

D R A F T

FOR APPROVAL

# **UNIFORM ASSET FREEZING ORDERS ACT**

---

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

---

MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FIRST YEAR  
NASHVILLE, TENNESSEE  
JULY 13 - JULY 19, 2012

# **UNIFORM ASSET FREEZING ORDERS ACT**

*WITH PREFATORY NOTE AND COMMENTS*

Copyright ©2012

By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

---

*The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.*

May 30, 2012

## **DRAFTING COMMITTEE ON UNIFORM ASSET FREEZING ORDERS ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting this Act consists of the following individuals:

MICHAEL B. GETTY, 430 Cove Towers Dr., #503, Naples, FL 34110, *Chair*

LEVI J. BENTON, 440 Louisiana St., Suite 2350, Houston, TX 77002

CAROLINE N. BROWN, University of North Carolina School of Law, CB #3380, Chapel Hill, NC 27599-3380

ROBERT BUTKIN, University of Tulsa College of Law, 3120 E. 4th Pl., Tulsa, OK 74104

SIDNEY S. EAGLES, JR., P.O. Box 27525, Raleigh, NC 27611

BARRY H. EVENCHICK, 5 Becker Farm Rd., Roseland, NJ 07068

DON HOLLADAY, 204 N. Robinson Ave., Suite 1550, Oklahoma City, OK 73102

PETER F. LANGROCK, P.O. Drawer 351, Middlebury, VT 05753-0351

STEVEN N. LEITESS, 10451 Mill Run Cir., Suite 1000, Baltimore, MD 21117

JOHN T. MCGARVEY, 601 W. Main St., Louisville, KY 40202

LANE SHETTERLY, 189 SW Academy St., P.O. Box 105, Dallas, OR 97338

JOAN ZELDON, District of Columbia Superior Court, 515 Fifth St. NW, Room 219, Washington, DC 20001

JOHN L. CARROLL, Cumberland School of Law, Samford University, 800 Lakeshore Dr., Birmingham, AL 35229, *Reporter*

### **EX OFFICIO**

MICHAEL HOUGHTON, P.O. Box 1347, 1201 N. Market St., 18th Floor, Wilmington, DE 19899, *President*

STEVEN N. LEITESS, 10451 Mill Run Cir., Suite 1000, Baltimore, MD 21117, *Division Chair*

### **AMERICAN BAR ASSOCIATION ADVISORS**

KATHLEEN J. HOPKINS, 1326 5th Ave., Suite 654, Seattle, WA 98101-2655, *ABA Advisor*

STEVEN M. RICHMAN, 1940 Route 70 E, Suite 200, Cherry Hill, NJ 08003-2141, *ABA Advisor*

### **EXECUTIVE DIRECTOR**

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
111 N. Wabash Ave., Suite 1010  
Chicago, Illinois 60602  
312/450-6600  
[www.uniformlaws.org](http://www.uniformlaws.org)

# UNIFORM ASSET FREEZING ORDERS ACT

## TABLE OF CONTENTS

Prefatory Note .....	1
SECTION 1. SHORT TITLE. ....	4
SECTION 2. DEFINITIONS.....	4
SECTION 3. APPLICABILITY.....	5
SECTION 4. ASSET-FREEZING ORDER ISSUED WITH NOTICE.....	7
SECTION 5. ASSET-FREEZING ORDER ISSUED WITHOUT NOTICE.....	9
SECTION 6. OBLIGATION OF NONPARTY SERVED WITH ASSET-FREEZING ORDER.....	10
SECTION 7. SECURITY.....	11
SECTION 8. RECOGNITION OF ASSET-FREEZING ORDER ISSUED BY OTHER COURT.....	12
SECTION 9. PERSONAL JURISDICTION.....	14
SECTION 10. ENFORCEMENT OF ASSET-FREEZING ORDER.....	15
[SECTION 11. APPEAL.].....	15
SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	15
SECTION 13. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.....	15
[SECTION 14. SEVERABILITY.] .....	16
SECTION 15. EFFECTIVE DATE.....	16

# UNIFORM ASSET FREEZING ORDERS ACT

## Prefatory Note

This uniform act relates to asset-freezing orders, which are in personam orders issued to freeze the assets of a defendant to prevent that defendant from dissipating its assets to defeat satisfaction of an existing or future judgment. English Courts and the courts in other common law countries have been using asset-freezing orders since 1975. Those courts view asset freezing orders as valuable tools, particularly in the modern world of technology, where assets can be transferred with the simple stroke of a computer key.

In the United States, the primary remedy against asset dissipation has traditionally been an in rem order prohibiting the transfer of assets. Nonetheless, some courts in this country have issued in personam asset freezing orders where those orders were necessary to prevent a defendant from dissipating assets where it appeared that no assets would be left to satisfy a potential judgment.

The viability of asset-freezing orders was the subject of the United States Supreme Court opinion in *Grupo Mexicano de Desarrollo v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999). The *Grupo Mexicano* case is a classic case demonstrating the need for an asset-freezing order procedure. The plaintiffs were investment funds in the United States which had purchased 75 million dollars of notes issued by a Mexican holding company that operated toll roads in Mexico. The Mexican holding company suffered serious financial setbacks and began transferring the assets which secured the notes to pay other obligations. The assets were located in Mexico and consequently there was no possible in rem remedy.

The investment funds commenced an action in the United States District Court for the Southern District of New York seeking an asset-freezing order precluding the Mexican holding company from transferring or encumbering the assets. The district court issued an asset-freezing order restraining the Mexican holding company from dissipating the assets which were pledged to satisfy the note. The court found that the investment funds would suffer irreparable injury since the Mexican holding company's financial condition and dissipation of assets would frustrate any judgment recovered. The United States Court of Appeals for the Second Circuit affirmed the district court's issuance of an asset freezing order and the United States Supreme Court granted certiorari.

In 5-4 opinion authored by Justice Scalia, the Supreme noted that an asset-freezing procedure was a valuable procedural tool but concluded that federal courts lacked the jurisdiction to issue such orders because they were not part of the common law at the time the federal court system was created. Justice Scalia expressed no substantive concern with the asset-freezing order entered by this district court or the overall concept of asset-freezing orders but simply found that the district court lacked the jurisdiction to enter the order. He also remarked that the decision whether federal courts should have the power to issue asset-freezing orders should be left up to the legislature.

Although the *Grupo Mexicano* decision involved the jurisdiction of federal courts, it

caused confusion in the state court system over the propriety of asset-freezing orders. Some state supreme courts concluded, in the wake of that decision, that courts in their state lacked the authority to issue asset-freezing orders. At least one other state supreme court concluded the opposite – that courts in their state still had the power to issue asset freezing orders because the *Grupo Mexicano* decision involved federal court jurisdiction.

The Uniform Asset Freezing Orders Act remedies this lack uniformity on the asset-freezing order issue by providing state legislatures with a Uniform Act that authorizes the issuance of asset-freezing orders and provides for the recognition and enforcement of asset-freezing orders issued by sister states and courts outside the United States.

## ISSUES RELATING TO THIS ACT

### A. Procedural Protections

While asset-freezing orders are valuable procedural tools to protect against the dissipation of assets to insure the enforceability of judgments, they can have a significant impact on the debtor whose assets are frozen and on nonparties who hold those assets. The drafting committee was acutely aware of the need to draft a uniform law which provided appropriate procedural safeguards to debtors and nonparties.

Section 4 provides a rigorous process for the issuance of an asset-freezing order with notice. It draws heavily on the currently existing American law concerning temporary restraining orders and preliminary injunctions and currently existing English and Canadian law concerning asset-freezing orders. Under the provisions of Section 4, a party can obtain an asset-freezing order only if it establishes that there is a substantial likelihood that the assets of a party against which the order is sought will be dissipated so that the party seeking the asset freezing order will be unable to receive satisfaction of the judgment.

Sections 4(c) and 4(d) provide additional safeguards. Section 4(c) authorizes a court to relieve a party of its obligations under an asset-freezing order by permitting that party to post a bond or other security. Section 4(d) entitles a party against which an asset freezing order is entered to an order from the court allowing the use of assets to meet normal living or business expenses and the cost of defending the action.

Section 5 allows for the issuance of an asset freezing order without notice. In order to obtain such an order, the party must meet the rigorous showing required by Section 4. It must also make the disclosures normally required for the issuance of a Temporary Restraining Order as well as one important additional disclosure. Section 5(b)(1) requires the party seeking the order to conduct a reasonable inquiry and disclose all material facts that weigh against the issuance of the order.

Since asset freezing orders also impact nonparties, it is important that the obligations of nonparties be set out with specificity. Those obligations are contained in Section 6(b). Under the provisions of this section, nonparties served with an asset-freezing order shall promptly freeze the assets held on behalf of the party against which the order is issued. The nonparty is provided

significant protection because a court, assessing the promptness of a nonparty's response to an asset-freezing order under this section, must take into account the manner, time of service and other factors that reasonably affect a nonparty's ability to comply. This language is intended to incorporate the spirit of UCC §4-303.

Section 6(b) is a self-executing provision which requires a nonparty in a state that has adopted the order to comply with the asset-freezing order without the need for further action. If the nonparty is in a state which has not adopted this uniform act, the nonparty is not required to comply with the order unless and until the party on whose behalf the asset-freezing order has been issued has obtained an order recognizing the asset-freezing order from the jurisdiction where the nonparty is located .

Section 6(b) also provides protection for nonparties whose actions in freezing assets could potentially violate foreign law. Section 6(d) makes clear that a nonparty violates an asset-freezing order only if it knowingly assists in or permits a violation of the order.

Section 7 authorizes a court to require security to protect a party against the wrongful issuance of an asset-freezing order. It also requires a party on whose behalf an asset-freezing order has been entered to indemnify a nonparty for the reasonable costs of compliance.

#### B. Recognition and Enforcement of Asset-Freezing Orders

Because asset-freezing orders are not final judgments, there is a lack of uniformity in the approach courts take to the recognition and enforcement of asset-freezing orders issued by other courts. This Act remedies that deficiency. The provisions for recognition and enforcement appear in Sections 8, 9 and 10 and authorize recognition and enforcement of judgments of sister states.

1                                   **UNIFORM ASSET FREEZING ORDERS ACT**

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

4                   **SECTION 2. DEFINITIONS.** In this [act]:

5                   (1) “Asset” means anything that may be the subject of ownership, whether real or  
6 personal or tangible or intangible or legal or equitable, or any interest therein, which is not  
7 exempt from execution [under law of this state other than this [act] or the state in which the asset  
8 is located] [under Section 3(c)].

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

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

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

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

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

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

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

22                  (6) “Nonparty” means a person that is not a party and has custody or control of an asset  
23 of a party which is subject to an asset-freezing order. The term includes a person that holds a

1 joint ownership interest in an asset with a party against which an asset freezing order has been  
2 entered.

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

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

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

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

### 13 **SECTION 3. APPLICABILITY.**

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

16 (1) the nonparty has notice; or

17 (2) the party obtaining the order has filed, recorded, or docketed the order in the  
18 same jurisdiction in which the party would be required under applicable law to give notice of,  
19 establish, or perfect a lien, security interest, mortgage, or comparable interest:

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

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

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

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



1 that:

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

3 (2) the law of this state or another state, foreign country, or governmental unit of  
4 another state or foreign country expressly governs the creation, perfection, priority, or  
5 enforcement of a security interest, letter of credit, judgment lien, or lien on real or personal  
6 property, wherever the property is located, or permits the exercise of a common-law right of set-  
7 off or recoupment or right of another party pursuant to contract to the extent the party seeks to  
8 enforce a right or remedy that existed before the date of the order.

9 (d) This [act] does not prevent recognition and enforcement of an asset-freezing order  
10 under comity.

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

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

### 15 **Comment**

16 This section is designed to clarify the scope of this act and to make clear that an asset-  
17 freezing order does not confer any proprietary rights on successful applicants or alter the law  
18 relating to secured interests in any way. Under the provisions of section 3(a), however, the act  
19 applies to nonparty rights accruing after the entry of an asset-freezing order under certain limited  
20 circumstances.

21  
22 Section 3(b) makes clear that this [act] does not apply to actions against consumer  
23 debtors. Such actions would include actions relating to bankruptcy, collection and foreclosure  
24 actions. For example, a party seeking to collect on a credit card debt could not use the provisions  
25 of this act to attempt to freeze the assets of the debtor.

26  
27 The [act] also does not apply in cases which arise under the family or domestic law of a  
28 state. A wife in a divorce action, for example, could not use the provisions of this act to attempt  
29 to freeze the assets of her husband. Likewise, this act could not be used to enforce an asset  
30 freezing order in a divorce action issued by a court outside the United States. The decision to  
31 exempt these kinds of cases from this [act] was made by the Scope and Programs Committee.

1           Section 3(c) reinforces the notion that this [act] is not intended to limit or supersede any  
2 currently existing remedies that a secured creditor or lienholder may have. The asset freezing  
3 order does not establish any liens, choate or inchoate, in the property which is the subject of the  
4 asset freezing order. The purpose of the asset freezing order is the prevention of wrongful  
5 voluntary conveyances of any interest in the subject property. Absent fraud or collusion with the  
6 party against whom the asset freezing order is issued, it would not prevent other creditors of that  
7 party from obtaining involuntary liens against the subject property.  
8

9           The issuance of an asset freezing order would not prevent a secured creditor or lienholder  
10 from commencing, continuing or completing any available remedies to realize its collateral. It  
11 would not, for example, affect a creditor's right to foreclose on its mortgage or other security  
12 interest. It would not prevent, inhibit or affect the validity of a subsequent sale of the property  
13 which was the subject of the secured creditor's enforcement action. It would also not prevent an  
14 unrelated person from initiating a lawsuit against a party which is the subject of an asset freezing  
15 order and obtaining a judgment against that party's assets.  
16

17           By way of example, it would not prevent involuntary seizures of the debtor's property to  
18 the extent that a party wishes to pursue an action on contract, seek an attachment, seek to enforce  
19 a judgment, or seek to enforce common law rights of set-off or recoupment, or their contractual  
20 equivalent in certain circumstances such as "netting" in financial instruments. However, once the  
21 asset freezing order is in place, any person with notice of the order could not cooperate with the  
22 debtor to place a new mortgage on an asset, or enter into a new contract containing rights of set-  
23 off. If the mortgage or contract were in place prior to [the date of the asset freezing order][the  
24 commencement of the action in which the asset freezing order is obtained], then efforts to  
25 enforce those rights, as involuntary acts against the debtor, are excluded.  
26

#### 27           **SECTION 4. ASSET-FREEZING ORDER ISSUED WITH NOTICE.**

28           (a) A court may issue an asset-freezing order on motion with notice to the party against  
29 which the order is sought and an expedited opportunity to be heard if the court finds that:

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

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

35                   (3) any harm the party against which the order is sought may suffer through  
36 having to comply with the order is clearly outweighed by the risk of harm to the moving party if

1 the order is not issued; and

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

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

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

8 (d) On at least 24 hours' notice to a party that obtained an asset-freezing order, a party  
9 against which the order is issued may apply for an order specifying the amount the party may  
10 spend on ordinary living expenses, business expenses, and legal representation.

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

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

### 16 **Comment**

17 Section 4(a) mirrors the standard for the issuance of a preliminary injunction under  
18 currently existing law. All of the requirements of section 4 must be met before asset freezing  
19 order can be issued. Sections 4(c) and (d) provide a mechanism for a party against which an asset  
20 freezing order has been issued to immediately obtain full or partial relief from the order. These  
21 sections mitigate the potentially harmful effects of an asset freezing order.

22  
23 Under Section 4(d), the party against which an asset freezing order is issued is entitled to  
24 an order allowing the use of assets to meet normal living expenses and business expenses  
25 including the payment of currently existing debts and the costs of defending the claim. That party  
26 bears the burden of establishing the amount of those expenses.

27  
28 An asset freezing order cannot normally be applied to assets which are owned by a  
29 nonparty. However, where the assets are owned jointly by a nonparty and a party against which  
30 an asset freezing order has been entered, the order also applies to the nonparty. In that situation,

1 the non-party may apply to the court for an order removing the asset from the scope of the order.

2  
3 **SECTION 5. ASSET-FREEZING ORDER ISSUED WITHOUT NOTICE.**

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

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

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

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

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

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

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

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

21 **Comment**

22  
23 This section provides for the issuance of an asset freezing order without notice. A party  
24 seeking an asset freezing order without notice must satisfy the requirements for issuance of the  
25 order contained in Section 4(a) and the additional requirements set forth in this section.

26  
27 Sections 5 draws heavily from currently existing law relating to a temporary restraining  
28 order issued without notice in both state and federal court. Section 5(b)(1) is an extremely

1 important provision drawn from English and Canadian law and reflects the heightened disclosure  
2 obligation imposed on a party who seeks an asset-freezing order without notice. This section  
3 imposes a duty on counsel to make reasonable inquiry to ascertain material facts and to disclose  
4 to the court all material facts that weigh against the issuance of the order.

5  
6 The English courts define this duty of disclosure as follows:

- 7  
8 (a) the party seeking the order must make a full and fair disclosure of all of the  
9 material facts;  
10 (b) materiality is to be decided by the court, not by the movant or his legal  
11 advisers;  
12 (c) proper inquiries must be made before making the application and the duty of  
13 disclosure applies not only to facts known by the claimant but to those which  
14 he would have known if he had made proper inquiries;  
15 (d) the extent of the inquiries which are necessary must depend on the nature of  
16 the case, the probable effect of the order on the defendant, the degree of  
17 legitimate urgency and the time available for making inquiries.  
18

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

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

25 (b) A nonparty served with an asset-freezing order promptly shall freeze the assets held  
26 on behalf of the party against which the order is issued until further order of the court. The  
27 nonparty shall act promptly to comply with this subsection, taking into account the manner, time  
28 and place of service and other factors that reasonably affect the nonparty's ability to comply. If  
29 the nonparty believes, in good faith, that complying with the asset-freezing order would violate  
30 foreign law, create liability under a foreign legal system or violate an order issued by a foreign  
31 sovereign or tribunal, the nonparty immediately may petition the court that issued the asset-  
32 freezing order to dissolve or modify the order. If the court finds that the nonparty acted in good

1 faith, it may not find the nonparty in contempt of court for failing to comply with the order  
2 during the pendency of the petition. The petition must be decided on an expedited basis. The  
3 provisions of this paragraph do not displace those of section 6(e).

4 (c) If an asset-freezing order is vacated or modified, a party obtaining the order shall give  
5 notice promptly to a nonparty that was served with the order.

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

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

#### 10 **Comment**

11 This section recognizes that an asset freezing order applies in personam to the party  
12 against whom it is issued but also has in rem aspects as it applies to nonparties who hold the  
13 assets of that party.

14  
15 Section 6(b) is a self-executing provision which requires a non-party in a state that has  
16 adopted this [act] to comply with the asset freezing order without the need for further action. If  
17 the nonparty is in a state which has not adopted this [act], the nonparty is not required to comply  
18 with the order unless and until the party on whose behalf the asset freezing order has been issued  
19 has obtained an order recognizing the asset freezing order from the jurisdiction where the  
20 nonparty is located.

21  
22 Section 6(b) requires prompt action to freeze the assets but also cautions that the  
23 determination as to whether compliance with an asset freezing order was indeed prompt shall  
24 take into account the manner time and place of service and other factors that reasonably affect  
25 the nonparty's ability to comply. This language in Section 6(b) is modeled on §4-303 of the  
26 Uniform Commercial Code and was added following a helpful comment made during the  
27 discussion on this act at the 2011 annual meeting.

28  
29 Section 6(b) also provides protection for a nonparty who has a good faith belief that  
30 complying with an asset freezing order would violate foreign law. The provision was added  
31 following discussions with lawyers for the Federal Reserve Board.

#### 32 **SECTION 7. SECURITY.**

33  
34 (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 set aside.

(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.

### Comment

This section authorizes a court to require a party on whose behalf an asset freezing order has been issued to provide security for a party against which the order has been issued and any nonparty served with the order. The security is for damages sustained as the result of an order later found to have been improvidently granted. Section 7(b) also requires a party on whose behalf an asset freezing order has been issued to indemnify a nonparty for the reasonable costs of compliance. This section is intended to draw on currently existing law relating to the provision of security. The court, for example, could accept a personal bond or surety bond as security.

**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

1 tribunals or procedures compatible with the requirements of due process of law;

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

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

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

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

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

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

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

16 (5) the order conflicts with another order;

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

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

22 (8) the order was issued in circumstances that raise substantial doubt about the  
23 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

### **Comment**

This section relates to the recognition of asset-freezing orders issued by courts in other states and countries. Because asset freezing orders are not final judgments, there is a lack of uniformity in the present law concerning their recognition. Section 8(a) relates to the recognition of asset freezing orders issued by courts in other states and 8(b) - (d) relate to the recognition of asset freezing orders issued by courts outside the United States. Sections 8(b)-(d) borrow freely from the architecture and language of section 4 of the Uniform Foreign-Country Money Judgments Recognition Act.

### **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

1 outside the United States involved a [cause of action][claim for relief] arising out of the business  
2 done by the party through that office in the foreign country; or

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

5 (b) The list of bases for personal jurisdiction in subsection (a) is not exclusive. The courts  
6 of this state may recognize bases for personal jurisdiction other than those listed in subsection (a)  
7 as sufficient to support an asset-freezing order issued by a court outside the United States.

### 8 **Comment**

9 This section, like the previous section, draws heavily on the language and concepts of the  
10 Uniform Foreign-Country Money Judgments Recognition Act. The language of this section is  
11 taken from Section 5 of that Act.

12  
13 **SECTION 10. ENFORCEMENT OF ASSET-FREEZING ORDER.** An asset-  
14 freezing order issued or recognized by a court of this state is valid and enforceable in the same  
15 manner as a judgment.

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

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

21  
22 **SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
23 applying and construing this uniform act, consideration must be given to the need to promote  
24 uniformity of the law with respect to its subject matter among the states that enact it.

25 **SECTION 13. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**  
26 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal  
27 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but

1 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or  
2 authorize delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section  
3 7003(b).

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

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

10  
11 **SECTION 15. EFFECTIVE DATE.** This [act] takes effect...