



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB1882

Introduced 2/15/2019, by Sen. Rachelle Crowe

#### SYNOPSIS AS INTRODUCED:

735 ILCS 5/8-802.3

Amends Evidence Article of the Code of Civil Procedure. Provides that if a defendant's counsel seeks to discover the identity of an informant, then the defendant's counsel shall file a motion with the court alleging a good faith factual basis for believing that the prior representation of the informant creates a serious potential for an actual conflict of interest. Provides that the court: may deny the motion for lack of a factual basis; or, if it finds a sufficiently alleged factual basis, shall conduct an in camera hearing with the informant to ascertain whether an actual conflict of interest exists. Provides that if the court conducts an in camera hearing, the court shall: deny the motion if there is no basis to conclude that a serious potential for an actual conflict exists; or inform the petitioning counsel that his or her continued representation is a conflict. Provides that if the court concludes that a conflict exists, it shall notify the counsel of the nature of the conflict, subject to any condition of nondisclosure the court deems appropriate. Effective immediately.

LRB101 07247 LNS 52285 b

1 AN ACT concerning civil 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 Civil Procedure is amended by  
5 changing Section 8-802.3 as follows:

6 (735 ILCS 5/8-802.3)

7 Sec. 8-802.3. Informant's privilege.

8 (a) Except as provided in subsection (b), if an individual  
9 (i) submits information concerning a criminal act to a law  
10 enforcement agency or to a community organization that acts as  
11 an intermediary in reporting to law enforcement and (ii)  
12 requests anonymity, then the identity of that individual is  
13 privileged and confidential and is not subject to discovery or  
14 admissible in evidence in a proceeding.

15 (b) There is no privilege under subsection (a) if a court,  
16 after a hearing in camera, finds that the party seeking  
17 discovery or the proponent of the evidence has shown that:

18 (1) the identity of an individual who submits  
19 information concerning a criminal act is sought or offered  
20 in a court proceeding involving a felony or misdemeanor;

21 (2) the evidence is not otherwise available; and

22 (3) nondisclosure infringes upon a constitutional  
23 right of an accused, or there is a need for the evidence

1           that substantially outweighs the interest in protecting  
2           confidentiality.

3           (b-5) Except as provided in this subsection or under  
4           subsection (j) of Supreme Court Rule 412, if a defendant's  
5           counsel seeks to discover the identity of an informant, then  
6           the defendant's counsel shall file a motion with the court  
7           alleging a good faith factual basis for believing that the  
8           prior representation of the informant creates a serious  
9           potential for an actual conflict of interest. Upon such filing,  
10          the court: (1) may deny the motion for lack of factual basis;  
11          or (2) if it finds a sufficiently alleged factual basis, shall  
12          conduct an in camera hearing with the informant, outside the  
13          presence of all counsel, to ascertain whether an actual  
14          conflict of interest exists. A transcript of the in camera  
15          proceeding shall be made and sealed. After the in camera  
16          hearing, the court shall: (i) deny the motion if there is no  
17          basis to conclude that a serious potential for an actual  
18          conflict exists; or (ii) inform the petitioning counsel that  
19          his or her continued representation is a conflict. If the court  
20          concludes that a conflict exists, it shall notify the counsel  
21          of the nature of the conflict, subject to any condition of  
22          nondisclosure that the court deems appropriate.

23           (c) The court may impose such sanctions as are necessary to  
24           enforce its order.

25           (Source: P.A. 94-174, eff. 1-1-06.)

26           Section 99. Effective date. This Act takes effect upon

1 becoming law.