

UNIFORM ASSET FREEZING ORDERS ACT*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FIRST YEAR
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WITHOUT PREFATORY NOTE OR COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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*The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws.

UNIFORM ASSET FREEZING ORDERS ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Asset Freezing Orders Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Asset” means anything that may be the subject of ownership, whether real or personal or tangible or intangible or legal or equitable, or any interest therein, which is not exempt from execution under applicable law.

(2) “Asset-freezing order” means an in personam order restraining or enjoining a person directly or indirectly from dissipating an asset.

(3) “Consumer debt” means a debt incurred primarily for personal, family, or household purposes. The term includes a debt that has been reduced to judgment.

(4) “Debtor” means a person that allegedly owes money to a party.

(5) “Dissipate” means to take an action with regard to an asset of a debtor to defeat satisfaction of an existing or future judgment, including:

(A) selling, removing, alienating, transferring, assigning, encumbering, or similarly dealing with an asset of the debtor;

(B) instructing, requesting, counseling, demanding, or encouraging any other person to take an action described in subparagraph (A); and

(C) facilitating, assisting in, aiding, abetting, or participating in an action described in subparagraph (A) or (B).

(6) “Nonparty” means a person that is not a party and has custody or control of an asset of a party which is subject to an asset-freezing order. The term includes a person that holds a joint ownership interest in an asset with a party against which an asset freezing order has been entered.

(7) “Party” means a person that brings an action or against which an action is brought, whether or not service has been made or notice given to the person.

(8) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 3. APPLICABILITY.

(a) This [act] applies to a nonparty right accruing after the entry of an asset-freezing order if:

(1) the nonparty has been served with an asset freezing order pursuant to Section 6(a); or

(2) the party obtaining the order has filed, recorded, or docketed the order in the appropriate jurisdiction and office in which the party would be required under applicable law to give notice of, establish, or perfect a lien, security interest, mortgage, or comparable interest, and the order as filed, recorded or docketed would, if it were a judicial lien in favor of the party, under applicable law, give priority to the interest of the party over the interest of the nonparty.

(b) This [act] does not apply in an action:

(1) against an individual for a consumer debt; or

(2) that arises under the family or domestic relations law of this state.

(c) This [act] does not apply to or limit a right or remedy available to a party or nonparty

to the extent that:

(1) a law, regulation, or treaty of the United States preempts this [act];

(2) this [act] shall not affect rights or remedies arising under applicable law, including the creation, perfection, priority or enforcement of a security interest or other interests that existed before the effective date of the order.

(d) This [act] does not prevent the recognition under principles of comity of an asset freezing order not within the scope of this act.

(e) This [act] does not prevent the exercise of other remedies not inconsistent with this [act].

(f) [This [act] does not affect an exemption in this [state] based on tenancy by the entirety.]

SECTION 4. ASSET-FREEZING ORDER ISSUED WITH NOTICE.

(a) In an action in which monetary damages are sought, a court may issue an asset-freezing order on motion with notice to the party against which the order is sought and an expedited opportunity to be heard if the court finds that:

(1) there is a substantial likelihood that the party seeking the order will prevail on the merits of the action;

(2) if the order is not granted, there is a substantial likelihood that the assets of the party against which the order is sought will be dissipated so that the moving party will be unable to receive satisfaction of a judgment because of the dissipation;

(3) any harm the party against which the order is sought may suffer through having to comply with the order is outweighed by the risk of harm to the moving party if the order is not issued; and

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

(b) An asset-freezing order issued with notice must be served in compliance with [applicable law of this state for service appropriate to this type of order].

(c) A party against which an asset-freezing order is issued may apply for an order relieving it of the obligations imposed by the order by posting a bond or other security in the amount of the damages sought or in an amount determined by the court.

(d) On at least 24 hours notice to a party that obtained an asset freezing order, a party against which the order is issued may apply for an order permitting the party to pay for ordinary living expenses, business expenses and legal representation.

(e) The court may determine whether the asset-freezing order should be limited to a certain amount or type of assets and may order appropriate accounting requirements.

(f) An asset-freezing order remains in effect until vacated by the court, dissolved by agreement of the parties, or resolved by operation of law or satisfaction of a judgment entered against the party against which the order was issued.

SECTION 5. ASSET-FREEZING ORDER ISSUED WITHOUT NOTICE.

(a) The court may issue an asset-freezing order on motion without the notice required by Section 4(a) if the court finds that facts in an affidavit or verified pleading offered in support of the motion establish that the moving party is entitled to the order under Section 4(a).

(b) A party moving for an asset-freezing order under subsection (a) shall:

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

(2) disclose all efforts to give notice or the reasons why notice should not be required.

(c) An asset-freezing order issued without notice expires on a date set by the court, not to exceed 14 days after issuance of the order, unless before that time:

(1) the court, for good cause, extends the order and states in the order of extension the reasons for the extension; or

(2) the nonmoving party consents in a record to an extension.

(d) If an asset-freezing order is issued without notice, the party against which the order is issued may move to dissolve or modify the order after notice and may apply for the relief provided by Section 4(c) and (d). The court shall hear and decide the motion on an expedited basis.

SECTION 6. OBLIGATION OF NONPARTY SERVED WITH ASSET-FREEZING ORDER.

(a) An asset-freezing order may be served on a nonparty. If the party that obtained the order serves a nonparty with the order, the party shall give notice to all parties in the action of the name and address of the nonparty not later than [1] day after service.

(b) A nonparty served with an asset-freezing order shall freeze the assets of the party against which the order is issued until further order of the court. The nonparty shall act promptly to comply with this subsection, taking into account the manner, time and place of service and other factors that reasonably affect the nonparty's ability to comply. If the nonparty believes, in good faith, that complying with the asset-freezing order would violate foreign law, create liability under a foreign legal system or violate an order issued by a foreign sovereign or tribunal, the nonparty immediately may petition the court that issued the asset-freezing order to dissolve or modify the order. If the court finds that the nonparty acted in good faith, it may not find the nonparty in contempt of court for failing to comply with the order during the pendency of the petition. The petition must be decided on an expedited basis. The provisions of this paragraph do not displace those of section 6(e).

(c) If an asset-freezing order is vacated or modified, a party obtaining the order shall give

notice promptly to a nonparty that was served with the order or take appropriate action as required by Section 3(a)(2).

(d) A nonparty served with an asset-freezing order may not knowingly assist in or permit a violation of the order.

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

SECTION 7. SECURITY.

(a) The court shall determine whether security is required by a party on whose behalf an asset-freezing order is issued. If the court determines that security is required, it shall require the party to give security to pay for costs and damages sustained by the party against which the order is issued if the order is later determined to have been improvidently granted.

(b) A party on whose behalf an asset-freezing order is issued shall indemnify a nonparty for the reasonable costs of compliance with the order or compensate for any loss caused by the order whether or not the motion for the order was granted properly.

SECTION 8. RECOGNITION OF ASSET-FREEZING ORDER ISSUED BY OTHER COURT.

(a) A court of this state shall recognize an asset-freezing order issued by a court in another state unless:

(1) recognition would violate the public policy of this state; or

(2) the order was issued without notice and the issuing court did not use procedures substantially similar to those in Section 5.

(b) Except as otherwise provided in subsection (c) and subject to subsection (d), a court of this state shall recognize an asset-freezing order issued by a court outside the United States.

(c) A court of this state may not recognize an asset-freezing order issued by a court

outside the United States if:

(1) the order was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) the issuing court did not have personal jurisdiction over the party against which the order was issued; or

(3) the issuing court did not have jurisdiction over the subject matter.

(d) A court of this state need not recognize an asset-freezing order issued by a court outside the United States if:

(1) the order was issued without notice to the party against which the order was issued and the issuing court did not use procedures substantially similar to those in Section 5;

(2) the party against which the order was issued did not receive notice of the proceeding in sufficient time to allow the order to be modified or dissolved and the interest of justice requires a hearing to determine the issue;

(3) the order was obtained by fraud that deprived the losing party of an opportunity to oppose the order;

(4) the order or the underlying claim for relief is repugnant to the public policy of this state or the United States;

(5) the order conflicts with another order;

(6) the proceeding in the issuing court was contrary to an agreement of the parties under which the dispute in question was to be determined otherwise than by proceedings in the court outside the United States;

(7) in the case of jurisdiction based only on personal service, the court outside the United States was a seriously inconvenient forum for the hearing regarding the order;

(8) the order was issued in circumstances that raise substantial doubt about the

integrity of the issuing court with respect to the order; or

(9) the specific proceedings in the issuing court leading to the issuance of the order were not compatible with the requirements of due process of law.

(e) A party resisting recognition of an asset-freezing order issued by a court outside the United States has the burden of proving that a ground for nonrecognition in subsection (c) or (d) applies.

SECTION 9. PERSONAL JURISDICTION.

(a) An asset-freezing order issued by a court outside the United States may not be refused recognition for lack of personal jurisdiction if the party against which the order was entered:

(1) was served with process personally in a foreign country;

(2) voluntarily appeared in the proceeding other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

(3) before the commencement of the proceeding, had agreed to submit to the jurisdiction of the court outside the United States respect to the subject matter involved;

(4) was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;

(5) had a business office in foreign country and the proceeding in the court outside the United States involved a [cause of action][claim for relief] arising out of the business done by the party through that office in the foreign country; or

(6) operated a motor vehicle or airplane in the foreign country and the proceeding involved a [cause of action][claim for relief] arising out of that operation.

(b) The list of bases for personal jurisdiction in subsection (a) is not exclusive. The courts

of this state may recognize bases for personal jurisdiction other than those listed in subsection (a) as sufficient to support an asset-freezing order issued by a court outside the United States.

SECTION 10. ENFORCEMENT OF ASSET-FREEZING ORDER. An asset-freezing order issued or recognized by a court of this state shall be entitled to full faith and credit in the same manner as a judgment.

[**SECTION 11. APPEAL.** The [insert name of appropriate appellate court] has jurisdiction of all appeals, including interlocutory appeals, from an order granting, continuing, modifying, refusing, or dissolving an asset-freezing order.]

Legislative Note: This section may be adopted as a part of the statute or as a separate court rule.

SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

SECTION 13. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

[**SECTION 14. SEVERABILITY.** If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end, the provisions of this [act] are severable.]

Legislative Note: Include this section only if this state lacks a general severability statute or a decision by the highest court stating a general rule of severability.

SECTION 15. EFFECTIVE DATE. This [act] takes effect...