

1989

Session Law 89-054

Florida Senate & House of Representatives

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H 643 GENERAL BILL by Canady (Similar S 762)

Assignments/Liquidation Value; redefines term "liquidation value"; increases number of days before being required to file assignee's bond. Amends 727.103, 104. Effective Date: 07/01/89.

03/09/89 HOUSE Prefiled
03/14/89 HOUSE Referred to Judiciary
03/30/89 HOUSE Subreferred to Subcommittee on Court Systems, Probate and Consumer Law
04/04/89 HOUSE Introduced, referred to Judiciary -HJ 65; Subreferred to Subcommittee on Court Systems, Probate and Consumer Law; On Committee agenda—Judiciary, 04/06/89, 3:30 pm, 413-C—For ratification of referral to subcommittee
04/13/89 HOUSE On subcommittee agenda—Judiciary, 04/17/89, 10:40 am, 413-C
04/18/89 HOUSE Subcommittee Recommendation: Favorable
04/25/89 HOUSE On Committee agenda—Judiciary, 04/27/89, 8:30 am, 413-C
04/27/89 HOUSE Preliminary Committee Action by Judiciary: Favorable
04/28/89 HOUSE Comm. Report: Favorable by Judiciary, placed on Calendar
05/03/89 HOUSE Placed on Special Order Calendar; Read second time -HJ 360
05/04/89 HOUSE Read third time; Passed; YEAS 107 NAYS 0 -HJ 375
05/09/89 SENATE In Messages
05/16/89 SENATE Received, referred to Judiciary-Civil -SJ 361
05/24/89 SENATE Withdrawn from Judiciary-Civil; Substituted for SB 762; Passed; YEAS 38 NAYS 0 -SJ 435
05/25/89 Ordered enrolled
06/13/89 Signed by Officers and presented to Governor
06/16/89 Approved by Governor; Chapter No. 89-54

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h0643-f.jud

DATE: July 20, 1989

HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 643

RELATING TO: Assignment/liquidation value

SPONSOR(S): Representative Canady

EFFECTIVE DATE: July 1, 1989 or upon becoming law whichever occurs later

DATE BECAME LAW: June 16, 1989

CHAPTER #: 89-54, Laws of Florida

COMPANION BILL(S): Similar to SB 762

OTHER COMMITTEES OF REFERENCE: (1)

(2)

I. SUMMARY:

A. PRESENT SITUATION:

When a 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. A debtor may assign to a designated person (assignee) control of all assets which could normally be reached by creditors. These assets are then liquidated by the assignee and the proceeds are distributed pro rata among the creditors who had filed claims with the assignee. An assignment which purported to create a preference for one class of creditors over another would be declared void as to all creditors (Green v. Dixon, 21 Fla. 413 (1885)). Thus, problems arose as the old law required exacting conformance, but was generally silent as to its requirements.

Therefore, in 1987 the Legislature enacted a uniform assignment (of property) for the benefit of creditors law (CS/HB 383) which became effective July 1, 1987. Chapter 87-174, Laws of Florida. This legislation substantially rewrote chapter 727, Florida Statutes. The new law established uniform procedures to govern the actions of the assignor, assignee, creditors and the courts when a person or corporate entity liquidated assets to satisfy the claims of creditors. In addition, the authority and responsibilities of the assignee are defined and limitations placed on the assignee's exposure to liability.

The new law requires, as did the old law, the assignee to file a bond (as assurance of the faithful discharge of his duties) set by the court in an amount equal to not less than twice the

"liquidation value" of the assets involved. The bond must be filed with the clerk of the court within 10 days after the court enters an order setting the amount of the bond. Section 727.04, Florida Statutes.

B. EFFECT OF PROPOSED CHANGES:

House Bill 643 is intended to clarify that the bond filed by assignees is to be based on net assets (i.e., less the value of liens) rather than its gross valuation. The bill also increases the number of days within which bond must be filed with the Clerk of the Court from 10 to 30 days.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 of the bill amends the definition of "liquidation value" (s. 727.103(10), F.S.) to clarify that this term means net asset value upon a forced sale, i.e., reduced by the value of liens encumbering the assets, rather than gross valuation.

Section 2 increases from 10 to 30 the number of days within which the assignee must file a bond with the Clerk of the Court, (amending s. 727.104(2)(b), F.S.).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

None

III. LONG RANGE CONSEQUENCES:

This bill has no direct impact on the State Comprehensive Plan.

IV. COMMENTS:

This legislation has no direct impact on either the Mission Statement of the House Judiciary Committee or the Policy Statement of the Florida House of Representatives.

V. SIGNATURES:

~~SUBSTANTIVE COMMITTEE:~~

Prepared by:

David K. Sigerson, Jr.

Staff Director:

Richard Hixson

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:


REVISED: _____

BILL NO. SB 762

DATE: April 27, 1989

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Wiehle ^{KW}</u>	<u>Smawley </u>	1. <u>JCI</u>	<u>Favorable</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Creditors/Assignment of Assets

BILL NO. AND SPONSOR:

SB 762 by
Senator Langley

I. SUMMARY:

A. Present Situation:

Chapter 727, F.S., provides a procedure whereby a debtor who is unable to pay his debts as they come due can irrevocably assign his assets to an independent third party assignee, who then liquidates the assets and applies the proceeds to the debts. As part of this process, the debtor is to attach to the assignment document a schedule of his known creditors and the amount and nature of their claims and a separate schedule of his assets and their estimated liquidation value. "Liquidation value" is defined as the cash value obtainable in a forced sale. Within 10 days after the assignment and schedules are delivered to the assignee, he must record the assignment and file a petition to set the amount of the assignee's bond. The assignee's bond is to be in an amount not less than double the liquidation value of the assets of the estate. The assignee must file the bond with the clerk within 10 days after the court enters an order setting the bond.

B. Effect of Proposed Changes:

The bill would amend the definition of "liquidation value" to mean the difference between the cash value obtainable upon a forced sale of assets and the amount of any valid lien against the assets.

The bill would require that the assignee file his bond with the clerk within 30 days after the court sets the amount of bond instead of within 10 days.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

The bill would decrease the cost of the assignee's bond, thereby decreasing the cost to the assignee. As the assignee's costs of execution and administration are reimbursed from the liquidated estate pursuant to s. 727.104(1)(b), F.S., this would in turn increase the amount of the assignment estate remaining and available to be paid to creditors.

B. Government:

None.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.