitute for Senate Bill 808 creates ss. 727.101 - 727.128, F.S., establishing uniform procedures to govern the actions of the assignor, the assignee, the creditors and the courts. Pursuant to the bill, the court's enforcement powers would be delineated, including the method by which an assignee could be dismissed. In addition, the authority and responsibilities of the assignee would be defined.

The bill's procedures set forth the method of assignment to the assignee, the accounting of the assignor's assets, and the notice requirements to creditors. The procedures establish both the method by which a creditor is to file or dispute a claim, and the order of priority of competing claims.

The assignee is required to record the original assignment in the public records of the county where the assignor had its principal place of business and certified copy thereof in each county where the assets of an estate are located. However, the assignee is not required to file a certified copy of the assignment with the Secretary of State.

The bill, provides standard forms which the assignor may use to help assure that the assignment will not be declared void. Furthermore, the bill explicitly permits any money which remains after the creditors claims are satisfied to be returned to the assignor. Finally, the bill repeals ss. 727.01 -727.08, F.S.

REVISED:		BILL NO. CS/SB 808
DATE:	May 22, 1987	Page <u>2</u>

# II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The bill primarily clarifies and updates existing Florida law as it relates to assignments.

B. Government:

None.

# III. COMMENTS:

None.

# IV. AMENDMENTS:

None.

(VS-87: File with Secretary of Senate)	BILL NO. SB 808
COMMITTEE ON Judiciary-Civil	
DATE May 21. 1987	FINAL ACTION:
TIME 2:00 - 5:00 P.M.	Favorably withamendments
PLACE Room 1 - Capitol	x Favorably with Committee Substitute
OTHER COMMITTEE REFERENCES:	Unfavorably
(In order shown)	OTHER:Temporarily Passed
	Reconsidered
	Not Considered

# THE VOTE WAS:

			Com Dudl	Am 1 ey	Am. Wein:	sten	Make Dudl	CS ey				
FIN BILL	VAL VOTE	SENATORS						0				
Ave	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
		Crenshaw	₩ _		W		W					
х		Dudley	I		I		I					
		Frank	Т		Т		Т					
		Jenne	Н		Н		н					
x		Weinstein	0		0		0					
х	TX-7-75	VICE CHAIRMAN Grant	U		U		Ŭ					
х		CHAIRMAN Langley	т		Т		T					-
			0		0		0					
			В		В		В					
			J		J		J					-
			E		E		E	ļ				
			С		С	<u> </u>	С	-				
			Т		T	<u> </u>	т	-	<u> </u>	1		
			I		I	<u>L</u> .	I	ļ	<u> </u>	<u> </u>	ļ	-
			0_		0_	-	0		<u> </u>		<u> </u>	1_
	ļ		N	-	N		N			<u> </u>	-	-
				-					-			1
4	0		x	1	x		х					
Aye	Nay	TOTAL	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Ave	Na

(Attach additional page if necessary)

Please Complete:	The key sponsor appeared A Senator appeared Sponsor's aide appeared Other appearance	(	х	)
------------------	---	---	---	---

(VS-87:	(VS-87: File with Secretary of Senate) BILL NC. SB 808											
COMMITT	ree on	Commerce										
DATE	DATE April 30, 1987				FINAL ACTION:							
TIME	2 p.m	. – 5 <u>p.</u> m.			x	Favor	ably	with_	1a	mendm	ents	
PLACE_	Room	"A", S.O.B <u>.</u>			1	Favor	ably	with	Comm 1	ttee	Subst	ıtute
		TEE REFERENCES:				Unfav	orabl	Y				
(In or					OTHER	:	те	mpora	rily	Passe	đ	
Judicia	iry-Ci	vil				-	Re	consi	dered			
T		<u> </u>					No	t Con	sider	ed		
THE VOT	TE WAS	:										
			AM.		Γ .					-		
FIN			Thom p. 1	,								
BILL	VOTE	SENATORS	ln.	30								
λye	Nay		Aye	Nay	Aye	Nav	Ауе	Nay	Aye	Nay	Дуе	Nay
		W.D. Childers	W								L	
		Crenshaw	l I						V.			
<u>x</u>		Deratany	_т_					ļ			ļ	
х		Gordon	Н_						<u> </u>	ļ.,		
		Hair	_ 0									
x		Langley	U					ļ				
х		Scott	T	-				<u> </u>	ļ	_		
х		Thomas						<del> </del>	ļ	+		
		VICE CHAIRMAN Barron	0				ļ	ļ		-		-
x		CHAIRMAN Jennings	В			10	<u> </u>	ļ		<u> </u>		
			J				- T. S	1	ļ	-		
ļ			E	ļ	<u> </u>				ļ	ļ	ļ	
1			C		<u> </u>				<b> </b>	<b> </b>	ļ	
-			Т		<u>.</u>	ļ	<u> </u>				<u> </u>	
			I		<b> </b>	<u> </u>	<u> </u>		<b>!</b>		ļ	
			0	ļ		<b> </b>	ļ		ļ		<u> </u>	-
			N	1_	<u></u>	ļ	-	ļ	-		<u> </u>	1
				ļ	<u> </u>	ļ	<u> </u>	<u> </u>	1	1	<u> </u>	1
						<u> </u>	ļ		ļ	-	<u> </u>	<u> </u>
6*	0	TOTAL	x	4							1	
Aye	Nay				Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
*Pr	esent	at the table with (Attach	addit	ional	page	if ne	ecessa	ary)				
Please	Comp	lete: The key spo A Senator a Sponsor's a Other appea	ppeare	d		( ;	) ) k )					

REVISED: April 30, 1987 BILL NO. SB 808

DATE: <u>April 29, 1987</u> Page <u>1</u>

#### SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR		REFERENCE	ACTION
1. 2. 3.	Jones (19)	Fort	2. 3.	COM JCI	Fav/l amerd.
4. SUI	BJECT:	\$795,559 N	4.	BILL NO. AND	SPONSOR:
	Assignments f of Creditors	or the Benefit		SB 808 by Senator Craw	forà

### I. SUMMARY:

# A. Present Situation:

Chapter 727, F.S., governs the general requirements for assignments. Currently, a party may assign all assets which could normally be reached by creditors to a designated person. However, such a transfer must be for the "benefit of creditors." The party who transfers the assets to the assignee must give up all control of the assets. The proceeds of the subsequent liquidation are then distributed to creditors "in equal proportion to their respective demands." Since s.721.01, F.S., requires "an equal distribution of all the assignor's real and personal property," an assignment which creates a preference for one class of creditors over the rest would result in the assignment being declared void as to all creditors. Creeley v. Dixon, 21 Fls. 413 (1885).

Presently, ch. 727, F.S., is generally silent as to the details concerning assignments for the benefit of creditors. The statute makes no mention of the procedures to be used in creating the assignment, filing the notice, or accounting for the assets.

### B. Effect of Proposed Changes:

The proposed bill would establish uniform procedures to govern the actions of the assignor, the assignee, the creditors and the courts. Pursuant to the bill, the court's enforcement powers would be delineated, including the method by which an assignee could be dismissed. In addition, the authority and responsibilities of the assignee would be defined.

The proposed procedures set forth the method of assignment to the assignee, the accounting of the assignor's assets, and the notice requirements to creditors. The procedures establish both the method by which a creditor is to file or dispute a claim, and the order of priority of competing claims.

The proposed bill, provides standard forms which the assignor may use to help assure that the assignment will not be declared void. Furthermore, the bill explicitly permits any money which remains after the creditors claims are satisfied to be returned to the assignor. Finally, the bill repeals ss. 727.01 -727.08, F.S.

# II. ECONOMIC IMPACT AND FISCAL NOTE:

#### A. Public:

The economic impact upon the public should be insignificant, since the bill primarily clarifies and updates existing Florida law as it relates to assignments.

REVISED: April 30, 1987 BILL NO. SB 808

DATE: April 29, 1987

Page 2

#### B. Government:

The Department of State, Division of Corporations, has suggested that the additional filing requirements of 727.104(2)(b) may result in additional costs to the department. However, at this date the cost significance to the department relating to this filing responsibility is indeterminable.

# III. COMMENTS:

It should be noted that SB 808 provides the judiciary with a wide range of discretion in implementing assignments for the benefit of creditors. From this standpoint, the judicial discretion allowed in this area would be akin to that allowed courts in bankruptcy proceedings.

In addition, certain terms used with SB 808 are not defined within the bill. This creates some uncertainty as to their intended meaning. The phrases in question are "limited periods" in s.727.112(4) and "for good cause" as used in s. 727.118(g).

# IV. AMENDMENTS:

#### #1 by Commerce:

Technical amendment clarifying that "insolvent estates" pertains to assignments for the benefit of creditors.

(Amendment No. \_\_\_\_ Adopted \_\_ Failed \_\_ Date \_\_/\_\_/\_)

DATE:

April 29, 1987

Page 1

#### SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR		REFERENCE	ACTION
1. Jones 5 3 2	Fort	1. 2. 3. 4.	COM JCI	
SUBJECT:			BILL NO. AND	SPONSOR:
Assignments f	or the Benefit		SB 808 by Senator Craw	ford

# I. SUMMARY:

# A. Present Situation:

Chapter 727, F.S., governs the general requirements for assignments. Currently, a party may assign all assets which could normally be reached by creditors to a designated person. However, such a transfer must be for the "benefit of creditors." The party who transfers the assets to the assignee must give up all control of the assets. The proceeds of the subsequent liquidation are then distributed to creditors "in equal proportion to their respective demands." Since s.721.01, F.S., requires "an equal distribution of all the assignor's real and personal property," an assignment which creates a preference for one class of creditors over the rest would result in the assignment being declared void as to all creditors. Creeley v. Dixon, 21 Fls. 413 (1885).

Presently, ch. 727, F.S., is generally silent as to the details concerning assignments for the benefit of creditors. The statute makes no mention of the procedures to be used in creating the assignment, filing the notice, or accounting for the assets.

# B. Effect of Proposed Changes:

The proposed bill would establish uniform procedures to govern the actions of the assignor, the assignee, the creditors and the courts. Pursuant to the bill, the court's enforcement powers would be delineated, including the method by which an assignee could be dismissed. In addition, the authority and responsibilities of the assignee would be defined.

The proposed procedures set forth the method of assignment to the assignee, the accounting of the assignor's assets, and the notice requirements to creditors. The procedures establish both the method by which a creditor is to file or dispute a claim, and the order of priority of competing claims.

The proposed bill, provides standard forms which the assignor may use to help assure that the assignment will not be declared void. Furthermore, the bill explicitly permits any money which remains after the creditors claims are satisfied to be returned to the assignor. Finally, the bill repeals ss. 727.01 -727.08, F.S.

# II. ECONOMIC IMPACT AND FISCAL NOTE:

### A. Public:

The economic impact upon the public should be insignificant, since the bill primarily clarifies and updates existing Florida law as it relates to assignments.

15

REVISED:	 BILL NO.	SB 80
(HVIGED.	BILL NO.	35 0

DATE: April 29, 1987

Page 2

#### B. Government:

The Department of State, Division of Corporations, has suggested that the additional filing requirements of 727.104(2)(b) may result in additional costs to the department. However, at this date the cost significance to the department relating to this filing responsibility is indeterminable.

# III. COMMENTS:

It should be noted that SB 808 provides the judiciary with a wide range of discretion in implementing assignments for the benefit of creditors. From this standpoint, the judicial discretion allowed in this area would be akin to that allowed courts in bankruptcy proceedings.

In addition, certain terms used with SB 808 are not defined within the bill. This creates some uncertainty as to their intended meaning. The phrases in question are "limited periods" in s.727.112(4) and "for good cause" as used in s. 727.118(g).

# IV. AMENDMENTS:

None.

2

3

5

б

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24 25 26

27

28

29

30

31

page

This publication was produced at an are je cost of 1.5 cents per for the information of members of the .slature and the public.

A bill to be entitled An act relating to assignments for the benefit of creditors; repealing ss. 727.01-727.08, F.S., relating to general assignments; creating ss. 727.101-727.128, F.S.; replacing the existing laws relating to general assignments made for the benefit of creditors; providing statutory intent; providing definitions; providing jurisdiction and venue; providing for commencement of proceeding; providing for proceeding against assignee; providing for turning property over to the assignee; providing for duties of assignor and of assignee; providing power of the court; providing actions by assignee and other parties in interest; providing for notice of assignment; providing for proof of claim; providing for objections to claims; providing for priority of claims; providing for resignation or removal of assignee; providing for assignee's final report and discharge;

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

providing an effective date.

Section 1. Section 727.101, Florida Statutes, is created to read:

727.101 Intent of statute.--The intent of this statute is to provide a uniform procedure for the administration of insolvent estates which ensures full reporting to creditors

2

3

4

5

6

7

8

9

10

11 12

13

14

15

16

17

18 19

20

21

22 23

24

25

26

27

28

29

30

31

and equal distribution of assets according to priorities established under this chapter.

Section 2. Section 727.102, Florida Statutes, is created to read:

727.102 Definitions.--As used in this chapter, unless the context requires a different definition, the term;

- (1) "Asset" means a legal or equitable interest of the assignor in property, including anything that may be the subject of ownership, whether real or personal, tangible or intangible, wherever located and by whomever held at the date of the assignment, except property exempt by law from forced sale.
- (2) "Assignee" means an assignee for the benefit of creditors under the provisions of this chapter, which assignee must not be a creditor or an equity security holder or have any interest adverse to the interest of the estate.
- "Assignment" means an assignment for the benefit of creditors made under this chapter.
- "Assignor" means the person or entity that executed and delivered the assignment to the assignee.
- (5) "Court" means the circuit court where the petition is filed in accordance with s. 727.104(2).
- (6) "Creditor" means any person having a claim against the assignor, whether the claim is contingent, liquidated, unliquidated, or disputed.
  - "Estate" means all assets of the assignor,
- "Filing date" means the date upon which the original petition is filed in accordance with s. 727.104(2).
- (9) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation and includes a security interest created by

-	agreement, a judicial frem obtained by regal or equitable
2	process or proceeding, a common-law lien, or a statutory lien.
3	(10) "Liquidation value" means the value in cash
4	obtainable upon a forced sale of assets.
5	(11) "Petition" means the initial document filed with
6	the court, as set forth in s. 727.104(2), establishing the
7	jurisdiction of the court under this chapter.
В	Section 3. Section 727.103, Florida Statutes, is
9	created to read:
10	727.103 Jurisdiction of proceeding and venueA
11	proceeding under this chapter is subject to the order and
12	supervision of the circuit court for the county where the
13	petition is filed in accordance with s. 727.104(2).
14	Section 4. Section 727.104, Florida Statutes, is
15	created to read;
16	727.104 Commencement of proceeding
17	(1)(a) To commence a proceeding under this chapter, an
18	irrevocable assignment and schedules must be made in writing,
19	containing the name and address of the assignor and assignee
20	and providing for an equal distribution of the estate
21	according to the priorities set forth in s. 727.124.
72	(b) The assignment must be in substantially the
23	following form:
24	
25	ASSIGNMENT
26	ASSIGNMENT, made this day of
27	19, between with a principal
28	place of business at
29	hereinafter "Assignor", and, whose
30	address is, hereinafter "Assignee",
31	

WHEREAS, the Assignor has been engaged in the business of

WHEREAS, the Assignor is indebted to creditors, as set forth in Schedule A annexed hereto, is unable to pay its debts as they become due, and is desirous of providing for the payment of its debts, so far as it is possible by an assignment of all its assets for that purpose.

NOW, THEREFORE, the Assignor, in consideration of the Assignee's acceptance of this assignment, and for other good and valuable consideration, hereby grants, assigns, conveys, transfers, and sets over unto the Assignee, its successors and assigns, all assets of the Assignor, except such assets as are exempt by law from levy and sale under an execution, including, but not limited to, all real property, fixtures, goods, stock, inventory, equipment, furniture, furnishings, accounts receivable, bank deposits, cash, promissory notes, cash value and proceeds of insurance policies, claims, and demands belonging to the Assignor, wherever such assets may be located, hereinafter the "estate", as which assets are, to the best knowledge and belief of the Assignor, set forth in Schedule B annexed hereto.

The Assignee shall take possession and administer the estate in accordance with the provisions of Chapter 727,

Florida Statutes, and shall liquidate the assets of the estate with reasonable dispatch and convert the estate into money, collect all claims and demands hereby assigned as may be collectible, and pay and discharge all reasonable expenses, costs, and disbursements in connection with the execution and administration of this assignment from the proceeds of such liquidations and collections.

The Assignee shall then pay and discharge in full, to the extent that funds are available in the estate after payment of administrative expenses, costs, and disbursements, all debts and liabilities now due from the Assignor, including interest on such debts and liabilities. If funds of the estate are not sufficient to pay such debts and liabilities in full, the Assignee shall pay from funds of the estate such debts and liabilities, pro rata and in proportion to their priority as set forth in Section 727.124, Florida Statutes.

In the event that all debts and liabilities are paid in full, the Assignee shall return any funds of the estate that remain to the Assignor.

Assignor hereby appoints the Assignee its true and lawful attorney, irrevocably, with full power and authority to do all acts and things that may be necessary to execute the Assignment hereby created; to demand and recover from all persons all assets of the estate; to sue for the recovery of such assets; to execute, acknowledge, and deliver all necessary deeds, instruments, and conveyances; and to appoint one or more attorneys under the Assignee to assist it in carrying out its duties hereunder.

The Assignor hereby authorizes the Assignee to sign the name of the Assignor to any check, draft, promissory note, or other instrument in writing which is payable to the order of the Assignor, or to sign the name of the Assignor to any instrument in writing, whenever it is necessary to do so to carry out the purpose of this Assignment.

The Assignee hereby accepts the trust created by the Assignment and agrees with the Assignor that the Assignee will

1	faithfully and without delay carry out its duties under the
2	Assignment.
3	***************************************
4	Assignor
5	
6	Assignee
7	STATE OF FLORIDA
8	COUNTY OF SS:
9	The foregoing Assignment was acknowleded before me this
10	day of, 19, by
11	as Assignor, and by as Assignee, for
12	the purposes therein expressed.
13	***************************************
14	Notary Public
15	My Commission Expires:
۱6	
17	(c) The assignment must have annexed thereto as
18	Schedule A a true list of all of the assignor's known
اوا	creditors, their mailing addresses, the amounts and nature of
20	their claims, and whether their claims are disputed; and as
21	Schedule B a true list of all assets of the estate, including
22	the estimated liquidation values of the assets, their
23	locations, and, if real property, a legal description thereof,
24	as of the date of the assignment.
25	(d) The schedules must be in substantially the
26	following form:
27	
28	SCHEDULE A - LIST OF CREDITORS
29	l. List all secured creditors showing:
30	Whether or
31	Name Address Amount Collateral not disputed

1	<ol><li>List all wages owed showing:</li></ol>
2	Whether or
3	Name Address Amount not disputed
4	<ol><li>List all consumer deposits showing:</li></ol>
5	Whether or
6	Name Address Amount not disputed
7	4. List all taxes owed showing:
8	Whether or
9	Name Address Amount not disputed
10	<ol><li>List all unsecured claims owed showing:</li></ol>
11	Whether or
12	Name Address Amount not disputed
13	6. List all owners or shareholders showing:
14	Name Address Percentage of Ownership
15	
16	SCHEDULE B - LIST OF ASSETS
17	List each category of assets and, for each, give the
18	approximate value obtainable for the asset on the date of
19	Assignment and the address where the asset is located.
20	1. Nonexempt property:
21	Description and Liquidation Value
22	Location at Date of Assignment
23	a. Legal description and street address of real estate,
24	including leasehold interests:
25	b. Fixtures:
26	c. Cash and bank accounts:
27	d. Inventory:
28	e. Accounts receivable:
29	f. Equipment:
30	g. Prepaid expenses (including deposits, insurance, rents,
31	and utilities):

h. Other (including loans to third parties, claims, and choses in action):

2. Exempt Property:

Description and

Liquidation Value

Location

at Date of Assignment

5 6 7

8

10

111

12

13

15

16 l

17

18

19

20

21

22

23 l

2**4** 25

26

27

28 29

30

11

2

3

4

(d) The assignment and schedules must be duly verified upon oath by the assignor and accepted by the assignee under oath.

- (2) Within 10 days after delivery of the assignment to the assignee, the assignee shall:
- (a) Record the original assignment in the public records of the county in which the assignor had its principal place of business and shall thereafter promptly record a certified copy of the assignment in each county where assets of the estate are located;
- (b) File a certified copy of the assignment in the office of the Secretary of State; and
- (c) File in the office of the clerk of the court in the county of the assignor's place of business if it has one, in the county of the assignor's chief executive office if it has more than one place of business, or in the county of the assignor's residence if the assignor is an individual not engaged in business, in accordance with the procedures for filing a complaint as set forth in the Florida Rules of Civil Procedure, a petition setting forth the name and address of the assignor; the name and address of the assignee; a copy of the assignment, together with Schedules A and B; and a request that the court fix the amount of the assignee's bond to be filed with the clerk of the court. This bond is subject to reconsideration upon the motion of any party in interest after

3

5 l

6

8

10

11

12

13

14

15

16

17

18

19

20

21 22

23

24

25

26

27

28

29

1 notice and hearing. The bond must be payable to the clerk of the court, in an amount not less than double the liquidation value of the assets of the estate as set forth in Schedule B, conditioned upon the assignee's faithful discharge of its duties. Within 10 days after the court enters an order setting the amount of such bond, the assignee shall file the bond with the clerk of the court, who shall approve the bond.

Section 5. Section 727.106, Florida Statutes, is 9 created to read:

727.106 Proceeding against assignee. -- A proceeding may not be commenced against the assignee except as provided in this chapter, but nothing contained in this chapter affects any action or proceeding by a governmental unit to enforce its police or regulatory power. Except in the case of a secured creditor enforcing its rights in collateral under chapter 679, there may be no levy, execution, attachment, or the like in respect of any judgment against assets of the estate, other than real property, in the possession, custody, or control of the assignee.

Section 6. Section 727.108, Florida Statutes, is created to read:

727.108 Turnover of assets of estate. -- Any person or entity, other than a creditor, that is in possession, custody, or control of assets of the estate shall, upon notice by the assignee of the assignment proceeding, promptly turn such assets over to the assignee or its duly authorized representative.

Section 7. Section 727.11, Florida Statutes, is created to read:

727.11 Duties of assignor. -- The assignor shall:

- Assist the assignee in the administration of the estate and comply with all orders of the court;
- (2) Upon delivery of the assignment to the assignee, deliver to the assignee all assets of the estate in the assigner's possession, custody, or control, including, but not limited to, all accounts, books, papers, records, and other documents; and
- (3) Within 30 days after the filing date, submit to examination by the assignee, under oath, concerning the acts, conduct, assets, liabilities, and financial condition of the assignor or any matter related to the assignee's administration of the estate.
- Section 8. Section 727.112, Florida Statutes, is created to read:
  - 727.112 Duties of assignee. -- The assignee shall:
- Collect and reduce to money the assets of the estate, whether by suit in any court of competent jurisdiction or by public or private sale;
- (2) Within 30 days after the filing date, examine the assignor, under oath, concerning the acts, conduct, assets, liabilities, and financial condition of the assignor or any matter related to the assignee's administration of the estate, unless excused by the court for good cause shown;
- (3) Give notice to creditors of all matters concerning the administration of the estate, pursuant to the provisions of 5. 727.118:
- (4) Conduct the business of the assignor for limited periods, if in the best interest of the estate, upon authorization of the court;

31

1	(5) To the extent reasonable and necessary, pay
2	administrative expenses of the estate, subject, however, to s.
3	727.124(1);
4	(6) To the extent necessary, employ at the expense of
5	the estate one or more appraisers, auctioneers, accountants,
6	attorneys, or other professional persons to assist the
7	assignee in carrying out its duties under this chapter;
8	(7) Keep regular accounts and furnish such information
9	concerning the estate as may be reasonably requested by
10	creditors or other parties in interest;
11	(8) File with the court an interim report of receipts
12	and disbursements within 6 months after the filing date,
13	unless excused by the court or unless the estate has been
14	sooner distributed in full;
15	(9) Examine the validity and priority of all claims
16	against the estate;
17	(10) Abandon assets to duly perfected secured or lien
18	creditors, if, after due investigation, it determines that the
19	estate has no equity in such assets or such assets are
20	burdensome to the estate or are of inconsequential value and
21	benefit to the estate;
22	(11) Pay dividends and secured or priority claims as
23	often as is compatible with the best interest of the estate
24	and close the estate as expeditiously as possible; and
25	(12) File with the court a final report of all
26	receipts and disbursements and file an application for a
27	discharge pursuant to the provisions of s. 727.128.
28	Section 9. Section 727.114, Florida Statutes, is
29	created to read:

(1) Enforce all provisions of this chapter;

727.114 Power of the court, -- The court has power to:

2

3

4

5

7

8

9

10

11

13 14

15 16

17

18

19

20

21

22

23

24

25

26

27

28 29

30

- (2) Set, approve, or reconsider the amount of the assignee's bond:
- (3) Authorize the business of the assignor to be conducted for limited periods by the assignee, if in the best interest of the estate:
- (4) Allow or disallow claims against the estate and determine their priority;
- (5) Determine any claims of exemption by the assignor, if disputed;
- (6) Hear and determine any of the following actions brought by the assignee, which the assignee is hereby empowered to maintain:
- (a) To enforce the turnover of assets of the estate pursuant to s. 727.108;
- (b) To determine the validity, priority, and extent of a lien or other interest in assets of the estate, or to subordinate or avoid an unperfected security interest pursuant to the assignee's rights as a lien creditor under s. 679.301; and
- (c) To avoid any conveyances or transfer void or voidable by law;
- (7) Approve the assignee's final report and interim and final distributions to creditors:
- (8) Approve reasonable fees and the reimbursement of expenses for the assignee and all professional persons retained by the assignee, upon objection of a party in interest or upon the court's own motion;
- (9) Hear and determine any motion brought by a party in interest or by the court to close the estate after the passage of 1 year from the date of filing of the petition;

(10) Discharge the assignee and its surety from 1 2 liability upon matters included in the assignee's final 3 report; (11) Reopen an estate for cause shown; 4 (12) Punish by contempt any failure to comply with the 5 6 provisions of this chapter or any order of the court made 7 pursuant to this chapter; and 8 (13) Exercise such other and further powers as are 9 necessary to enforce or carry out the provisions of this 10 chapter. Section 10. Section 727.116, Florida Statutes, is 11 12 created to read: 13 727.116 Actions by assignee and other parties in 14 interest --15 (1) All matters requiring court authorization under 16 this chapter must be brought by motion, except for the 17 following matters, which must be brought by supplemental 18 proceeding, as provided in subsection (2): 19 (a) An action by the assignee to recover money or other assets of the estate; 20 21 (b) An action by the assignee to determine the 22 validity, priority, or extent of a lien or other interest in 23 property or to subordinate or avoid an unperfected security 24 interest under s. 727 114(6)(b); and 25 (c) An action by the assignee to avoid any conveyance 26 or transfer void or voidable by law under s. 727.114(6)(c). 27 (2) A supplemental proceeding is an action of a type 28 designated in paragraph (a), paragraph (b), or paragraph (c) 29 of subsection (1) and must be brought as follows:

- - -

- (a) The Florida Rules of Civil Procedure apply to supplemental proceedings, except when inconsistent with the provisions of this chapter.
- (b) The clerk of the court shall docket a supplemental proceeding under both the same case number assigned to the original petition filed by the assignee pursuant to s. 727.104 and a separate supplemental proceeding number; and he shall assign such supplemental proceeding to the same division and judge then assigned to the main case.
- (c) All pleadings and other papers filed in a supplemental proceeding must contain a separate subcaption and the supplemental proceeding number in addition to the caption and case number applicable to the main case.
- Section 11. Section 727.118, Florida Statutes, is created to read:

727.118 Notice of assignment.--

(1) The assignee shall give notice of the assignment by publication in a newspaper of general circulation published in the county where the petition is filed and in any other county or counties where the assignment is required to be recorded pursuant to s. 727.104(2), once a week for 4 consecutive weeks, the first notice to be published within 10 days after filing of the petition; and by mailing notice to all known creditors of the assignor within 20 days after filing of the petition. The notice of the assignment must include the date of filing of the petition; the name of the court where the petition is filed and the case number assigned to the petition; the last day on which a proof of claim may be served upon the assignee, to be determined in accordance with s. 727.12(2); and the name and address of the assignor, the assignee, and the assignee's attorney, if any.

1	(2) The notice of assignment must be in substantially						
2	the following form:						
3							
4	NOTICE OF ASSIGNMENT						
5	IN THE CIRCUIT COURT						
6	OF THE						
7	CIRCUIT, IN AND FOR						
8	COUNTY,						
9	FLORIDA						
10	IN RE:						
11	Assignor,						
12	to						
13	Assignee.						
14	TO CREDITORS AND OTHER INTERESTED PARTIES:						
15	PLEASE TAKE NOTICE that on, a petition						
16	commencing an assignment for the benefit of creditors pursuant						
17	to Chapter 727, Florida Statutes, made by						
18	Assignor, with principal place of business at,						
19	to Assignee, whose address is						
20	, was filed on, 19						
21	YOU ARE HEREBY further notified that, in order to						
22	receive any dividend in this proceeding, you must file a Proof						
23	of Claim with the Assignee or its attorney on or						
24	before(120 days from the date of the filing of						
25	the petition).						
26							
27	Assignee						
28	Attorney for Assignee (if any):						
29	Address:						
30							
31							

- 1 creditors not less than 10 days' notice by mail of an 2 examination of the assignor pursuant to s. 727.112(2).
- 3
- 5 6
- 7 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16 17
- 18
- 19
- 20
- 21 22
- 23
- 24 25
- 26 27
- 28
- 29
- 30

(4) The assignee shall give the assignor and all

(3) The assignee shall give the assignor and all

- creditors not less than 20 days' notice by mail of a proposed sale of assets of the estate other than in the ordinary course of business, the compromise or settlement of a controversy, and the payment of fees and expenses to the assignee and to professional persons employed by the assignee pursuant to s. 727.112(6). All objections to the proposed action must be filed and served upon the assignee and the assignee's attorney, if any, not less than 3 days before the date of the proposed action. The notice must include a description of the proposed action to be taken and the date of the proposed action and must set forth the date and place for the hearing at which any objections will be heard. If no objections are timely filed and served, the assignee may take such action as described in the notice without further order of the court.
- (5) The assignee shall give the assignor and all creditors not less than 20 days' notice by mail of the filing of its petition for discharge and the final report of receipts and disbursements pursuant to s. 727.128. The notice must include a summary of all receipts and disbursements of the estate and must set forth the date and place of the final hearing.
- For good cause shown and without notice or hearing, the court may shorten the notice period, or limit the parties to whom notice must be given, pursuant to subsection (3) or subsection (4).
- (7) Whenever notice is required to be given under this chapter and the period of the notice is not specified, the

court shall fix such period of notice as is appropriate in the particular circumstances.

- (8) Whenever notice is required to be given under this chapter, a certificate of service of such notice must be filed with the court.
- (9) Whenever notice is not specifically required to be given under this chapter, the court, in its discretion, may consider motions and grant or deny relief without notice or hearing.
- Section 12. Section 727.12, Florida Statutes, is created to read:

727.12 Proof of claim. --

- (1) All claims, other than claims of creditors with liens on assets of the estate, whether contingent, liquidated, unliquidated, or disputed, which arose prior to the filing date must be filed in accordance with the provisions of this chapter; and any such claim not so filed is barred from any further recovery against the estate.
- (2) A claim must be filed by delivering the claim to the assignee within 120 days from the filing date unless for cause shown.
- (3) A claim must be in written form entitled "Proof of Claim," setting forth the name and address of the creditor and the nature and amount of the claim, and must be executed by the creditor or the creditor's authorized agent.
- (4) When a claim, or an interest in property of the assignor securing the claim is based on a writing, the original or a copy of such writing must be filed with the proof of claim, together with evidence of perfection of any security interest, if applicable.

3 |

(5) A proof of claim, executed and delivered in accordance with this section, constitutes prima facie evidence of the validity and amount of the claim.

Section 13. Section 727.122, Florida Statutes, is created to read:

727.122 Objections to claims.—At any time prior to the entry of an order approving the assignee's final report, the assignee or any party in interest may file with the court an objection to a claim, which objection must be in writing and must set forth the nature of the objection. A copy of the objection, together with notice of hearing thereon, must be mailed to the creditor at least 20 days prior to the hearing. All claims properly filed with the assignee and not disallowed by the court constitute all claims entitled to distribution from the estate.

Section 14. Section 727.124, Florida Statutes, is created to read:

- 727.124 Priority of claims.—Allowed claims must receive distribution under this chapter in the following order of priority and, with the exception of claims under subsection (1), pro rata within a class:
- (1) Creditors with liens on assets of the estate, which liens are duly perfected pursuant to applicable law, shall receive the proceeds from the disposition of their collateral, less the reasonable, necessary expenses of preserving or disposing of such collateral to the extent of any benefit to such creditors. If and to the extent that such proceeds are less than the amount of a creditor's claim or a creditor's lien is avoided pursuant to s. 727.114(6)(c), such a creditor is deemed to be an unsecured creditor pursuant to subsection (6) of this section.

- (2) Expenses incurred during the administration of the estate, other than expenses allowable under subsection (1), including allowed fees and reimbursements of all expenses of the assignee and professional persons employed by the assignee pursuant to s. 727.112(6).
- (3) Unsecured claims of governmental units for taxes that accrued prior to the filing date.
- (4) Claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay, or contributions to an employee benefit plan earned by the individual within 90 days of the filing date or the cessation of the assignor's business, whichever occurs first, but only to the extent of \$2,000.
- (5) Allowed unsecured claims, to the extent of \$900 for each individual, arising from the deposit with the assignor before the filing date of money in connection with the purchase, lease, or rental of property or the purchase of services for personal, family, or household use by such individuals which were not delivered or provided.
  - (6) Unsecured claims.

If all of the foregoing classes have been paid in full, any residue must be paid to the assignor.

Section 15. Section 727.126, Florida Statutes, is created to read:

- 727.126 Resignation or removal of assignee.--
- (1) The court shall remove or replace the assignee on application of the assignor, the assignee, any creditor, or on its own motion, if the assignee has not executed and filed the bond required by s. 727.104(2), if the assignee resigns or refuses or fails to serve for any reason, or for good cause.

9

10

11

12 13

14 15

16 17

18

19

20

21

22

23

24

25

26 27

28

29

30

(2) Upon removal, resignation, or death of the
assignee, the court shall appoint a replacement assignee if
the court determines, in its discretion, that further
administration of the estate is required. Upon executing and
filing a bond pursuant to s. 727.104(2), the replacement
assignee shall forthwith take possession of the estate and
assume its duties as assignee.

- (3) Whenever the court is satisfied that the assignee so removed or replaced has fully accounted for and turned over to the replacement assignee appointed by the court all property of the estate and has filed a report of all receipts and disbursements during its tenure as assignee, the court shall enter, after notice and a hearing, an order discharging the assignee from all further duties, liabilities, and responsibilities as assignee.
- Section 16. Section 727.128, Florida Statutes, is created to read:
  - 727.128 Assignee's final report and discharge .--
- (1) Upon distribution of all assets of the estate, the assignee shall petition the court for its discharge upon notice and a hearing in accordance with s. 727.118(3).
- (2) The assignee's final report setting forth all receipts and disbursements of the estate must be annexed to the petition for discharge and filed with the court.
- (3) Upon approval of the final report, the court shall discharge the assignee and release its bond.
- (4) The assignee's discharge has the effect of releasing it from any duties, liabilities, and responsibilities as assignee pursuant to the provisions of the assignment and this chapter.

Section 17. Sections 727.01, 727.02, 727.03, 727.04, 727.05, 727.06, 727.07, and 727.08, Florida Statutes, are hereby repealed. Section 18. This act shall take effect January 1, 1988. θ 1.1 \*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\* SENATE SUMMARY Repeals existing provisions of ch. 727, F.S., relating to general assignments for the benefit of creditors, and replaces them with new provisions providing a uniform procedure for the administration of insolvent estates, including the establishment of a priority for claims. See bill for details. 

3

Δ

5

7

8

9

10

11

12

13

14

16

17

18

20

21

22

23 24

27

28

29

30

31

25 26 26 A bill to be entitled

By the Committee on Judiciary-Civil and Senators Crawford and Kiser

An act relating to assignments for the benefit of creditors, repealing ss. 727.01-727 08, F.S., relating to general assignments; creating ss. 727.101-727.128, F.S.; replacing the existing laws relating to general assignments made for the benefit of creditors; providing statutory intent, providing definitions; providing jurisdiction and venue, providing for commencement of proceeding; providing for proceeding against assignee; providing for turning property over to the assignee; providing for duties of assignor and of assignee; providing power of the court; providing actions by assignee and other parties in interest, providing for notice of assignment; providing for proof of claim; providing for objections to claims; providing for priority of claims; providing for resignation or removal of assignee; providing for assignee's final report and discharge; providing an effective date

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

Section 1. Section 727.101, Florida Statutes, is created to read:

727.101 Intent of statute. —The intent of this statute is to provide a uniform procedure for the administration of insolvent estates under an assignment for benefit of creditors which ensures full reporting to creditors and equal

distribution of assets according to priorities established under this chapter

1

2

3

4

5

б

7

8

9

10

11

12

13

14

16 17

18

19

20

21

22

23

24

25

26

27

28

29

301

31

Section 2. Section 727.102, Florida Statutes, is created to read:

727.102 Definitions.--As used in this chapter, unless the context requires a different definition, the term:

- (1) "Asset" means a legal or equitable interest of the assignor in property, including anything that may be the subject of ownership, whether real or personal, tangible or intangible, wherever located and by whomever held at the date of the assignment, except property exempt by law from forced sale.
- (2) "Assignee" means an assignee for the benefit of creditors under the provisions of this chapter, which assignee must not be a creditor or an equity security holder or have any interest adverse to the interest of the estate.
- (3) "Assignment" means an assignment for the benefit of creditors made under this chapter.
- (4) "Assignor" means the person or entity that executed and delivered the assignment to the assignee.
- (5) "Court" means the circuit court where the petition is filed in accordance with s. 727.104(2).
- (6) "Creditor" means any person having a claim against the assignor, whether the claim is contingent, liquidated, unliquidated, or disputed
  - (7) "Estate" means all assets of the assignor.
- (8) "Filing date" means the date upon which the original petition is filed in accordance with s. 727.104(2).
- (9) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation and includes a security interest created by

agreement, a judicial lien obtained by legal or equitable process or proceeding, a common-law lien, or a statutory lien.

- (10) "Liquidation value" means the value in cash obtainable upon a forced sale of assets.
- (11) "Petition" means the initial document filed with the court, as set forth in s. 727 104(2), establishing the nurisdiction of the court under this chapter.

Section 3. Section 727.103, Florida Statutes, is created to read:

727.103 Jurisdiction of proceeding and venue.--A proceeding under this chapter is subject to the order and supervision of the circuit court for the county where the petition is filed in accordance with s. 727.104(2).

Section 4. Section 727.104, Florida Statutes, is created to read:

727.104 Commencement of proceeding --

- (1)(a) To commence a proceeding under this chapter, an irrevocable assignment and schedules must be made in writing, containing the name and address of the assignor and assignee and providing for an equal distribution of the estate according to the priorities set forth in s. 727.124.
- (b) The assignment must be in substantially the following form:

1 2

б

в 

#### **ASSIGNMENT**

WHEREAS, the Assignor has been engaged in the business of ....

WHEREAS, the Assignor is indebted to creditors, as set forth in Schedule A annexed hereto, is unable to pay its debts as they become due, and is desirous of providing for the payment of its debts, so far as it is possible by an assignment of all its assets for that purpose.

NOW, THEREFORE, the Assignor, in consideration of the Assignee's acceptance of this assignment, and for other good and valuable consideration, hereby grants, assigns, conveys, transfers, and sets over unto the Assignee, its successors and assigns, all assets of the Assignor, except such assets as are exempt by law from levy and sale under an execution, including, but not limited to, all real property, fixtures, goods, stock, inventory, equipment, furniture, furnishings, accounts receivable, bank deposits, cash, promissory notes, cash value and proceeds of insurance policies, claims, and demands belonging to the Assignor, wherever such assets may be located, hereinafter the "estate", as which assets are, to the best knowledge and belief of the Assignor, set forth in Schedule B annexed hereto.

The Assignee shall take possession and administer the estate in accordance with the provisions of Chapter 727, Florida Statutes, and shall liquidate the assets of the estate with reasonable dispatch and convert the estate into money, collect all claims and demands hereby assigned as may be collectible, and pay and discharge all reasonable expenses, costs, and disbursements in connection with the execution and administration of this assignment from the proceeds of such liquidations and collections.

The Assignee shall then pay and discharge in full, to the extent that funds are available in the estate after payment of administrative expenses, costs, and dispursements, all debts and liabilities now due from the Assignor, including interest on such debts and liabilities. If funds of the estate are not sufficient to pay such debts and liabilities in full, the Assignee shall pay from funds of the estate such debts and liabilities, pro rata and in proportion to their priority as set forth in Section 727.124, Florida Statutes.

In the event that all debts and liabilities are paid in full, the Assignee shall return any funds of the estate that remain to the Assignor.

To accomplish the purposes of this Assignment, the Assignor hereby appoints the Assignee its true and lawful attorney, irrevocably, with full power and authority to do all acts and things that may be necessary to execute the Assignment hereby created, to demand and recover from all persons all assets of the estate, to sue for the recovery of such assets; to execute, acknowledge, and deliver all necessary deeds, instruments, and conveyances; and to appoint one or more attorneys under the Assignee to assist it in carrying out its duties hereunder.

The Assignor hereby authorizes the Assignee to sign the name of the Assignor to any check, draft, promissory note, or other instrument in writing which is payable to the order of the Assignor, or to sign the name of the Assignor to any instrument in writing, whenever it is necessary to do so to carry out the purpose of this Assignment.

The Assignee hereby accepts the trust created by the Assignment and agrees with the Assignor that the Assignee will

1	faithfully and without delay carry out its duties under the							
2	Assignment.							
3								
4	Assignor							
5								
6	Assignee							
7	STATE OF FLORIDA							
8	COUNTY OF SS:							
9	The foregoing Assignment was acknowleged before me this							
10	day of, 19, by,							
11	as Assignor, and by, as Assignee, for							
12	the purposes therein expressed.							
13	***************************************							
14	Notary Public							
15	My Commission Expires:							
16								
17	(c) The assignment must have annexed thereto as							
18	Schedule A a true list of all of the assignor's known							
19	creditors, their mailing addresses, the amounts and nature of							
20	their claims, and whether their claims are disputed; and as							
21	Schedule B a true list of all assets of the estate, including							
22	the estimated liquidation values of the assets, their							
23	locations, and, if real property, a legal description thereof,							
24	as of the date of the assignment.							
25	(d) The schedules must be in substantially the							
26	following form:							
27								
28	SCHEDULE A - LIST OF CREDITORS							
29	<ol> <li>List all secured creditors showing:</li> </ol>							
30	Whether or							
31	Name Address Amount Collateral not disputed							

1 2. List all wages owed showing 2 Whether or Address. Amount 3 Name not disputed 4 List all consumer deposits showing 5 Whether or 6 Name Address Amount not disputed 7 4. List all taxes owed showing 8 Whether or 9 Name Address Amount not disputed 5. List all unsecured claims owed showing 10 11 Whether or 12 Name Address Amount not disputed 13 List all owners or shareholders showing: 14 Address Percentage of Ownership Name 15 16 SCHEDULE B - LIST OF ASSETS 17 List each category of assets and, for each, give the 18 approximate value obtainable for the asset on the date of 19 Assignment and the address where the asset is located 20 Nonexempt property: Liquidation Value 21 Description and 22 at Date of Assignment Location 23 Legal description and street address of real estate, 24 including leasehold interests 25 b. Fixtures: 26 Cash and bank accounts: c. 27 d. Inventory. 28 Accounts receivable. 29 f. Equipment: Prepaid expenses (including deposits, insurance, rents, 30 31 and utilities):

h. Other (including loans to third parties, claims, and choses in action):

2. Exempt Property:

Description and

Liquidation Value

Location

at Date of Assignment

(d) The assignment and schedules must be duly verified upon oath by the assignor and accepted by the assignee under oath.

- (2) Within 10 days after delivery of the assignment to the assignee, the assignee shall:
- (a) Record the original assignment in the public records of the county in which the assignor had its principal place of business and shall thereafter promptly record a certified copy of the assignment in each county where assets of the estate are located; and
- the county of the assignor's place of business if it has one, in the county of the assignor's chief executive office if it has more than one place of business, or in the county of the assignor is an individual not engaged in business, in accordance with the procedures for filing a complaint as set forth in the Florida Rules of Civil Procedure, a petition setting forth the name and address of the assignor; the name and address of the assignment, together with Schedules A and B; and a request that the court fix the amount of the assignee's bond to be filed with the clerk of the court. This bond is subject to reconsideration upon the motion of any party in interest after notice and hearing. The bond must be payable to the clerk of the court, in an amount not less than double the liquidation

value of the assets of the estate as set forth in Schedule B, conditioned upon the assignee's faithful discharge of its duties. Within 10 days after the court enters an order setting the amount of such bond, the assignee shall file the bond with the clerk of the court, who shall approve the bond.

Section 5. Section 727.106, Florida Statutes, is created to read:

 727.106 Proceeding against assignee.—A proceeding may not be commenced against the assignee except as provided in this chapter, but nothing contained in this chapter affects any action or proceeding by a governmental unit to enforce its police or regulatory power. Except in the case of a secured creditor enforcing its rights in collateral under chapter 679, there may be no levy, execution, attachment, or the like in respect of any judgment against assets of the estate, other than real property, in the possession, custody, or control of the assignee.

Section 6. Section 727.108, Florida Statutes, is created to read:

727.108 Turnover of assets of estate. -- Any person or entity, other than a creditor, that is in possession, custody, or control of assets of the estate shall, upon notice by the assignee of the assignment proceeding, promptly turn such assets over to the assignee or its duly authorized representative.

Section 7. Section 727.11, Florida Statutes, is created to read:

727.11 Duties of assignor. -- The assignor shall.

(1) Assist the assignee in the administration of the estate and comply with all orders of the court;

2 3

4

5

8

9

11

12

13

15

16 17

18

19 20

21

22

24

25 26

26 27

28

29

30

31

(2) Upon delivery of the assignment to the assignee, deliver to the assignee all assets of the estate in the assigner's possession, custody, or control, including, but not limited to, all accounts, books, papers, records, and other documents; and

(3) Within 30 days after the filing date, submit to examination by the assignee, under oath, concerning the acts, conduct, assets, liabilities, and financial condition of the assignor or any matter related to the assignee's administration of the estate

Section 8. Section 727.112, Florida Statutes, is created to read:

727.112 Duties of assignee. -- The assignee shall:

- Collect and reduce to money the assets of the estate, whether by suit in any court of competent jurisdiction or by public or private sale;
- (2) Within 30 days after the filing date, examine the assignor, under oath, concerning the acts, conduct, assets, liabilities, and financial condition of the assignor or any matter related to the assignee's administration of the estate, unless excused by the court for good cause shown,
- (3) Give notice to creditors of all matters concerning the administration of the estate, pursuant to the provisions of s. 727.118:
- (4) Conduct the business of the assignor for limited periods, if in the best interest of the estate, upon authorization of the court;
- (5) To the extent reasonable and necessary, pay administrative expenses of the estate, subject, however, to s. 727.124(1);

(6) To the extent necessary, employ at the expense of the estate one or more appraisers, auctioneers, accountants, attorneys, or other professional persons to assist the assignee in carrying out its duties under this chapter;

- (7) Keep regular accounts and furnish such information concerning the estate as may be reasonably requested by creditors or other parties in interest;
- (8) File with the court an interim report of receipts and disbursements within 6 months after the filing date, unless excused by the court or unless the estate has been sooner distributed in full:
- (9) Examine the validity and priority of all claims against the estate;
- (10) Abandon assets to duly perfected secured or lien creditors, if, after due investigation, it determines that the estate has no equity in such assets or such assets are burdensome to the estate or are of inconsequential value and benefit to the estate.
- (11) Pay dividends and secured or priority claims as often as is compatible with the best interest of the estate and close the estate as expeditiously as possible, and
- (12) File with the court a final report of all receipts and disbursements and file an application for a discharge pursuant to the provisions of s. 727.128.
- Section 9. Section 727.114, Florida Statutes, is created to read:
  - 727.114 Power of the court. -- The court has power to:
  - (1) Enforce all provisions of this chapter;
- (2) Set, approve, or reconsider the amount of the assignee's bond;

30 31

2

3

4

6

7

8

9

10

11 12

13

14

15

1.6

17 18

19 20

21

22

24

25

26

27

(3) Authorize the business of the assignor to be conducted for limited periods by the assignee, if in the best interest of the estate:

11

2

3

Δ

5

6

7

8

10

12

13

14

15

16

17

18

19

20

21

22

24 25

26

27

28

29

- (4) Allow or disallow claims against the estate and determine their priority;
- (5) Determine any claims of exemption by the assignor, if disputed;
- (6) Hear and determine any of the following actions brought by the assignee, which the assignee is hereby empowered to maintain:
- (a) To enforce the turnover of assets of the estate pursuant to s. 727.108;
- (b) To determine the validity, priority, and extent of a lien or other interest in assets of the estate, or to subordinate or avoid an unperfected security interest pursuant to the assignee's rights as a lien creditor under s. 679.301; and
- (c) To avoid any conveyances or transfer void or voidable by law;
- (7) Approve the assignee's final report and interim and final distributions to creditors:
- (8) Approve reasonable fees and the reimbursement of expenses for the assignee and all professional persons retained by the assignee, upon objection of a party in interest or upon the court's own motion;
- (9) Hear and determine any motion brought by a party in interest or by the court to close the estate after the passage of 1 year from the date of filing of the petition;
- (10) Discharge the assignee and its surety from liability upon matters included in the assignee's final report;

(11) Reopen an estate for cause shown;

1

**2** 3

4

5

6

7

8

9

10

11 12

13

14 15

16

17

18 19

20

21

22

24

25

26

27 28

29

30

31

(12) Punish by contempt any failure to comply with the provisions of this chapter or any order of the court made pursuant to this chapter, and

(13) Exercise such other and further powers as are necessary to enforce or carry out the provisions of this chapter.

Section 10. Section 727.116, Florida Statutes, is created to read:

727.116 Actions by assignee and other parties in interest.--

- (1) All matters requiring court authorization under this chapter must be brought by motion, except for the following matters, which must be brought by supplemental proceeding, as provided in subsection (2):
- (a) An action by the assignee to recover money or other assets of the estate,
- (b) An action by the assignee to determine the validity, priority, or extent of a lien or other interest in property or to subordinate or avoid an unperfected security interest under s. 727.114(6)(b), and
- (c) An action by the assignee to avoid any conveyance or transfer void or voidable by law under s. 727.114(6)(c).
- (2) A supplemental proceeding is an action of a type designated in paragraph (a), paragraph (b), or paragraph (c) of subsection (1) and must be brought as follows
- (a) The Florida Rules of Civil Procedure apply to supplemental proceedings, except when inconsistent with the provisions of this chapter.
- (b) The clerk of the court shall docket a supplemental proceeding under both the same case number assigned to the

original petition filed by the assignee pursuant to s. 727.104 and a separate supplemental proceeding number; and he shall assign such supplemental proceeding to the same division and judge then assigned to the main case.

(c) All pleadings and other papers filed in a supplemental proceeding must contain a separate subcaption and the supplemental proceeding number in addition to the caption and case number applicable to the main case.

Section 11. Section 727.118, Florida Statutes, is created to read

727.118 Notice of assignment. --

б

- (1) The assignee shall give notice of the assignment by publication in a newspaper of general circulation published in the county where the petition is filed and in any other county or counties where the assignment is required to be recorded pursuant to s. 727.104(2), once a week for 4 consecutive weeks, the first notice to be published within 10 days after filing of the petition; and by mailing notice to all known creditors of the assignor within 20 days after filing of the petition. The notice of the assignment must include the date of filing of the petition; the name of the court where the petition is filed and the case number assigned to the petition; the last day on which a proof of claim may be served upon the assignee, to be determined in accordance with s. 727.12(2); and the name and address of the assignor, the assignee, and the assignee's attorney, if any.
- $\begin{tabular}{ll} (2) & The notice of assignment must be in substantially \\ the following form \\ \end{tabular}$

NOTICE OF ASSIGNMENT

IN THE CIRCUIT COURT

```
OF THE..
 1
 2
                                 CIRCUIT, IN AND FOR
                                  ...... .. .COUNT / ,
 3
                                 FLORIDA
 4
5 IN RE-....
6
                   Assignor,
7 to.......
8
                    Assignee.
         TO CREDITORS AND OTHER INTERESTED PARTIES:
9
10
         PLEASE TAKE NOTICE that on .... a petition
11
   commencing an assignment for the benefit of creditors pursuant
   to Chapter 727, Florida Statutes, made by ....
12
13
   Assignor, with principal place of business at ......
14
   to ..... Assignee, whose address is
   ..... was filed on ...... ... 19...
15
16
         YOU ARE HEREBY further notified that, in order to
17
   receive any dividend in this proceeding, you must file a Proof
18
   of Claim with the Assignee or its attorney on or
19
   before.....(120 days from the date of the filing of
20
   the petition).
21
22
                                               Assignee
23
   Attorney for Assignee (if any) ... ...
24
   Address .. ......
25
          (3) The assignee shall give the assignor and all
26
   creditors not less than 10 days' notice by mail of an
27
   examination of the assignor pursuant to s. 727 112(2).
28
          (4) The assignee shall give the assignor and all
29
   creditors not less than 20 days' notice by mail of a proposed
30
   sale of assets of the estate other than in the ordinary course
31
```

я

q

of business, the compromise or settlement of a controversy, and the payment of fees and expenses to the assignee and to professional persons employed by the assignee pursuant to s. 727.112(6). All objections to the proposed action must be filed and served upon the assignee and the assignee's attorney, if any, not less than 3 days before the date of the proposed action. The notice must include a description of the proposed action to be taken and the date of the proposed action and must set forth the date and place for the hearing at which any objections will be heard. If no objections are timely filed and served, the assignee may take such action as described in the notice without further order of the court.

- (5) The assignee shall give the assignor and all creditors not less than 20 days' notice by mail of the filing of its petition for discharge and the final report of receipts and disbursements pursuant to s. 727.128. The notice must include a summary of all receipts and disbursements of the estate and must set forth the date and place of the final hearing.
- (6) For good cause shown and without notice or hearing, the court may shorten the notice period, or limit the parties to whom notice must be given, pursuant to subsection (3) or subsection (4).
- (7) Whenever notice is required to be given under this chapter and the period of the notice is not specified, the court shall fix such period of notice as is appropriate in the particular circumstances.
- (8) Whenever notice is required to be given under this chapter, a certificate of service of such notice must be filed with the court.

(9) Whenever notice is not specifically required to be given under this chapter, the court, in its discretion, may consider motions and grant or deny relief without notice or hearing.

Section 12. Section 727.12, Florida Statutes, is created to read

727.12 Proof of claim. --

- (1) All claims, other than claims of creditors with liens on assets of the estate, whether contingent, liquidated, unliquidated, or disputed, which arose prior to the filing date must be filed in accordance with the provisions of this chapter; and any such claim not so filed is barred from any further recovery against the estate.
- (2) A claim must be filed by delivering the claim to the assignee within 120 days from the filing date unless for cause shown.
- (3) A claim must be in written form entitled "Proof of Claim," setting forth the name and address of the creditor and the nature and amount of the claim, and must be executed by the creditor or the creditor's authorized agent.
- (4) When a claim, or an interest in property of the assignor securing the claim is based on a writing, the original or a copy of such writing must be filed with the proof of claim, together with evidence of perfection of any security interest, if applicable.
- (5) A proof of claim, executed and delivered in accordance with this section, constitutes prima facie evidence of the validity and amount of the claim.
- Section 13. Section 727.122, Florida Statutes, is created to read:

30 31

1 2

3

5

7

8

9

11

12

13

14 15

16

17

18

20

21

22

23

24 25

26

27

727.122 Objections to claims.—At any time prior to the entry of an order approving the assignee's final report, the assignee or any party in interest may file with the court an objection to a claim, which objection must be in writing and must set forth the nature of the objection. A copy of the objection, together with notice of hearing thereon, must be mailed to the creditor at least 20 days prior to the hearing. All claims properly filed with the assignee and not disallowed by the court constitute all claims entitled to distribution from the estate.

Section 14. Section 727.124, Florida Statutes, is created to read:

727.124 Priority of claims. -- Allowed claims must receive distribution under this chapter in the following order of priority and, with the exception of claims under subsection (1), pro rata within a class:

- (1) Creditors with liens on assets of the estate, which liens are duly perfected pursuant to applicable law, shall receive the proceeds from the disposition of their collateral, less the reasonable, necessary expenses of preserving or disposing of such collateral to the extent of any benefit to such creditors. If and to the extent that such proceeds are less than the amount of a creditor's claim or a creditor's lien is avoided pursuant to s. 727.114(6)(c), such a creditor is deemed to be an unsecured creditor pursuant to subsection (6) of this section.
- (2) Expenses incurred during the administration of the estate, other than expenses allowable under subsection (1), including allowed fees and reimbursements of all expenses of the assignee and professional persons employed by the assignee pursuant to s. 727.112(6).

(3) Unsecured claims of governmental units for taxes that accrued prior to the filing date.

- (4) Claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay, or contributions to an employee benefit plan earned by the individual within 90 days of the filing date or the cessation of the assignor's business, whichever occurs first, but only to the extent of \$2,000.
- (5) Allowed unsecured claims, to the extent of \$900 for each individual, arising from the deposit with the assignor before the filing date of money in connection with the purchase, lease, or rental of property or the purchase of services for personal, family, or household use by such individuals which were not delivered or provided.
  - (6) Unsecured claims.

If all of the foregoing classes have been paid in full, any residue must be paid to the assignor.

Section 15. Section 727.126, Florida Statutes, is created to read.

727.126 Resignation or removal of assignee .--

- (1) The court shall remove or replace the assignee on application of the assignor, the assignee, any creditor, or on its own motion, if the assignee has not executed and filed the bond required by s. 727.104(2), if the assignee resigns or refuses or fails to serve for any reason, or for good cause.
- (2) Upon removal, resignation, or death of the assignee, the court shall appoint a replacement assignee if the court determines, in its discretion, that further administration of the estate is required. Upon executing and filing a bond pursuant to s. 727.104(2), the replacement

assignee shall forthwith take possession of the estate and assume its duties as assignee.

(3) Whenever the court is satisfied that the assignee so removed or replaced has fully accounted for and turned over to the replacement assignee appointed by the court all property of the estate and has filed a report of all receipts and disbursements during its tenure as assignee, the court shall enter, after notice and a hearing, an order discharging the assignee from all further duties, liabilities, and responsibilities as assignee.

Section 16. Section 727.128, Florida Statutes, is created to read:

727.128 Assignee's final report and discharge. --

- (1) Upon distribution of all assets of the estate, the assignee shall petition the court for its discharge upon notice and a hearing in accordance with s. 727.118(3).
- (2) The assignee's final report setting forth all receipts and disbursements of the estate must be annexed to the petition for discharge and filed with the court.
- (3) Upon approval of the final report, the court shall discharge the assignee and release its bond.
- (4) The assignee's discharge has the effect of releasing it from any duties, liabilities, and responsibilities as assignee pursuant to the provisions of the assignment and this chapter.

Section 17. Sections 727.01, 727.02, 727.03, 727.04, 727.05, 727.06, 727.07, and 727.08, Florida Statutes, are hereby repealed.

Section 18. This act shall take effect January 1, 1988.

1 2

### STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR Senate Bill 808

CS/SB 808 provides clarifying language as to the intent of the bill and provides that certified copies of assignments for the benefit of creditors do not have to be filed with the Secretary of State by the assignee.

# FLORIDA LEGISLATURE

History of Legislation 1987 Regular Session 1987 Special Session A



prepared by:

Joint Legislative Management Committee

Legislative Information Division Capitol Building, Room 826 — 488-4371

#### FLORIDA LEGISLATURE—REGULAR SESSION—1987

#### HISTORY OF SENATE BILLS

HISTORY OF	SENATE BILLS
8 801 (CONTINUED)	8 805 (CONTINUED)
04/30/87 SENATE Extension of time granted Committee Personnel, Returnment and Collective Bargaining	05/19/87 SENATE Withdrawn from Agriculture -SJ 331; Now in Appropria-
05/14/87 SENATE Extension of time granted Committee Personnel, Retirement and Collective Bargaining	05/21/87 SENATE Extension of time granted Committee Appropriations 05/22/87 SENATE On Committee agenda—Appropriations, 05/25/87, 2 00
05/25/87 SENATE Extension of time granted Committee Personnel, Retirement and Collective Bargaining	pm, Room-A 06/26/87 SENATE Comm. Report: Favorable with I amendment(s) by Appro-
06/06/87 SENATE Died in Committee on Personnel, Retirement and Collec-	priations, placed on Calendar -SJ 417 06/04/87 SENATE Placed on Special Order Calendar -SJ 706 & -SJ 707
tive Bargaining	06/06/87 SENATE Died on Calendar, Iden./Sim./Compare Bill passed, refer to
8 802 GENERAL BILL by Gordon	CS/SB 600 (Ch. 87-383)
Cable TV/Gross Receipts Tax, provides for gross receipts tax on providers of ca- ble TV service; creates Educational Television & Public Broadcasting Program-	8 806 GENERAL BILL by Gordon (Compare H 625)
ming System Trust Fund, provides for deposit of cartain tax revenues into trust	
fund; provides for distribution of revenues from fund, provides exceptions, pro-	may start making losn principal repayments on behalf of persons certified to
vides penalties. Effective Date: Upon becoming law.	teach. Amenda 231 621. Effective Date. Upon becoming law.
04/08/87 SENATE Filed 04/21/87 SENATE Introduced, referred to Finance, Taxation and Claims; Ap-	04/08/87 SENATE Filed 04/21/87 SENATE Introduced, referred to Education; Appropriations -SJ 126
propriations -SJ 126	04/27/87 SENATE On Committee agenda—Education, 04/29/87, 9:00 am,
05/04/87 SENATE Extension of time granted Committee Finance, Taxation	Room-A-Not heard
and Claims 05/19/87 SENATE Extension of time granted Committee Finance, Taxation	05/01/87 SENATE Extension of time granted Committee Education 05/08/87 SENATE On Committee agenda—Education, 05/12/87, 2-00 pm,
and Claims	Room-A
06/02/87 SENATE Extension of time granted Committee Finance, Taxation	05/12/87 SENATE Comm. Report: Pavorable by Education -SJ 293
and Claims	05/13/87 SENATE Now in Appropriations -SJ 293
06/06/87 SENATE Died in Committee on Finance, Taxation and Claims	05/21/87 SENATE Extension of time granted Committee Appropriations 05/27/87 SENATE On Committee agenda—Appropriations, 05/28/87, 1-00
S 803 GENERAL BILL by Kirkpatrick and others (Compare	pm, Room-A -SJ 446
CS/ENG/H 1280, CS/ENG/S 799)  Private Sector & Edu. Pertnership; creates Fla. Private Sector & Education Part-	05/28/87 SENATE Comm. Report: Pavoreble by Appropriations, placed on
nership Act, provides for designation of office to function as clearinghouse, pro-	Calendar -SJ 499  OS/00/07 SENATE Placed on Second Order Calendar, SJ 571, Idea /Sim
vides for designation of district private sector & education partnership coordina-	06/02/87 SENATE Placed on Special Order Calendar -SJ 571; Iden./Sim House Bill substituted; Laid on Table under Rule, Iden./
tors & their duties, creates Fla. Public Schools Challenge Grants Program, pro-	Sim /Compare Bill passed, refer to HB 625 (Ch 87-189)
vides for grants to school districts, etc. Creates 229.602. Effective Date: 07/01/87 or upon becoming law, whichever occurs later	-SJ 593
04/08/87 SENATE Filed	S 807 GENERAL BILL by Weinstock
04/21/87 SENATE Introduced, referred to Education, Appropriations -SJ 126	Unemployment Comp./Social Security; provides that benefits received under So-
04/27/87 SENATE On Committee agenda—Education, 04/29/87, 9-00 am, Room-A—Not heard	cial Security Act shall not be considered retirement income for purposes of reduc-
04/30/87 SENATE On Committee agenda—Education, 05/04/87, 2 00 pm,	ing or denying unemployment benefits. Amends 443.101 Effective Date 10/01/87.
Room-A	04/06/87 SENATE Filed
05/01/87 SENATE Extension of time granted Committee Education	04/21/87 SENATE Introduced, referred to Commerce; Appropriations -SJ 126
05/04/87 SENATE Comm. Report: Favorable with 2 amendment(s) by Educa- tion -SJ 254	05/08/87 SENATE Extension of time granted Committee Commerce 05/25/87 SENATE Extension of time granted Committee Commerce
05/05/87 SENATE Now in Appropriations -SJ 254	06/06/87 SENATE Died in Committee on Commerce
05/06/57 SENATE Extension of time granted Committee Appropriations	S 808 GENERAL BILL/CS by Judiciary-Civil; Crawford and others
05/21/87 SENATE Extension of time granted Committee Appropriations	(Similar CS/ENG/H 383)
06/06/87 SENATE Died in Committee on Appropriations, Iden /Sim / Compare bill passed, refer to CS/SB 799 (Ch. 87-329)	Custing the party of the property of the property of the party of the
8 804 GENERAL BILL by Brown (Identical H 540)	made for benefit of creditors, provides statutory intent, definitions, jurisdiction & venue, provides for commencement of proceedings; provides for proceeding
Annexation/Optional Referendum; provides that referendum on annexation	against assurance & for turning property over to assignee, etc. Repeals 727.01-06;
within annexing municipality is optional. Amends 171.0413. Effective Date:	creates 727 101- 128. Effective Date. 01/01/88
07/01/87.	04/08/87 SENATE Filed 04/21/87 SENATE Introduced, referred to Commerce, Judiciary-Civil -SJ 126
04/08/87 SENATE Filed 04/21/87 SENATE Introduced, referred to Economic, Community and Con-	04/28/87 SENATE On Committee agenda—Commerce, 04/30/87, 2:00 pm,
aumer Affaira -SJ 126	Room-A
04/23/87 SENATE On Committee agenda—Economic, Community and Con-	04/30/87 SENATE Comm. Report: Favorable with 1 amendment(s) by Commerce -SJ 254
sumer Affairs, 04/27/87, 2:00 pm, Room-H 04/27/87 SENATE Comm. Report. Favorable by Economic, Community and	05/01/87 SENATE Now in Judiciary-Civil -SJ 254
Consumer Affairs, placed on Calendar -SJ 196	05/15/87 SENATE Extension of time granted Committee Judiciary-Civil
05/19/87 SENATE Placed on Special Order Calendar -SJ 324, Passed,	05/19/87 SENATE On Committee agenda—Judiciary-Civil, 05/21/87, 2:00
YEAS 25 NAYS 8 –SJ 339	pm, Room-1C 05/21/87 SENATE Comm. Report: CS by Judiciary-Civil, placed on Calendar
05/20/87 HOUSE In Messages 05/22/87 HOUSE Received, referred to Community Affairs, Appropriations	-SJ 388
-HJ 554	05/25/87 SENATE CS read first time -SJ 390
06/06/87 HOUSE Died in Committee on Community Affairs	06/04/87 SENATE Placed on Special Order Calendar -SJ 706 & -SJ 707,
S 805 GENERAL BILL/CS by Commerce; Gordon; Peterson; Margolis	Iden./Sim. House Bill substituted; Laid on Table under Rule, Iden./Sim./Compare Bill passed, refer to CS/HB 383
(Similar CS/H 174, Compare H 739, H 912, CS/ENG/S 600, S 751,	(Ch. 87-174) -SJ 779
S 1127) <u>Unemployment Comp./Actt. Labor;</u> (THIS BILL COMBINES S 805,1127,751)	S 809 GENERAL BILL by Weinstein (Similar H 946)
modifies definition of term "employment", as such term relates to agricultural	Negligence/Recovery by Children: provides that children are entitled to recover
service, for purpose of Unemployment Compensation Law; postpones coverage	damages for injuries to their parents under certain circumstances. Effective Date.
of alien agricultural workers; excludes from coverage certain nonimmigrant aliens	10/01/87 04/08/87 SENATE Filed
present in United States for educational purposes; changes weekly benefit amount. Amends 443.036,111 Effective Date: 10/01/87	04/21/87 SENATE Introduced, referred to Judiciary-Civil -SJ 127
04/08/87 SENATE Filed	04/22/87 SENATE Extension of time granted Committee Judiciary-Civil
04/21/87 SENATE Introduced, referred to Commerce -SJ 126	05/01/87 SENATE Extension of time granted Committee Judiciary-Civil 05/15/87 SENATE Extension of time granted Committee Judiciary-Civil
05/07/87 SENATE On Committee agenda—Commerce, 05/11/87, 10:00 am,	05/15/87 SENATE On Committee agenda—Judiciary-Civil, 05/21/87, 2.00
Room-A 05/08/87 SENATE Extension of time grapted Committee Commerce	pm, Room-1C
05/11/87 SENATE CS combines this bill and 1127 & 751, Combined CS addi-	05/21/87 SENATE Comm. Report. Favorable by Judiciary-Civil, placed on
tional reference(s) Agriculture: Appropriations. Comm	Calendar -SJ 387

05/15/87 SENATE Extension of time granted Committee Agriculture (PAGE NUMBERS REFLECT <u>DAILY</u> SENATE AND HOUSE JOURNALS AND NOT FINAL BOUND JOURNALS)

Report. CS by Commerce -SJ 293

05/12/87 SENATE CS read first time -SJ 295; Now in Agriculture -SJ 293

tional reference(s) Agriculture; Appropriations, Comm

(CONTINUED ON NEXT PAGE)

9 810 GENERAL BILL/ENG by Crawford and others (Similar H 446,

06/06/87 SENATE Died on Calendar

Compare CS/ENG/H 115, CS/S 341)

#### FLORIDA LEGISLATURE—REGULAR SESSION—1987

#### HISTORY OF HOUSE BILLS

	HISTORY OF HOUSE BILLS							
н	381 (CO)	NTINUED		H	384 (CO	NTINUED	))	
_		HOUSE	Subreferred to Subcommittee on General Government, On Committee agenda—Appropriations, 05/14/87, 8 00 am, 21	_	Beach M tion or en	ianagement ccavation es	prohibits DNR. from issuing permits for certain constructed in specified circumstances, establishes criteria for local	
	05/28/87	HOUSE	HOB, for ratification of subreferral On Committee agenda—Appropriations, 05/28/87, 3 30 pm, 21 HOB, Preliminary Committee Action by Appropri-		for habit of sea os	able major : 14 & sea gr	zoning & building codes; prohibits dept from issuing permit structure located as specified, repeals provision re harvesting apes, etc. Amends Ch. 161, 201-02, creates 161-164; repeals	
	06/01/87	HOUSE	ations Favorable, as a Committee Substitute, to Calendar Comm Report CS/CS by Appropriations, placed on Cal-			Effective D HOUSE	late 10/01/87 Prefiled	
			endar -HJ 920, CS read first time -HJ 919			HOUSE	Referred to Natural Resources; Finance & Taxation, Ap-	
	06/02/87	HOUSE	Placed on Special Order Calendar; Read second time -HJ 939; Amendment pending -HJ 939		04/07/87	HOUSE	propriations Introduced, referred to Natural Resources, Finance & Tax-	
	06/05/87	HOUSE	Pending amendment withdrawn -HJ 1298, CS/CS/SB 399 was taken up in heu of CS/CS/HB 381, Laid on Table un-		04/16/87	HOUSE	ation, Appropriations -HJ 38 On Committee agendaNatural Resources, 04/20/87, 1 15	
			der Rule, Iden /Sim /Compare Bill passed, refer to CS/CS/SB 399 (Ch 87-373) -HJ 1301		04/20/87	HOUSE	pm, Morris Hall, for ratification of subreferral Subreferred to Subcommittee II	
H	H 382 GENERAL BILL by Tobiassen (Similar S 316)				06/06/87	HOUSE	Died in Committee on Natural Resources, Iden /Sim / Compare bill passed, refer to CS/HB 1350 (Ch. 87-97)	
			nyate Contractors, authorizes school boards to obtain certain					
	03/04/87		vate contractors Amends 237 02. Effective Date 07/01/87  Prefiled	H	385 GI S 319)	ENERAL	BILL/CS by Commerce; Tobin and others (Similar	
	03/12/87	HOUSE	Referred to Education, K - 12, Appropriations			ra/Retaliate	ory Action, prohibits employers from taking retaliatory per-	
	04/07/87	HOUSE	Introduced, referred to Education, K - 12, Appropriations -HJ 38, On Committee agenda—Education, K - 12,		sonnel ac	ction agains	t employees under certain conditions; euthorizes civil actions	
			04/08/87, 1 15 pm, 214C, for subreferral		& provid 10/01/87		relief, provides for certain employer relief Effective Date	
	04/08/87	HOUSE	Subreferred to Subcommittee on Administration and Fi-			HOUSE	Prefiled	
	0.4 /4 5 /05		nance			HOUSE	Referred to Commerce	
	04/15/87	HOUSE	On subcommittee agenda—Education, K ~ 12, 04/17/87, 8 00 am, 214C—Meeting cancelled			HOUSE	Introduced, referred to Commerce -HJ 38	
	04/16/87	HOUSE	On subcommittee agenda—Education, K - 12, 04/20/87,		04/20/87	HOUSE	Subreferred to Subcommittee on Labor and Employment Security, On Committee agenda—Commerce, 04/22/87,	
	04/20/87	HOUSE	1:15 pm, 214C Subcommittee Recommendation pending ratification by		04/04/07	HOUSE	8:00 am, 317C, for ratification of subreferral	
	0 1, 20, 01		full Committee Favorable, On Committee agenda, pending subcommittee action—Education, K - 12, 04/22/87, 2-00			HOUSE	On subcommittee agenda—Commerce, 04/28/87, 1 15 pm, 314 HOB	
			pm, 214C—Temporarily passed		04/28/87	HOUSE	Subcommittee Recommendation pending ratification by full Committee. Favorable, with 1 amendment, On Com-	
	04/23/87	HOUSE	On Committee agenda—Education, K - 12, 04/27/87, 4 30 pm, 214C		04/20/97	HOUSE	mittee agenda—Commerce, 04/30/87, 8 00 am, 317C	
	04/27/87	HOUSE	Preliminary Committee Action by Education, K - 12 Favorable				Preliminary Committee Action by Commerce Favorable, as a Committee Substitute, to Calendar	
	05/01/87	HOUSE	Comm Report Favorable by Education, K - 12 -HJ 331, Now in Appropriations -HJ 331			HOUSE	Comm Report. CS by Commerce, placed on Calendar -HJ 383, CS read first time -HJ 380	
	05/28/87	HOUSE	On Committee agenda—Appropriations, 05/28/87, 3.30	17		HOUSE	Died on Calendar	
	06/06/87	HOUSE	pm, 21 HOB, for subreferral Died in Committee on Appropriations	п	State Re	tirees/Reen	BILL by Brown (Identical S 343, Similar H 1100) apployment/Age 62, exempts persons age 62 or older from cer-	
H	383 GENERAL BILL/CS/ENG by Judiciary; Canady (Similar CS/S 808)				tain restrictions on reemployment after retirement. Amends 112 05, 121 091, 122 16, 238 181, 321 203 Effective Date 07/01/87 or upon becoming law, whichever occurs later			
	Creditors/Benefit Assignments; deletes language regeneral requirements for assignments & oath of assignor; provides for jurisdiction of proceedings & venue; provides for commencement of proceedings, proceedings against assignee, turn-					HOUSE	Prefiled Referred to Retirement, Personnel & Collective Bargaining; Appropriationa	
	er parties		gnor; provides for power of court, actions by assignees & oth- t & proof of claim, etc Amends Ch. 727 Effective Date.			HOUSE	Subreferred to Subcommittee on Retirement	
	07/01/87 03/04/87	HOUSE	Prefiled		04/01/61	HOUSE	Introduced, referred to Retirement, Personnel & Collective Bargaining, Appropriations -HJ 38, Subreferred to Sub-	
	03/12/87	HOUSE	Referred to Judiciary				committee on Retirement, On subcommittee agenda—	
	04/07/87	HOUSE	Introduced, referred to Judiciary -HJ 38, Subreferred to Subcommittee on Court Systems, Probate and Consumer				Retirement, Personnel & Collective Bargaining, 04/08/87, 10 00 am, 317 HOB—Temporarily passed; On Committee	
			Law; On subcommittee agenda-Judiciary, 04/09/87, 10:00				agenda, pending subcommittee action—Retirement, Per-	
	04/09/87	HOUSE	am, 16 HOB Subcommittee Recommendation pending ratification by		06/06/87	HOUSE	sonnel & Collective Bargaining, 04/09/87, 8 30 am, 317C Died in Committee on Retirement, Personnel & Collective	
	• 1, 10, 01		full Committee Favorable, as a proposed Committee Sub-				Bargaining	
	04/13/87	HOUSE	on Committee agendaJudiciary, 04/15/87, 1 15 pm, 214C	H			BILL by Bankhead and others	
	04/15/87		Preliminary Committee Action by Judiciary Favorable, as				syclopments specifies that certain resource recovery & man- re presumed to be developments of regional impact. Amends	
	04/21/87	HOUSE	a Committee Substitute, to Calendar Also referred to Appropriations -HJ 205		380 0651	Effective	Date 07/01/87	
	04/24/87		Comm Report. CS by Judiciary -HJ 279, CS read first time			HOUSE	Prefiled Referred to Natural Resquirces, Appropriations	
	05/19/87	HOUSE	-HJ 278, Now in Appropriations -HJ 279 On Committee agenda—Appropriations, 05/21/87, 3 30			HOUSE	Introduced, referred to Natural Resources, Appropriations	
	05/21/87	HOUSE	pm, 21 HOB Preliminary Committee Action by Appropriations. Favor-		04/16/87	HOUSE	-HJ 38 On Committee agenda—Natural Resources, 04/20/87, 1 15	
		HOUSE	able, with 1 amendment, to Calendar Comm Report. Favorable with 1 amendment(s) by Appro-		04/20/87	HOUSE	pm, Morris Hall, for ratification of subreferral Subreferred to Subcommittee II	
			priations, placed on Calendar -HJ 567		06/06/87	HOUSE	Died in Committee on Natural Resources	
	05/29/87 06/01/87	HOUSE	Placed on Special Order Calendar Read second time, Amendment adopted, Read third time,	H			BILL by Arnold (Compare CS/H 132, ENG/S 133)	
			CS passed as amended, YEAS 116 NAYS 0 -HJ 918				ntal Prohibited. (THIS BILL COMBINED IN CS/H 132,388) ng authority shall prohibit rental or leasing of dwelling unit	
			In Messages  Received referred to Commerce Judiciary Curl. \$1,623		to persor	us found gu	ilty of committing certain prohibited acts re controlled sub-	
			Received, referred to Commerce, Judiciary-Civil -SJ 633 Withdrawn from Commerce, Judiciary-Civil, Substituted				ate 10/01/87	
			for CS/SB 808, CS passed, YEAS 31 NAYS 0 -SJ 779			HOUSE	Prefiled Referred to Housing	
	06/04/87		Ordered enrolled				Introduced, referred to Housing -H.J.38	

04/07/87 HOUSE

04/14/87 HOUSE

04/16/87 HOUSE

HOB

dar

H 384 GENERAL BILL by Upchurch (Similar CS/CS/CS/S 235, Compare CS/ENG/H 1350, H 1478)

Signed by Officers and presented to Governor

Approved by Governor, Chapter No 87-174

(CONTINUED ON NEXT PAGE)

Introduced, referred to Housing -HJ 38

On Committee agenda—Housing, 04/16/87, 830 am, 24

Preliminary Committee Action by Housing Favorable, as

a Committee Substitute, combined with HB 132, to Calen-

06/05/87 SENATE Requested House to return -SJ 787

06/16/87

## Journal

of the

# Florida House of Representatives



Eighty-ninth
Regular Session
since Statehood in 1845

April 7 through June 6, 1987

[Including a record of transmittal of Acts subsequent to sine die adjournment]

Upchurch Webster Woodruff Young Wallace Wetherell

Navs-None

So the bill passed and was immediately certified to the Senate

CS/HB 383-A bill to be entitled An act relating to assignments for the benefit of creditors, amending s 727 01, FS deleting language with respect to general requirements for assignments providing legislative intent, amending 5 727 02, FS, deleting language relating to the oath of assignor, providing for jurisdiction of proceedings and venue amending 5 727 03, FS deleting language with respect to record of assignment and oath providing definitions amending s 727.04 F.S. deleting language with respect to qualifications of assignee, providing for commencement of proceedings, amending s 727 05 FS, deleting language with respect to notice of assignment providing for proceedings against the assignee, amending s 727 06, FS, deleting language with respect to disposition of property, providing for turnover amending s 727 07 FS, deleting language with respect to semiannual statements providing for duties of the assignor, amending s 727 08, FS, deleting language with respect to application for discharge of assignee, providing for duties of the assignee, creating s 727 09, FS, providing for power of the court, creating s 727 10 FS, providing for actions by assignees and other parties in interest, creating s 727 11, FS, providing for notice, creating s 727 12, F.S., providing for proof of claim, creating s 727 13, FS, providing for objections to claims, creating s 727 14, FS, providing for priority of claims, creating s 727 15, FS, providing for resignation or removal of assignee, creating a 727 16, FS, providing for the assignee's final report and discharge, providing an effective date

-was read the second time by title

The Committee on Appropriations offered the following amendment Amendment 1—On page 9, lines 19 and 20, strike all of said lines

Rep Canady moved the adoption of the amendment, which was adopted without objection

On motion by Rep Canady the rules were waived by two-thirds vote and CS/HB 383, as amended, was read the third time by title On passage, the vote was

# Yeas-116

Nays-None

The Chair King Renke Friedman Abrams Frishe Langton Rochlin Arnold Gaffney Lawson Rudd Bainter Garcia LOWIS Rush Banianin Gardner Liberti Sample Bankhead Glickman Sanderson Lippman Gonzalez-Sansom Bass Locke Bell Quevedo Logan Saunders Bìoom Gordon Lombard Sheller Grindle Silver Bronson Long Brown Guber Mackenzie Sumon Burke Gustafson Mackey Simone Gutman Smith Burnsed Martin Martinez Canady Hanson Souto Carlton Harden McEwan Starks Carpenter Hargrett Meffert Stone Messersmith Thomas CARRE Harris Clark Hawkins Metcalf Titone Clements Healey Mitchell Tobiassen Coegrove Hill Morse Tobin Crady Hodges Mortham Trammell Holland Troxler Crotty Nergard Dantzler Upchurch Ireland Ogden Irvine Ostran Webster Davis Deutsch Wetherell Jamerson Patchett Diaz-Balart Woodruff Jennings Peeples Drage Johnson, B L Young Press Dunbar Johnson, R C Reaves Figg Jones, D L Reddick Frankel Kelly Rehm

So the bill passed, as amended and was immediately certified to the Senate after engrossment

# Waiver of Rule 8.15 for Special Order Calendar

On motion by Rep Patchett, without objection, Rule 8 15 was waived and the Chairman of the Committee on Rules & Calendar was given permission to set the Special Order Calendar for Tuesday, June 2

# Motions Relating to Committee References

On motion by Rep Long, Vice Chairman on behalf of Rep Wallace Chairman, without objection HR 1502 was withdrawn from the Committee on Science & Technology and placed on the Calendar.

# Messages from the Senate

The Honorable Jon Mills Speaker

I am directed to inform the House of Representatives that the Senate has passed HBs 484 500, 666, 667, 668 669, 670, 671, 672, 677, 679, 733, 751, 907, 949, 956, 959, 963, 1076, 1306, 1440, 200, 202, 380, 460, 522, 646, 808, 1324, CS/HBs 324, 341 531 & 168, CS/HB 195, CS/HB 776, CS/HB 935, CS/HB 972, CS/HB 1010, CS/HB 1016, CS/HB 1153 CS/HB 703, HBs 830 183 779 CS/HB 336, HBs 645, 1359 367, 1316

Joe Brown, Secretary

The above bills were ordered enrolled

# The Honorable Jon Mills, Speaker

I am directed to inform the House of Representatives that the Senate has concurred in House amendments and passed SB 478, CS/SB 234, CS/SB 383, CS/SB 516, and CS/SB 1130, as amended

Joe Brown, Secretary

#### Announcement

Rep Bell announced that the Full Committee on Appropriations would meet at 8 00 a m on Tuesday in Morris Hall

# Presentation of Former Members

Rep Messersmith presented the Honorable Lawrence R Hawkins former Member of the House from Perrine

Rep Drage presented the Honorable Lewis Earle, former Member of the House from Orlando

# Presentation of Guest

Rep Lombard presented the Honorable Connie Mack, U S Congressman from the 13th District

Rep Carpenter moved that the House, after receiving Reports, stand in recess for the purpose of holding committee meetings, Conference Committee meetings, and conducting other House business to reconvene at 1000 am tomorrow The motion was agreed to

# Recorded Votes

# Representative Martin

Yea—CS/SB 234, HB 1456, SB 154, CS/HB 864, HB 1317, CS/SB 908, HB 649, CS/SB 906, CS/SB 1130, CS/SB 1080, HB 1402, CS/SB 377, HBs 1398, 1408

# Prime Sponsor

CS/HB 286-Garcia

# Co-sponsors

HB 261—Lawson
CS/HB 269—Rush
CS/HBs 324, 341, 531 & 168—Troxler
CS/HB 538—Souto
HB 684—Arnold, Lippman, D L Jones, Davis
CS/HB 864, HB 1111—King

Date:	April	6,	1987	
Revis	ed:		- 35	
Final				

# AS REPORTED TO CLERK

# HOUSE OF REPRESENTATIVES COMMITTEE ON JUDICARY STAFF ANALYSIS - GENERAL LEGISLATION

$\mathcal{G}$	1	1	J
	_	_	

BILL# CS/HB 383
COMPANION BILL(S)
RELATING TO Assignments for the Benefit of Creditors
SPONSOR(S) Committee on Judiciary & Canady
EFFECTIVE DATE July 1, 1987
OTHER COMMITTEES OF REFERENCE (1)
(2)
**************

# I. SUMMARY:

# A. Present Situation:

When a party, whether a real person or corporate entity, becomes unable to pay debts as they fall due, it may become necessary to liquidate assets to satisfy the claims of creditors. Under present law, a party may assign to a designated person all of the assets which could normally be reached by creditors. In doing so, the party transferring assets to the assignee must give up all control of the assets, and the proceeds of the subsequent liquidation are then distributed on a pro rata basis among all creditors who file claims with the assignee. Therefore, an assignment which would purport to create a preference for one class of creditors over the rest would result in the assignment being declared void as to all creditors (Greeley v. Dixon, 21 Fla. 413 (1885)).

Although, the present law is restrictive and/or requires exacting conformance, it is generally silent as to its requirements. There is no mention of the procedures which are to be used when creating the assignment, the form of notice to be filed, or the method of accounting of assets.

# B. Effect of Proposed Changes:

The proposed bill would establish uniform procedures to govern the actions of the assignor, the assignee, the creditors and the courts. Under the bill, the court's enforcement powers would be delineated, including the method of, and grounds for, dismissal of the assignee. Likewise, the authority and responsibilities of the assignee would be defined, and limitations would be placed

Storage Name: 87 SS HB 0383

Page 2

Bill # : CS/HB 383 Date: April 6, 1987

on the assignee's exposure to liability. The proposed procedures set forth the method of assignment to the assignee, the accounting of the assignor's assets, and the notice to creditors. Additionally, the procedures establish both the method by which a creditor is to file or dispute a claim, and the order of priority of competing claims.

# II. ECONOMIC IMPACT:

# A. Public:

None apparent

# B. Government:

None apparent

# III. STATE COMPREHENSIVE PLAN IMPACT:

None

# IV. COMMENTS:

The bill is designed to assure uniform procedures for persons wanting to make an assignment for the benefit of creditors. In the past, persons have attempted to make assignments for the satisfaction of their just debts, only to find that the assignment has been declared void because the attempted assignment did not conform to the strict requirements of the law, requirements which do not necessarily become apparent by reading Chapter 727, Florida Statutes. The proposed bill eliminates most of the problems encountered in the present law, providing standard forms which the assignor may use to assure that the assignment will not be declared void. Furthermore, the bill explicitly sets forth the priority of creditor claims, and permits any money which remains after the creditors claims are satisfied to be returned to the assignor. The proposed bill, which clarifies the requirements and establishes the terms for operation of the assignment, is preferable to the present law which, although permitting the use of assignments, gives no guidance as to how that assignment is to be done.

# V. AMENDMENTS:

None

VI. PREPARED BY Christopher T. Hayes

CAL

VII. STAFF DIRECTOR Richard Hixson

# CHAPTER 727

# GENERAL ASSIGNMENTS

727 01	General requirements for assignments
727 02	Oath of assignor
727 03	Record of assignment and oath
727 04	Qualifications of assignee
727 05	Notice of assignment
727 06	Disposition of property
727 07	Semiannual statements
727 08	Application for discharge of assignee

727.01 General requirements for assignments.—
No assignment made for the benefit of creditors shall be valid in this state, except the same shall be made in writing and shall provide for an equal distribution of all the assignor's real and personal property, except such as is exempted by law from forced sale, among the several creditors of the said assignor in equal proportion to their respective demands

History -s 1, ch 3891, 1889, RS 2307, GS 2926, RGS 4666 CGL 6752

727.02 Oath of assignor.—The said assignor shall make and subscribe an oath in writing before any officer authorized to administer oaths in the county in which he lives and does business, or of the county or counties wherein is situated the property assigned, not more than 10 days after the assignment, that he has placed or assigned, and that the true intention of his assignment was to place in the hands of his assignee all of his property of every description, except such as is exempt by law from forced sale, to be divided among the creditors in proportion to their respective demands

History.-s 2, ch 3891, 1889, RS 2308, GS 2927, RGS 4667, CGL 6753

727.03 Record of assignment and oath.—Both the said deed of assignment and oath of assignor shall be recorded in the office or offices of the clerk or clerks of the county or counties in which the property assigned is situated

History.--s 3, ch 3891, 1889, RS 2309, GS 2928, RGS 4668, CGL 6754

727.04 Qualifications of assignee.—No one shall be selected and appointed as assignee by the assignor, in such assignment, who does not give bond to be approved by the clerk of the circuit court of the county wherein the assignor lives or does business, or of the county wherein is situated the property assigned, payable to the Governor of Florida, in double the value of the property assigned, conditioned for the faithful discharge of the duties devolved on him as such assignee, said bond to be filed in the office aforesaid, immediately upon the assignee's taking possession of the assigned prop-

erty History.—s 4, ch 3891 1889 RS 2310 GS 2929, RGS 4669, CGL 6755

727.05 Notice of assignment.—Said assignee immediately upon taking possession of the assigned property shall give notice by publication in a newspaper, published in the county where the assigned property is situated or wherein a portion of the same is, once a week for 4 consecutive weeks, to all the creditors of the assignor, of the fact of the assignment, and calling upon said creditors to file with him within 60 days, if such creditors reside in the state, or if beyond the limits of the state, within 4 months, sworn statements of their claims against said assignor, and he shall send by mail a copy of the newspaper containing said notice to each of the said creditors, as far as he may know them

History -s 6, ch 3891 1889, RS 2311, GS 2930 RGS 4670, CGL 6756

727.06 Disposition of property.—The said assignee shall, as soon as the foregoing provisions have been complied with, proceed to dispose of all the property mentioned in the deed of assignment to him, to the best interest of all the parties concerned, either at public or private sale, as to him may seem best, and to collect and to recover by law, or otherwise, all debts due the assignor in the same manner as said assignor might or could do in his own right if such assignment had not been made, and for this purpose said assignee may employ an attorney to prosecute such claims

History.-s 7, ch 3891, 1889, AS 2312 GS 2931, RGS 4671, CGL 6757

727.07 Semiannual statements.—Semiannually, as long as shall be necessary after his appointment, said assignee shall file his sworn statement in the office of the clerk of the circuit court, of all his doings and financial transactions as said assignee

History.--s 8, ch 3891, 1889, RS 2313, GS 2932, RGS 4672, CGL 6758

727.08 Application for discharge of assignee.—After the final statement of the assignee of all the matters pertaining to his position, he may, after publication for 30 days in a newspaper in the county where he published his notice mentioned in s. 727.05, apply by petition to the judge of the circuit court of said circuit for his letters of discharge as said assignee, and if the said circuit judge shall be satisfied that the said assignee has complied with his duties as such assignee, he shall then grant him such letters as prayed for

History.-s 9, ch 3891, 1889 RS 2314 GS 2933, RGS 4673, CGL 6759

# GENERAL ACTS RESOLUTIONS AND MEMORIALS

ADOPTED BY THE

# TENTH LEGISLATURE OF FLORIDA UNDER THE CONSTITUTION AS REVISED IN 1968

During the Regular Session April 7, 1987 through June 6, 1987 and the Special Session February 4, 1987



Volume I, Part One

Published by Authority of Law Under Direction of the

JOINT LEGISLATIVE MANAGEMENT COMMITTEE

TALLAHASSEE

1987

enforceable by the contempt powers of the court, and for which judgments execution shall issue on request of a party.

(5) The party having filed for a trial de novo shall be assessed the arbitration costs, court costs, and other reasonable costs of the party, including attorney's fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision. The court may waive an assessment of costs required upon a finding that the imposition of costs would create a substantial economic handicap or would not be in the interest of justice.

Section 4. Section 44.304, Florida Statutes, is created to read:

#### 44.304 Voluntary binding arbitration .--

- (1) Two or more parties who are involved in a civil dispute may agree in writing to submit the controversy to voluntary binding arbitration, in lieu of litigation of the issues involved, prior to or after a lawsuit has been filed, provided no constitutional issue is involved.
- (2) If the parties have entered into an agreement which provides for a method for the appointment of one or more arbitrators, the court shall proceed with the appointment as prescribed, except that at least one of the arbitrators, who shall serve as the chief arbitrator, shall meet the qualifications and training regulrements adopted pursuant to s. 44.306. In the absence of an agreement, or if the agreement method fails or for any reason cannot be followed, the court, on application of a party, shall appoint one or more qualified arbitrators.
- (3) The arbitrators shall be compensated by the parties according to their agreement, but not at an amount less than \$75 per day,
- (4) Within 10 days of the submission of the request for binding arbitration, the court shall provide for the appointment of the arbitrator or arbitrators. Once appointed, the arbitrators shall notify the parties of the time and place for the hearing.
- (5) Application for voluntary binding arbitration shall be filed, and fees paid to the clerk of court as if for complaints initiating civil actions. The clerk of the court shall handle and account for these matters in all respects as if they were civil actions, except that the clerk of court shall keep separate the records of the applications for voluntary binding arbitration from all other civil actions.
- (6) Filing of the application for binding arbitration will toll the running of the applicable statutes of limitation.
- (7) The chief arbitrator shall have such power to administer oaths or affirmation and to conduct the proceedings as the rules of court shall provide. At the request of any party, the chief arbitrator shall issue sub cenas for the attendance of witnesses and for the production of books, records, documents and other evidence and may apply to the court for orders compelling attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by law.

- LAWS OF FLORIDA 8. The hearing shall be conducted by all of the arbitrators, but a majority may determine any question and render a final decision.
- (9) The Florida Evidence Code shall apply to all proceedings under thTs section.
- (10) The appeal shall be taken to the circuit court and shall be limited to review on the record and not de novo, of:
- (a) Any alleged failure of the arbitrators to comply with the applicable rules of procedure or evidence.
- (b) Any alleged partiality or misconduct by an arbitrator prejudicing the r ghts of any party.
- (c) Whether the decision reaches a result contrary to the Constitution of the United States or of the State of Florida.

The harmless error doctrine shall apply in all appeals. No further review shall be permitted unless a constitutional issue is raised.

(11) If no appeal is taken within the time provided by rules promulgated by the Supreme Court, then the decision shall be referred to the presiding judge in the case, or if one has not been assigned, then to the chief judge of the circuit for assignment to a circuit judge, who shall enter such orders and judgments as are required to carry out the terms of the decision, which orders shall be enforceable by the contempt powers of the court and for which judgments execution shall issue on request of a party.

Section 5. Section 44.305, Florida Statutes, is created to read:

44.305 Limitation on referral. -- The court shall not refer an issue to mediation or nonbinding arbitration if such issue has been referred to arbitration or mediation under mandate of Florida law.

Section 6. Section 44.306, Florida Statutes, is created to read:

44.306 Standards for mediator and arbitrator qualifications; rules of professional conduct and training.—The Supreme Court shall establish minimum standards for qualifications, rules of professional conduct, and training standards for mediators and arbitrators who are appointed pursuant to this act. No person may be appointed to serve as a mediator or arbitrator unless he has been certified by the chief judge of a circuit in accordance with the standards established by the Supreme Court.

Section 7. This act shall take effect January 1, 1988.

Approved by the Governor June 30, 1987.

Filed in Office Secretary of State June 30, 1987.

CHAPTER 87-174

Committee Substitute for House Bill No. 383

CHAPTER 87-174

An act relating to assignments for the benefit of creditors; amending s. 727.01, F.S.; deleting language with respect to general requirements for assignments; providing legislative intent; amending s. 727.02, F.S.; deleting language relating to the oath of assignor; providing for jurisdiction of proceedings and venue; amending s. 727.03, F.S.; deleting language with respect to record of assignment and oath; providing definitions; amending s. 727.04, F.S.; deleting language with respect to qualifications of assignee; providing for commencement of proceedings; amending s. 727.05, F.S.; deleting language with respect to notice of assignment; providing for proceedings against the assignee; amending s. 727.06, F.S.; deleting language with respect to disposition of property; providing for turnover; amending s. 727.07, F.S.; deleting language with respect to semiannual statements; providing for duties of the assignor; amending s. 727.08, F.S.; deleting language with respect to application for discharge of assignee; providing for duties of the assignee; creating s. 727.09, F.S.; providing for power of the court; creating s. 727.10, F.S.; providing for actions by assignees and other parties in interest; creating s. 727.11, F.S.; providing for notice; creating s. 727.12, F.S.; providing for proof of claim; creating s. 727.13, F.S.; providing for objections to claims: creating s. 727.14, F.S.; providing for priority of claims; creating s. 727.15, F.S.; providing for resignation or removal of assignee; creating s. 727.16, F.S.; providing for the assignee's

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

Section 1. Section 727.01, Florida Statutes, is amended to read:

final report and discharge; providing an effective date.

727.01 Intent of chapter. -- The intent of this chapter is to Provide a uniform procedure for the administration of insolvent estates, and to ensure full reporting to creditors and equal distribution of assets according to priorities as established under this chapter. General-requirements-for-assignments---No-assignment made-for-the-benefit-of-creditors--shall--be--valid--in--this--state; except--the--same--shall--be-made-in-writing-and-shall-provide-for-an equal-distribution-of-all-the-assignor's-real-and-personal-~property, except-such-as-is-exempted-by-law-from-forced-saler-among-the-several creditors--of--the--said--assignor--:n--equal--proportion--to---their respective-demands.

Section 2. Section 727.02, Florida Statutes, is amended to read;

727.02 Jurisdiction of proceedings and venue. -- All proceedings under this chapter shall be subject to the order and supervision of the circuit court for the county where the petition is filled in accordance with s. 727.04(2). Oath-of-assignor: The said-assignor shail--make--and--subscribe-an--oath--in--writing-before-any-officer authorized-to-administer-oaths-in-the-county-in-which--he--lives--and does--business,--or-of-the-county-or-countres-wherein-is-situated-the property-assigned;-not-more-than-10-days-after-the--assignment;--that he--has--placed--or--assigned;--and--that--the--true-intention-of-his assignment-was-to-place-in-the-hands--of--his--assignee--all--of--his property-of-every-description,-except-such-as-is-exempt-by-law-from

forced-saley-to-be-divided-among-the-creditors-in-proportion-to-their respective-demands.

- Section 3. Section 727.03, Florida Statutes, is amended to read
- 727.03 Definitions. -- As used in this chapter, unless the context requires a different meaning, the term:
- (1) "Asset" means a legal or equitable interest of the assignor in property, which shall include anything that may be the subject of ownership, whether real or personal, tangible or intangible, wherever located and by whomever held at the date of the assignment, except property exempt by law from forced sale.
- (2) "Assignee" means an assignee for the benefit of creditors under the provisions of this chapter, which assignee shall not be a creditor or an equity security holder or have any interest adverse to the interest of the estate.
- (3) "Assignor" means the person or entity which has executed and delivered the assignment to the assignee.
- (4) "Assignment" means an assignment for the benefit of creditors made under this chapter.
- (5) "Court" means the circuit court where the petition is filed in accordance with s. 727.04(2).
- (6) "Creditor" means any person having a claim against the assignor, whether such claim is contingent, liquidated, unliquidated, or disputed.
  - (7) "Estate" means all of the assets of the assignor.
- "Filing date" means the date upon which the original petition is filed in accordance with s. 727.04(2).
- (9) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.
- (10) "Liquidation value" means the value in cash obtainable upon a forced sale of assets.
- (11) "Petition" means the initial document filed with the court, as set forth in s. 727.04(2), establishing the court's jurisdiction under this chapter. Record-of-assignment-and-oath--Both-the-said deed-of-assignment-and-oath-of-assignor--shall--be--recorded--in--the office-or-offices-of-the-clerk-or-clerks-of-the-county-or-countres-in which-the-property-assigned~is-situated;
  - Section 4. Section 727.04, Florida Statutes, is amended to read:
  - 727.04 Commencement of proceedings.--
- (1)(a) An irrevocable assignment and schedules shall be made in writing, containing the name and address of the assignor and assignee and providing for an equal distribution of the estate according to the priorities set forth in s. 727.14.

(b) The assignment shall be in substantially the following form:

#### ASSIGNMENT

WHEREAS, the assignor has been engaged in the business of

WHEREAS, the assignor is indebted to creditors, as set forth in Schedule A annexed hereto, is unable to pay its debts as they become due, and is desirous of providing for the payment of its debts, so far as it is possible by an assignment of all of its assets for that purpose.

NOW, THEREFORE, the assignor, in consideration of the assignee's acceptance of this assignment, and for other good and valuable consideration, hereby grants, assigns, conveys, transfers, and sets over, unto the assignee, his successors and assigns, all of its assets, except such assets as are exempt by law from levy and sale under an execution, including, but not limited to, all real property, fixtures, goods, stock, inventory, equipment, furniture, furnishings, accounts receivable, bank deposits, cash, promissory notes, cash value and proceeds of insurance policies, claims and demands belonging to the assignor, wherever such assets may be located, hereinafter the "estate," as which assets are, to the best knowledge and belief of the assignor, set forth on Schedule B annexed hereto.

The assignee shall take possession and administer the estate in accordance with the provisions of chapter 727, Florida Statutes, and shall liquidate the assets of the estate with reasonable dispatch and convert the estate into money, collect all claims and demands hereby assigned as may be collectible, and pay and discharge all reasonable expenses, costs, and disbursements in connection with the execution and administration of this assignment from the proceeds of such liquidations and collections.

The assignee shall then pay and discharge in full, to the extent that funds are available in the estate after payment of administrative expenses, costs, and disbursements, all of the debts and liabilities now due from the assignor, including interest on such debts and liabilities. If funds of the estate shall not be sufficient to pay such debts and liabilities in full, then the assignee shall pay from funds of the estate such debts and liabilities, on a pro rate basis and in proportion to their priority as set forth in s. 727.14, Florida Statutes.

In the event that all debts and liabilities are paid in full, any funds of the estate remaining shall be returned to the assignor.

To accomplish the purposes of this assignment, the assignor hereby appoints the assignee its true and lawful attorney, irrevocable, with full power and authority to do all acts and things which may be necessary to execute the assignment hereby created; to demand and recover from all persons all assets of the estate; to sue for the recovery of such assets; to execute, acknowledge, and deliver all necessary deeds, instruments, and conveyances; and to appoint one or

CHAPTER 87-174 LAWS OF FLORIDA

more attorneys under him to assist him in carrying out his duties hereunder.

The assignor hereby authorizes the assignee to sign the name of the assignor to any check, draft, promissory note, or other instrument in writing which is payable to the order of the assignor, or to sign the name of the assignor to any instrument in writing, whenever it shall be necessary to do so, to carry out the purpose of this assignment.

The assignee hereby accepts the trust created by the assignment, and agrees with the assignor that the assignee will faithfully and without delay carry out his duties under the assignment.

Assigno	L
<i></i>	

STATE OF FLORIDA

COUNTY OF..... SS:.....

Notary Public

#### My Commission Expires:

- (c) The assignment shall have annexed thereto as Schedule A a true list of all of the assignor's known creditors, their mailing addresses, the amount and nature of their claims, and whether their claims are disputed; and as Schedule B a true list of all assets of the estate, including the estimated liquidation value of the assets, their location, and, if real property, a legal description thereof, as of the date of the assignment.
  - (d) The schedules shall be in substantially the following forms.

#### SCHEDULE A--CREDITOR LIST

List all secured creditors showing:

Amount

Collateral Whether or not disputed

List all wages owed showing:

Address

Name

Name Address Amount not disputed

Consumer deposits:

Name Address Amount Whether or not disputed

4. List all taxes owed showing:

CHAPTER 87-174

Name Address Amount not disputed

5. List all unsecured claims owed showing:

Name Address Amount not disputed

6. List all owners or shareholders showing:

Name Address

Percent of Ownership

#### SCHEDULE B--LIST OF ASSETS

List each category of assets and for each give approximate value obtainable for the asset on the date of assignment, and address where asset is located.

Nonexempt Property

Description and Location

Liquidation Value at Date of Assignment

- <u>1. Legal</u> description and street address of real estate, including leasehold interests:
- 2. Fixtures:
- 3. Cash and bank accounts:
- 4. Inventory:
- 5. Accounts receivable:
- 6. Equipment:
- 7. Prepaid expenses, including deposits, insurance, rents, and utilities;
- 8. Other, including loans to third parties, claims, and choses in action;
- II. Exempt Property

Description and Location

Liquidation Value at Date of Assignment

- (e) The assignment and schedules shall be duly verified upon oath by the assignor, and accepted by the assignee under oath.
- (2) Within 10 days after delivery of the assignment to the assignee, the assignee shall:
- (a) Record the original assignment in the public records of the county in which the assignor had its principal place of business and shall thereafter promptly record a certified copy of the assignment in each county where assets of the state are located;
- (b) File, in the office of the clerk of the court in the county of the assignor's place of business if it has one, in the county of its chief executive office if it has more than one place of business,

or in the county of the assignor's residence if the assignor is an individual not engaged in business, in accordance with the procedures for filing a complaint as set forth in the Florida Rules of Civil Procedure, a petition setting forth the name and address of the assignor and the name and address of the assignee; a copy of the assignment, together with Schedules A and B; and a request that the court fix the amount of the assignee's bond to be filed with the clerk of the court. This bond shall be subject to reconsideration upon the motion of any party in interest after notice and hearing. The bond shall be payable to the clerk of the court, in an amount not less than double the liquidation value of the assets of the estate as set forth in Schedule B, conditioned upon the assignee's faithful discharge of his duties. Within 10 days after the court enters an order setting the amount of such bond, the assignee shall file the bond with the clerk of the court, who shall approve the bond. Qualifications -- of -- assignee -- No-one-shall-be-selected-and-appointed as-assignee-by-the-assignor;-in-such-assignment;-who--does--not--give bond--to--be-approved-by-the-clerk-of-the-crrcuit-court-of-the-county wherein-the-assignor-lives-or-does-business,-or-of-the-county-wherein is--situated--the--property--assigned,--payable--to--the--Governor-of Floriday-in-double-the-value-of-the--property--assignedy--conditioned for--the--farthful--drscharge--of--the-dutres-devolved-on-hrm-as-such assignee, -said-bond-to-be-filed-in-the-office-aforesaid, --: mmed:ately upon-the-assignee's-taking-possession-of-the-assigned-property:

Section 5. Section 727.05, Florida Statutes, is amended to read

727.05 Proceedings against assignee. -- No proceeding may be commenced against the assignee except as provided in this chapter, but nothing contained herein shall affect any action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power. Except in the case of a secured creditor enforcing Its rights in collateral under chapter 679, there shall be no levy, execution, attachment, or the like in respect of any judgment against assets of the estate, other than real property, in the possession, custody, or control of the assignee. Notice-of-assignment --- Said assignee-immediately-upon-taking-possession-of-the-assigned--property shall--qive--notice--by--publication-in-a-newspaper,-published-in-the county-where-the-assigned-property-is-situated-or-wherein--a--portion of--the--same--is7--once--a--week-for-4-consecutive-weeks7-to-all-the creditors-of-the-assignory-of-the-fact-of-the-assignmenty-and-calling upon--said--creditors--to--file--with--him--within--60--days7-if-such creditors-reside-in-the-state;-or-if-beyond-the-limits-of-the--state; within--4--months; --sworn--statements--of--their--claims-against-said assignory-and--he--shall--send--by--mail--a--copy--of--the--newspaper containing--said--notice--to-each-of-the-said-creditorsy-as-far-as-he may-know-them-

Section 6. Section 727.06, Florida Statutes, is amended to read:

727.06 Turnover. -- Any person or entity, other than a creditor, in possession, custody, or control of assets of the estate shall, upon notice by the assignee of the assignment proceeding, promptly turn such assets over to the assignee or his duly authorized representative. Disposition--of-property--The-said-assignee-shally as-soon-as-the-foregoing-provisions-have-been-complied-with; proceed to-dispose-of-all-the-property-mentioned-in-the-deed-of-assignment-to him; to-the-best-interest-of-all-the-parties--concerned; --either--at public--or--private-sale; -as-to-him-may-seem-best; and-to-collect-and to-recover-by-law; -or-otherwise; -all-debts-due-the--assignor--in-the same--manner--as--said-assignor-might-or-could-do-in-his-own-right-if

such-assignment-had-not-been-made;-and-for-this-purpose-said-assignee may-employ-an-attorney-to-prosecute-such-claims;

Section 7. Section 727.07, Florida Statutes, is amended to read:

- 727.07 Duties of assignor. -- The assignor shall:
- (1) Assist the assignee in the administration of the estate and comply with all orders of the court;
- (2) UPon delivery of the assignment to the assignee, deliver to the assignee all of the assets of the estate in the assignor's possession, custody, or control, including, but not limited to, all accounts, books, papers, records, and other documents; and
- (3) Within 30 days after the filing date, submit to examination by the assignee, under oath, concerning the acts, conduct, assets, liabilities, and financial condition of the assigner or any matter related to the assignee's administration of the estate. Semiannual statements.—Semiannually,—as—long—as—shall—be—necessary—after—his appointment,—said—assignee—shall—file—his—sworn—statement—in—the office—of—the—cierk—of—the—creuit—court,—of-all—his—doings—and financial—transactions—as—said—assignee—

Section 8. Section 727.08, Florida Statutes, is amended to read:

- 727.08 Duties of assignee. -- The assignee shall:
- (1) Collect and reduce to money the assets of the estate, whether by suit in any court of competent jurisdiction or by public or private sale;
- (2) Within 30 days after the filing date, examine the assignor, under oath, concerning the acts, conduct, assets, liabilities, and financial condition of the assignor or any matter related to the assignee's administration of the estate, unless excused by the court for good cause shown;
- (3) Give notice to creditors of all matters concerning the administration of the estate, pursuant to the provisions of s. 727.11;
- (4) Conduct the business of the assignor for limited periods, if in the best interest of the estate, upon authorization of the court;
- (5) To the extent reasonable and necessary, pay administrative expenses of the estate, subject, however, to s. 727.14(1);
- (6) To the extent necessary, employ at the expense of the estate one or more appraisers, auctioneers, accountants, attorneys, or other professional persons, to assist the assignee in carrying out his duties under this chapter;
- (7) Keep regular accounts and furnish such information concerning the estate as may be reasonably requested by creditors or other parties in interest;
- (8) File with the court an interim report of receipts and disbursements within 6 months after the filing date unless excused by the court or unless the estate has been sooner distributed in full;

- (9) Examine the validity and priority of all claims against the estate;
- (10) Abandon assets to duly perfected secured or lien creditors, where, after due investigation, he determines that the estate has no equity in such assets or such assets are burdensome to the estate or are of inconsequential value and benefit to the estate;
- (11) Pav dividends and secured or priority claims as often as is compatible with the best interests of the estate and close the estate as expeditiously as possible; and
- (12) File with the court a final report of all receipts and disbursements and file an application for his discharge pursuant to the provisions of s. 727.16. Application-for-discharge-of assignee--After-the-final-statement-of-the--assignee--of-all-the matters--pertaining-to-his-position-he-may-after-publication-for-30 days-in-a-newspaper-in-the--county--where-he--published--his-notice mentioned-in-s-727.057-apply-by-petition-to-the-judge-of-the-circuit court-of-said-circuit-for-his-letters-of-discharge-as-said--assignee7 and--if--the-said-circuit--judge--shall--be-satisfied-that-the-said assignee-has-compiled-with-his-duties-as-such-assignee7-he-shall-then grant-him-such-letters-as-prayed-for-

Section 9. Section 727.09, Florida Statutes, is created to read.

- 727.09 Power of the court. -- The court shall have power to.
- (1) Enforce all provisions of this chapter;

CHAPTER 87-174

- (2) Set, approve, or reconsider the amount of the assignee's bond;
- (3) Authorize the business of the assignor to be conducted for limited periods by the assignee, if in the best interest of the estate;
- (4) Allow or disallow claims against the estate and determine their priority;
- (5) Determine any claims of exemption by the assignor, if disputed;
- (6) Hear and determine any of the following actions brought by the assignee, which he is hereby empowered to maintain:
- (a) To enforce the turnover of assets of the estate pursuant to s. 727.06;
- (b) To determine the validity, priority, and extent of a lien or other interests in assets of the estate, or to subordinate or avoid an unperfected security interest pursuant to the assignee's rights as a lien creditor under s. 679.301; and
  - (c) To avoid any conveyances or transfer void or voidable by law:
- (7) Approve the assignee's final report and interim and final distributions to creditors;

(8) Approve reasonable fees and the reimbursement of expenses for the assignee and all professional persons retained by the assignee, upon objection of a party in interest or upon the court's own motion,

LAWS OF FLORIDA

- (9) Hear and determine any motion brought by a party in interest or by the court to close the estate after the passage of 1 year from the date of filing of the petition;
- (10) Discharge the assignee and his surety from liability upon matters included in the assignee's final report;
  - (11) Reopen estates for cause shown;
- (12) Punish by contempt any failure to comply with the provisions of this chapter or any order of the court made pursuant to this chapter; and
- (13) Exercise such other and further powers as are necessary to enforce or carry out the provisions of this chapter.
  - Section 10. Section 727.10, Florida Statutes, is created to read:
  - 727.10 Actions by assignee and other parties in interest.--
- (1) All matters requiring court authorization under this chapter shall be brought by motion, except for the following matters, which shall be trought by supplemental proceeding, as provided in subsection (2):
- (a) An action by the assignee to recover money or other assets of the estate;
- (b) An action by the assignee to determine the validity, priority, or extent of a lien or other interest in property or to subordinate or avoid an unperfected security interest under s. 727.09(6)(b); and
- (c) An action by the assignee to avoid any conveyance or transfer void or voidable by law under s. 727.09(6)(c).
- (2) A supplemental proceeding is an action of the type designated in paragraphs (1)(a), (b), and (c) and shall be brought as follows:
- (a) The Florida Rules of Civil Procedure shall apply to supplemental proceedings, except where inconsistent with the provisions of this chapter.
- (b) The clerk of the court shall docket a supplemental proceeding under both the same case number assigned to the original petition filed by the assignee pursuant to s. 727.04 and a separate supplemental proceeding number, and shall assign such supplemental proceeding to the same division and judge assigned to the main case.
- (c) All pleadings and other papers filed in a supplemental proceeding shall contain a separate subcaption and the supplemental proceeding number in addition to the caption and case number applicable to the main case.
  - Section 11. Section 727.11, Florida Statutes, is created to read.
  - 727.11 Notice.--

(1) The assignee shall give notice of the assignment by publication in a newspaper of general circulation published in the county where the petition is filed and in any other county or counties where the assignment is required to be recorded pursuant to s. 727.04(2), onc. \_\_\_\_\_for 4 consecutive weeks, the first notice to be published within 10 days after filing of the petition; and by mailing notice to all known creditors within 20 days after filing of the petition. The notice of the assignment shall include the date of filing of the petition; the name of the court where the petition is filed and the case number assigned to the petition; the last day on which a proof of claim may be served upon the assignee, to be determined in accordance with s. 727.12(2); and the name and address of the assignor, the assignee, and the assignee's attorney, if any.

LAWS OF FLORIDA

(2) The notice of assignment shall be in substantially the following form:

# NOTICE OF ASSIGNMENT

IN	THE	CIR	CUIT	COURT
ŌF	THE			
CII	RCUI	r, 1	N AN	D FOR
			co	UNTY,
	ORIDA			

IN RE:.... Assignor, to...... Assignee.

TO CREDITORS AND OTHER INTERESTED PARTIES:

			T.																				
an	ass	ia	nment	. for	: th	e b	enef	it	ο£	çr	edi	to	rs	Du	rsı	ant	to	С	ha	pter		727	,
FI	orid	a	Stat	utes	,	made	e by							1	ass	igr	or,	wi	th	pri	nc	ı pa	1
nl	CP	of-	busi	ness	at						. t	0								ass	ıσ	nee	ラ.
who	ose	ac	dres	38	s.		<i>.</i>					.,	wa	ıs	fil	.ed	on		٠.			٠. ٠	
19																							

YOU ARE HEREBY further notified that in order to receive any dividend in this proceeding you must file a proof of claim with the assignee or his attorney on or before.....(120 days from the date of the filing of the petition).

•	٠	٠		٠	•	٠	٠	٠	•	٠	٠	•	٠	٠	٠	٠	٠	٠
_	_	Т	Т	Т	_	A	S	s	I	G	N	E	Ē					

Attorney for assignee (if any):.....

Address:.....

- (3) The assignee shall give the assignor and all creditors not less than 10 days' notice by mail of an examination of the assignor pursuant to s. 727.08(2).
- (4) The assignee shall give the assignor and all creditors not less than 20 days' notice by mail of a proposed sale of assets of the estate other than in the ordinary course of business, the compromise or settlement of a controversy, and the payment of fees and expenses to the assignee and to professional persons employed by the assignee pursuant to s. 727.08(6). Any and all objections to the proposed action must be filed and served upon the assignee and the assignee's attorney, If any, not less than 3 days before the date of the

- proposed action. The notice shall include a description of the proposed action to be taken and the date of the proposed action, and shall set forth the date and place for the hearing at which any objections shall be heard. If no objections are timel filed and served, the assignee may take such action as described in the notice without further order of the court.
- (5) The assignee shall give the assignor and all creditors not less than 20 days' notice by mail of the filing of his petition for discharge and the final report of receipts and disbursements Pursuant to s. 727.16. The notice shall include a summary of all receipts and disbursements of the estate and shall set forth the date and place of the final hearing.
- (6) For good cause shown and without notice of hearing, the court may shorten the notice period or limit the parties to whom notice need be given, pursuant to subsection (3) or subsection (4).
- (7) Wherever notice is required to be given under this chapter and the period of such notice is not specified, the court shall fix such period of notice as is appropriate in the particular circumstances.
- (8) Wherever notice is required to be given under this chapter, a certificate of service of such notice shall be filed with the court.
- (9) Wherever notice is not specifically required to be given under this chapter, the court in its discretion may consider motions and grant or deny relief without notice or hearing.
  - Section 12. Section 727.12, Florida Statutes, is created to read.

#### 727.12 Proof of claim.--

- (1) All claims other than claims of creditors with liens on assets of the estate, whether contingent, liquidated, unliquidated, or disputed, which arose prior to the filing date, must be filed in accordance with the provisions of this chapter, and any such claim not so filed is barred from any further recovery against the estate.
- (2) Claims shall be filed by delivering the claim to the assignee within 120 days from the filing date unless for cause shown.
- (3) Claims shall be in written form, entitled "proof of claim," setting forth the name and address of the creditor and the nature and amount of the claim, and executed by the creditor or the creditor's authorized agent.
- (4) When a claim, or an interest in property of the assignor securing the claim is based on a writing, the original or a copy of such writing shall be filed with the proof of claim, together with evidence of perfection of any security interest, it applicable.
- (5) A proof of claim, executed and delivered in accordance with this section, shall constitute prima facie evidence of the validity and amount of the claim.
  - Section 13. Section 727.13, Florida Statutes, is created to read:
- 727.13 Objections to claims. -- At any time prior to the entry of an order approving the assignee's final report, the assignee or any

Party in interest may file with the court an objection to a claim, which objection shall be in writing and shall set forth the nature of the objection. A copy of the objection, together with notice of hearing thereon, shall be mailed to the creditor at least 20 days prior to the hearing. All claims properly filed with the assignee and not disallowed by the court shall constitute all claims entitled to distribution from the estate.

Section 14. Section 727.14, Florida Statutes, is created to read:

- 727.14 Priority of claims.—Allowed claims shall receive distribution under this chapter in the following order of priority and, with the exception of subsection (1), on a pro rata basis:
- (1) Creditors with liens on assets of the estate, which liens are duly perfected pursuant to applicable law, shall receive the proceeds from the disposition of their collateral, less the reasonable, necessary expenses of preserving or disposing of such collateral to the extent of any benefit to such creditors. If and to the extent that such proceeds are less than the amount of a creditor's claim or a creditor's lien is avoided pursuant to s. 727.09(6)(c), such a creditor shall be deemed to be an unsecured creditor pursuant to subsection (6) of this section.
- (2) Expenses incurred during the administration of the estate, other than those expenses allowable under subsection (1), including allowed fees and reimbursements of all expenses of the assignee and professional persons employed by the assignee pursuant to s. 727.08(6).
- (3) Unsecured claims of governmental units for taxes which accrued prior to the filing date.
- (4) Claims for wages, salaries, or commissions, including vacation, severance and sick leave pay, or contributions to an employee benefit Plan earned by the individual within 90 days of the filing date or the cessat on of the assignor's business, whichever occurs first, but only to the extent of \$2,000.
- (5) Allowed unsecured claims, to the extent of \$900 for each individual, arising from the deposit with the assignor before the filing date of money in connection with the purchase, lease, or rental of property or the purchase of services for personal, family, or household use by such individuals that were not delivered or provided.
  - (6) Unsecured claims.

If all of the above classes have been paid in full, any residue shall be paid to the assignor.

Section 15. Section 727.15, Florida Statutes, is created to read:

727.15 Resignation or removal of assignee.--

(1) The court shall remove or replace the assignee on application of the assigner, the assignee, any creditor, or on its own motion, if the assignee has not executed and filed the bond required by s. 127.04(2), if the assignee resigns, refuses, or falls to serve for any reason, or for good cause.

CHAPTER 87-174

- (2) Upon removal, resignation, or death of the assignee, the court shall appoint a replacement assignee if the court deems in its discretion that further administration of the estate is required. Upon executing and filing a bond pursuant to s. 727.04(2), the replacement assignee shall forthwith take possession of the estate and assume his duties as assignee.
- (3) Whenever the court shall be satisfied that the assignee so removed or replaced has fully accounted for and turned over to the replacement assignee appointed by the court all of the property of the estate and has filed a report of all receipts and disbursements during his tenure as assignee, the court shall enter an order discharging him from all further duties, liabilities, and responsibilities as assignee after notice and a hearing.

Section 16. Section 727.16, Florida Statutes, is created to read:

# 727.16 Assignee's final report and discharge.--

- (1) Upon distribution of all assets of the estate, the assignee shall petition the court for his discharge upon notice and a hearing in accordance with s. 727.11(5).
- (2) The assignee's final report setting forth all receipts and disbursements of the estate shall be annexed to the petition for discharge and filed with the court.
- (3) Upon approval of the final report, the court shall discharge the assignee and release his bond.
- (4) The assignee's discharge shall have the effect of releasing him from any duties, liabilities, and responsibilities as assignee pursuant to the provisions of the assignment and this chapter.

Section 17. This act shall take effect July 1, 1987.

Approved by the Governor June 30, 1987.

Filed in Office Secretary of State June 30, 1987.

#### CHAPTER 87-175

#### Committee Substitute for House Bill No. 453

An act relating to local option taxes; amending s. 125.0104, F.S.; authorizing any county levying the local option tourist development tax to elect to collect and administer the tax on a local basis; amending s. 213.053, F.S.; authorizing the Department of Revenue to disclose certain information to the governing body of a county or subcounty district levying a local option tax which the department administers; providing for application of confidentiality and penalty provisions to the governing body and its officers and employees, providing an effective date.

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

- Section 1. Subsection (10) is added to section 125.0104, Florida Statutes, 1986 Supplement, to read:
- 125.0104 Tourist development tax; procedure for levying, authorized uses; referendum; enforcement.--

#### (10) LOCAL ADMINISTRATION OF TAX. --

CHAPTER 87-175

- (a) A county levying a tax under the provisions of this section may be exempt from the requirements of this section that the tax collected be remitted to the Department of Revenue before being returned to the county, and that such tax be administered according to the provisions of part I of chapter 212, if the county adopts an ordinance providing for the collection and administration of the tax on a local basis.
- (b) The ordinance shall include provision for, but need not be limited to:
- 1. Initial collection of the tax to be made in the same manner as the tax imposed under part I of chapter 212.
- 2. Designation of the local official to whom the tax shall be remitted, and that official's powers and duties with respect thereto.

  Tax revenues may be used only in accordance with the provisions of this section.
- 3. Requirements respecting the keeping of appropriate books, records, and accounts by those responsible for collecting and administering the tax.
- 4. Provision for payment of a dealer's credit as required under part I of chapter 212.
- 5. A portion of the tax collected may be retained by the county for costs of administration, but such portion shall not exceed 3 percent of collections.
- Section 2. Subsection (2) of section 213.053, Florida Statutes, 1986 Supplement, is amended, and subsection (9) is added to said section, to read:

#### 213.053 Confidentiality and information sharing. --

- (2) Except as provided in subsections (3), (4), (5), (6), (7), and (8) and (9), all information contained in returns, reports, accounts, or declarations received by the department including investigative reports and information and including included letters of technical advice, is confidential except for official purposes. Any officer or employee, or former officer or employee, of the department who divulges any such information in any manner, except for such official purposes or in accordance with the provisions of subsection (3), subsection (4), subsection (5), subsection (6), subsection (7), or subsection (8), or subsection (9), is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (9)(a) Notwithstanding other provisions of this section, the department shall, subject to the safeguards and limitations of paragraphs (b) and (d), disclose to the governing body of the county or subcounty district levying a local option tax which the department