



Rep. Elgie R. Sims, Jr.

Filed: 5/29/2017

10000SB1402ham001

LRB100 08099 MRW 27204 a

1 AMENDMENT TO SENATE BILL 1402

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 1402 by replacing  
3 everything after the enacting clause with the following:

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, and 112B-5 as follows:

7 (725 ILCS 5/Art. 112B heading new)

8 ARTICLE 112B. ASSET DISSIPATION RELIEF

9 (725 ILCS 5/112B-1 new)

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

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

15 "Crime of violence" has the meaning ascribed to it in

1 Section 2 of the Crime Victims Compensation Act.

2 "Dissipate" means to take an action with regard to an asset  
3 of a defendant to defeat satisfaction of an existing or future  
4 judgment for a fine, restitution, assessment, or court costs  
5 after conviction, including:

6 (1) selling, removing, transferring, assigning,  
7 encumbering, or similarly dealing with the asset;

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

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

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

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

25 "Sex offense" means a violation of Article 11 of the  
26 Criminal Code of 1961 or the Criminal Code of 2012.

1       "State" means the prosecutor who filed the charge against  
2 the defendant and brings an action for an asset dissipation  
3 relief order.

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

9       "Transferee" means an individual, estate, business or  
10 nonprofit entity, public corporation, government or  
11 governmental subdivision, agency, or instrumentality, or other  
12 legal entity.

13       (725 ILCS 5/112B-2 new)

14       Sec. 112B-2. Scope.

15       (a) This Article applies to the property of a defendant  
16 charged with or convicted of a crime of violence or sex offense  
17 in which the victim is under 18 years of age.

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

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

25       (d) This Article does not prevent the exercise of other

1 remedies not inconsistent with this Article.

2 (725 ILCS 5/112B-3 new)

3 Sec. 112B-3. Asset dissipation relief.

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

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

10 (2) an attachment or other provisional remedy against  
11 the asset transferred or other property of the transferee  
12 in accordance with the procedure prescribed by the Code of  
13 Civil Procedure; or

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

16 (A) an injunction against further disposition by  
17 the defendant or a transferee, or both, of the asset  
18 transferred or of other property;

19 (B) appointment of a receiver to take charge of the  
20 asset transferred or of other property of the  
21 transferee; or

22 (C) any other relief the circumstances may  
23 require.

24 (b) Notwithstanding voidability of a transfer or an  
25 obligation under this Section, a good-faith transferee or

1 obligee is entitled, to the extent of the value given the  
2 defendant for the transfer or obligation, to: (1) a lien on or  
3 a right to retain any interest in the asset transferred; or (2)  
4 enforcement of any obligation incurred.

5 (c) The court shall limit an asset dissipation relief order  
6 to provide a sufficient amount to provide the legal  
7 representation needs of the defendant for any pending criminal  
8 charge against him or her, including responding and contesting  
9 motions and orders under this Article.

10 (d) An asset dissipation relief order remains in effect  
11 until it is vacated by the court, or the criminal charge is  
12 resolved by agreement of the State and defendant, operation of  
13 law, or satisfaction of a judgment entered against the  
14 defendant against whom the order was issued.

15 (725 ILCS 5/112B-4 new)

16 Sec. 112B-4. Indemnity.

17 The court may indemnify a nonparty for the reasonable costs  
18 of compliance with the order and compensate for any loss caused  
19 by the order from the assets of the defendant.

20 (725 ILCS 5/112B-5 new)

21 Sec. 112B-5. Appeal. The State, defendant, or nonparty may  
22 appeal an order issued, including an interlocutory appeal,  
23 under this Article granting, continuing, modifying, refusing,  
24 or dissolving an asset dissipation relief order."