

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by adding the heading of Article 112B and Sections
6 112B-1, 112B-2, 112B-3, 112B-4, 112B-5, 112B-5.5, 112B-6,
7 112B-7, and 112B-8 as follows:

8 (725 ILCS 5/Art. 112B heading new)

9 ARTICLE 112B. ASSET-FREEZING ORDERS

10 (725 ILCS 5/112B-1 new)

11 Sec. 112B-1. Definitions. In this Article:

12 "Asset" means anything that may be the subject of
13 ownership, whether real or personal, tangible or intangible, or
14 legal or equitable, or any interest in it, which is not exempt
15 from execution under applicable law.

16 "Asset-freezing order" means an in personam order
17 restraining or enjoining a person from dissipating an asset
18 directly or indirectly.

19 "Defendant" means a person charged with a criminal offense
20 against whom an asset-freezing order is brought.

21 "Dissipate" means to take an action with regard to an asset
22 of a defendant to defeat satisfaction of an existing or future

1 judgment for a fine, restitution, assessment, or court costs
2 after conviction, including:

3 (1) selling, removing, alienating, transferring,
4 assigning, encumbering, or similarly dealing with the
5 asset;

6 (2) instructing, requesting, counseling, demanding, or
7 encouraging any other person to take an action described in
8 paragraph (1) of this definition; and

9 (3) facilitating, assisting in, aiding, abetting, or
10 participating in an action described in paragraph (1) or
11 (2) of this definition.

12 "Lien" means a charge against or an interest in property to
13 secure payment of a debt or performance of an obligation, and
14 includes a security interest created by agreement, a judicial
15 lien obtained by legal or equitable process or proceedings, a
16 common-law lien, or a statutory lien.

17 "Nonparty" means a person that is not a defendant and has
18 custody or control of an asset of a defendant who is subject to
19 an asset-freezing order. The term includes a person that holds
20 a joint ownership interest in an asset with a defendant against
21 which an asset-freezing order has been entered.

22 "Person" means an individual, estate, business or
23 nonprofit entity, public corporation, government or
24 governmental subdivision, agency, or instrumentality, or other
25 legal entity.

26 "Record" means information that is inscribed on a tangible

1 medium or that is stored in an electronic or other medium and
2 is retrievable in perceivable form.

3 "State" means the prosecutor who filed the charge against
4 the defendant and brings an action for an asset-freezing order.

5 "Transfer" means every mode, direct or indirect, absolute
6 or conditional, voluntary or involuntary, of disposing of or
7 parting with an asset or an interest in an asset, and includes
8 payment of money, release, lease, and creation of a lien or
9 other encumbrance.

10 (725 ILCS 5/112B-2 new)

11 Sec. 112B-2. Scope.

12 (a) This Article applies to a right accruing to a nonparty
13 after the entry of an asset-freezing order if:

14 (1) the nonparty has been served with the order under
15 subsection (a) of Section 112B-5 of this Article; or

16 (2) the State obtaining the order has filed, recorded,
17 or docketed the order in the appropriate jurisdiction and
18 office in which the State would be required under
19 applicable law to file, record, or docket the order to give
20 notice of, establish, or perfect a lien, security interest,
21 mortgage, or comparable interest, and the order as filed,
22 recorded, or docketed, if it were a judicial lien in favor
23 of the State, would give priority to the interest of the
24 State over the interest of the nonparty under applicable
25 law.

1 (b) This Article does not apply to or limit a right or
2 remedy available to the State, defendant, or nonparty to the
3 extent that a federal law or regulation preempts this Article.

4 (c) This Article does not affect a right or remedy
5 including a right or remedy arising from the creation,
6 perfection, priority, or enforcement of a security interest or
7 other interests that existed before an order takes effect.

8 (d) This Article does not prevent the exercise of other
9 remedies not inconsistent with this Article.

10 (725 ILCS 5/112B-3 new)

11 Sec. 112B-3. Asset-freezing order issued with notice.

12 (a) The State may, by motion, bring an action under this
13 Article regarding assets of a person charged with or convicted
14 of a criminal offense under the laws of this State if a fine,
15 restitution, assessment, or costs may be sought or has been
16 imposed as the result of a conviction. A court may issue an
17 asset-freezing order on motion of the State with notice to the
18 defendant against whom the order is sought and with an
19 expedited opportunity to be heard if the court finds that:

20 (1) there is a substantial likelihood that the State
21 will prevail on the merits of the action;

22 (2) if the order is not granted, there is a substantial
23 likelihood the assets of the defendant against whom the
24 order is sought will be dissipated so that the State will
25 be unable to receive satisfaction of a judgment after

1 conviction because of the dissipation;

2 (3) any harm the defendant against whom the order is
3 sought may suffer by complying with the order is clearly
4 outweighed by the risk of harm to the State if the order is
5 not issued; and

6 (4) the order, if issued, would not be adverse to the
7 public interest.

8 (b) An asset-freezing order issued with notice must be
9 served in compliance with State law.

10 (c) A defendant against whom an asset-freezing order is
11 issued may apply for relief from the order by posting a bond or
12 other security in an amount determined by the court.

13 (d) On at least 24 hours' notice to the State, a defendant
14 against whom the order is issued may apply for an order
15 permitting him or her to pay his or her ordinary living
16 expenses or business expenses.

17 (e) The court must limit an asset-freezing order to provide
18 a sufficient amount to provide the legal representation needs
19 of the defendant for any pending criminal charge against him or
20 her, including responding and contesting motions and orders
21 under this Article.

22 (f) The court may limit an asset-freezing order to a
23 certain amount or type of assets and may order appropriate
24 accounting requirements.

25 (g) An asset-freezing order remains in effect until it is
26 vacated by the court, or the criminal charge is resolved by

1 agreement of the State and defendant, operation of law, or
2 satisfaction of a judgment entered against the defendant
3 against whom the order was issued.

4 (725 ILCS 5/112B-4 new)

5 Sec. 112B-4. Asset-freezing order issued without notice.

6 (a) The court may issue an asset-freezing order on motion
7 of the State without the notice required by subsection (a) of
8 Section 112B-3 of this Article if the court finds that facts in
9 an affidavit or verified pleading offered in support of the
10 motion establish that the State is entitled to the order under
11 that Section.

12 (b) The State moving for an asset-freezing order under
13 subsection (a) of this Section shall:

14 (1) conduct a reasonable inquiry and disclose in the
15 affidavit or verified pleading all material facts that
16 weigh against the issuance of the order; and

17 (2) disclose in the affidavit or verified pleading all
18 efforts to give notice or the reasons why notice should not
19 be required.

20 (c) An asset-freezing order issued without notice expires
21 on a date set by the court, not later than 14 days after the
22 court issues the order, unless before that time:

23 (1) the court, for good cause, extends the order and
24 states in the order of extension the reason for the
25 extension; or

1 (2) the defendant consents in a record to an extension.

2 (d) If an asset-freezing order is issued without notice,
3 the defendant against whom the order is issued may move to
4 dissolve or modify the order after notice to the State that
5 obtained the order and may apply for relief under subsections
6 (c) and (d) of Section 112B-3 of this Article. The court shall
7 hear and decide the motion or application on an expedited
8 basis.

9 (725 ILCS 5/112B-5 new)

10 Sec. 112B-5. Obligation of nonparty served with
11 asset-freezing order.

12 (a) An asset-freezing order may be served on a nonparty. If
13 the State who obtained the order serves a nonparty with the
14 order, the State shall give notice to the defendant of the name
15 and address of the nonparty not later than one day after
16 service.

17 (b) Subject to subsection (e) of this Section, a nonparty
18 served with an asset-freezing order shall freeze the assets of
19 the defendant against whom the order is issued until further
20 order of the court. The nonparty shall comply promptly with
21 this subsection (b), taking into account the manner, time, and
22 place of service and other factors that reasonably affect the
23 nonparty's ability to comply. If the nonparty believes, in good
24 faith, that complying with the asset-freezing order would
25 violate a law, create liability under a law, or violate an

1 order issued by another jurisdiction, the nonparty immediately
2 may move the court that issued the asset freezing order to
3 dissolve or modify the order. If the court finds that the
4 nonparty acted in good faith, it may not find the nonparty in
5 contempt of court for failing to comply with the order during
6 the pendency of the petition. The court shall hear and decide
7 the motion on an expedited basis.

8 (c) If an asset-freezing order is vacated or modified, the
9 State obtaining the order shall give notice promptly to a
10 nonparty that was served with the order in the same manner as
11 the nonparty was originally given notice.

12 (d) Except as otherwise provided for in subsection (b) of
13 this Section, a nonparty served with an asset-freezing order
14 may not knowingly assist in or permit a violation of the order.

15 (e) A nonparty served with an asset-freezing order may move
16 to dissolve or modify the order. The court shall hear and
17 decide the motion on an expedited basis.

18 (725 ILCS 5/112B-5.5 new)

19 Sec. 112B-5.5. Asset dissipation relief.

20 (a) The State may seek asset dissipation relief against a
21 transfer or obligation of an asset knowingly made to dissipate
22 the asset and may obtain:

23 (1) avoidance of the transfer or obligation to the
24 extent necessary to satisfy an existing or future judgment
25 for a fine, restitution, assessment, or court costs;

1 (2) an attachment or other provisional remedy against
2 the asset transferred or other property of the transferee
3 in accordance with the procedure prescribed by the Code of
4 Civil Procedure; or

5 (3) subject to applicable principles of equity and in
6 accordance with applicable rules of civil procedure:

7 (A) an injunction against further disposition by
8 the defendant or a transferee, or both, of the asset
9 transferred or of other property;

10 (B) appointment of a receiver to take charge of the
11 asset transferred or of other property of the
12 transferee; or

13 (C) any other relief the circumstances may
14 require.

15 (b) Notwithstanding voidability of a transfer or an
16 obligation under this Section, a good-faith transferee or
17 obligee is entitled, to the extent of the value given the
18 defendant for the transfer or obligation, to:

19 (1) a lien on or a right to retain any interest in the
20 asset transferred; or

21 (2) enforcement of any obligation incurred.

22 (725 ILCS 5/112B-6 new)

23 Sec. 112B-6. Indemnity.

24 The court may indemnify a nonparty for the reasonable costs
25 of compliance with the order and compensate for any loss caused

1 by the order from the assets of the defendant.

2 (725 ILCS 5/112B-7 new)

3 Sec. 112B-7. Appeal. The State, defendant, or nonparty may
4 appeal an order issued, including an interlocutory appeal,
5 under this Article granting, continuing, modifying, refusing,
6 or dissolving an asset-freezing order or asset dissipation
7 relief order.