



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

SB1402

Introduced 2/9/2017, by Sen. James F. Clayborne, Jr.

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/Art. 112B heading new  
725 ILCS 5/112B-1 new  
725 ILCS 5/112B-2 new  
725 ILCS 5/112B-3 new  
725 ILCS 5/112B-4 new  
725 ILCS 5/112B-5 new  
725 ILCS 5/112B-6 new  
725 ILCS 5/112B-7 new

Amends the Code of Criminal Procedure of 1963. Allows the prosecution in a criminal case to bring an action seeking a court order to freeze the assets of a person charged with or convicted of a criminal offense if there are grounds to believe the defendant may dissipate the assets to avoid paying any fine, restitution, assessment, or costs that may or has been imposed as the result of a conviction. Provides the court must limit its order to allow the defendant sufficient assets for legal representation for any pending criminal charges against the defendant, including contesting any motion or order with regard to freezing his or her assets. Provides the court may limit an asset freezing order to provide the defendant with assets for his or her living and business expenses. Provides procedures for obtaining and enforcing asset freezing motions and orders. Sets forth obligations and protections for persons who are not a defendant in the case but who hold assets of the defendant subject to an asset freezing order. Allows for appeal by any party. Defines terms.

LRB100 08099 MRW 18192 b

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-6, 112B-7, and  
7 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 "Nonparty" means a person that is not a defendant and has  
13 custody or control of an asset of a defendant who is subject to  
14 an asset-freezing order. The term includes a person that holds  
15 a joint ownership interest in an asset with a defendant against  
16 which an asset-freezing order has been entered.

17 "Person" means an individual, estate, business or  
18 nonprofit entity, public corporation, government or  
19 governmental subdivision, agency, or instrumentality, or other  
20 legal entity.

21 "Record" means information that is inscribed on a tangible  
22 medium or that is stored in an electronic or other medium and  
23 is retrievable in perceivable form.

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

1 (725 ILCS 5/112B-2 new)

2 Sec. 112B-2. Scope.

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

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

7 (2) the State obtaining the order has filed, recorded,  
8 or docketed the order in the appropriate jurisdiction and  
9 office in which the State would be required under  
10 applicable law to file, record, or docket the order to give  
11 notice of, establish, or perfect a lien, security interest,  
12 mortgage, or comparable interest, and the order as filed,  
13 recorded, or docketed, if it were a judicial lien in favor  
14 of the State, would give priority to the interest of the  
15 State over the interest of the nonparty under applicable  
16 law.

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

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

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

1 (725 ILCS 5/112B-3 new)

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

3 (a) The State may, by motion, bring an action under this  
4 Article regarding assets of a person charged with or convicted  
5 of a criminal offense under the laws of this State if a fine,  
6 restitution, assessment, or costs may be sought or has been  
7 imposed as the result of a conviction. A court may issue an  
8 asset-freezing order on motion of the State with notice to the  
9 defendant against whom the order is sought and with an  
10 expedited opportunity to be heard if the court finds that:

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

13 (2) if the order is not granted, there is a substantial  
14 likelihood the assets of the defendant against whom the  
15 order is sought will be dissipated so that the State will  
16 be unable to receive satisfaction of a judgment after  
17 conviction because of the dissipation;

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

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

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

26 (c) A defendant against whom an asset-freezing order is

1 issued may apply for relief from the order by posting a bond or  
2 other security in an amount determined by the court.

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

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

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

15 (g) An asset-freezing order remains in effect until it is  
16 vacated by the court, or the criminal charge is resolved by  
17 agreement of the State and defendant, operation of law, or  
18 satisfaction of a judgment entered against the defendant  
19 against whom the order was issued.

20 (725 ILCS 5/112B-4 new)

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

22 (a) The court may issue an asset-freezing order on motion  
23 of the State without the notice required by subsection (a) of  
24 Section 112B-3 of this Article if the court finds that facts in  
25 an affidavit or verified pleading offered in support of the

1 motion establish that the State is entitled to the order under  
2 that Section.

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

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

8 (2) disclose in the affidavit or verified pleading all  
9 efforts to give notice or the reasons why notice should not  
10 be required.

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

14 (1) the court, for good cause, extends the order and  
15 states in the order of extension the reason for the  
16 extension; or

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

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

1       Sec. 112B-5. Obligation of nonparty served with  
2 asset-freezing order.

3       (a) An asset-freezing order may be served on a nonparty. If  
4 the State who obtained the order serves a nonparty with the  
5 order, the State shall give notice to the defendant of the name  
6 and address of the nonparty not later than one day after  
7 service.

8       (b) Subject to subsection (e) of this Section, a nonparty  
9 served with an asset-freezing order shall freeze the assets of  
10 the defendant against whom the order is issued until further  
11 order of the court. The nonparty shall comply promptly with  
12 this subsection (b), taking into account the manner, time, and  
13 place of service and other factors that reasonably affect the  
14 nonparty's ability to comply. If the nonparty believes, in good  
15 faith, that complying with the asset-freezing order would  
16 violate a law, create liability under a law, or violate an  
17 order issued by another jurisdiction, the nonparty immediately  
18 may move the court that issued the asset freezing order to  
19 dissolve or modify the order. If the court finds that the  
20 nonparty acted in good faith, it may not find the nonparty in  
21 contempt of court for failing to comply with the order during  
22 the pendency of the petition. The court shall hear and decide  
23 the motion on an expedited basis.

24       (c) If an asset-freezing order is vacated or modified, the  
25 State obtaining the order shall give notice promptly to a  
26 nonparty that was served with the order in the same manner as



1 the nonparty was originally given notice.

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

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

8 (725 ILCS 5/112B-6 new)

9 Sec. 112B-6. Indemnity.

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

13 (725 ILCS 5/112B-7 new)

14 Sec. 112B-7. Appeal. The State, defendant, or nonparty may  
15 appeal an order issued, including an interlocutory appeal,  
16 under this Article granting, continuing, modifying, refusing,  
17 or dissolving an asset-freezing order.