

Introduced by

Judiciary Committee

(At the request of the Uniform Commission on State Laws)

1 A BILL for an Act to provide for the Uniform Asset-Freezing Orders Act.

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

3 **SECTION 1.**

4 **Definitions.**

5 In this Act:

- 6 1. “Asset” means anything that may be the subject of ownership, whether real or
7 personal, tangible or intangible, or legal or equitable, or any interest therein, which is
8 not exempt from execution under applicable law.
- 9 2. “Asset-freezing order” means an in personam order restraining or enjoining a person
10 from dissipating an asset directly or indirectly.
- 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. “Dissipate” means to take 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 similarly
17 dealing with the asset;
- 18 b. Instructing, requesting, counseling, demanding, or encouraging any other person
19 to take an action described in subdivision a; and
- 20 c. Facilitating, assisting in, aiding, abetting, or participating in an action described in
21 subdivision 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

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

3 7. “Party” means a person that brings an action or against which an action is brought,
4 whether service has been made on or notice given to the person.

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

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

10 **SECTION 2.**

11 **Scope.**

12 1. This Act applies to a right accruing to a nonparty after the entry of an asset-freezing
13 order if:

14 a. The nonparty has been served with the order pursuant to subsection 1 of
15 section 5 of this Act; or

16 b. The party obtaining the order has filed, recorded, or docketed the order in the
17 appropriate jurisdiction and office in which the party would be required under
18 applicable law to file, record, or docket the order to give notice of, establish, or
19 perfect a lien, security interest, mortgage, or comparable interest, and the order
20 as filed, recorded, or docketed, if it were a judicial lien in favor of a party, would
21 give priority to the interest of a party over the interest of the nonparty under
22 applicable law.

23 2. This Act does not apply in an action:

24 a. Against an individual for a consumer debt; or

25 b. That arises under the family or domestic relations law of this state.

26 3. This Act does not apply to or limit a right or remedy available to a party or nonparty to
27 the extent that a law, regulation, or treaty of the United States preempts this Act.

28 4. This Act does not affect a right or remedy, including a right or remedy arising from the
29 creation, perfection, priority, or enforcement of a security interest or other interests that
30 existed before an order takes effect.

- 1 5. This Act does not prevent recognition under principles of comity of an asset-freezing
2 order not within the scope of this Act.
- 3 6. This Act does not prevent the exercise of other remedies not inconsistent with this Act.
- 4 7. This Act does not affect an exemption in this state based on tenancy by the entirety.

5 **SECTION 3.**

6 **Asset-freezing order issued with notice.**

- 7 1. In an action in which monetary damages are sought, a court may issue an
8 asset-freezing order on motion with notice to the party against which the order is
9 sought and with an expedited opportunity to be heard if the court finds that:
- 10 a. There is a substantial likelihood that the party seeking the order will prevail on the
11 merits of the action;
- 12 b. If the order is not granted, there is a substantial likelihood the assets of the party
13 against which the order is sought will be dissipated so that the moving party will
14 be unable to receive satisfaction of a judgment because of the dissipation;
- 15 c. Any harm the party against which the order is sought may suffer by complying
16 with the order is clearly outweighed by the risk of harm to the moving party if the
17 order is not issued; and
- 18 d. The order, if issued, would not be adverse to the public interest.
- 19 2. An asset-freezing order issued with notice must be served in compliance with the
20 North Dakota Rules of Civil Procedure.
- 21 3. A party against which an asset-freezing order is issued may apply for relief from the
22 order by posting a bond or other security in the amount of the damages sought or in
23 an amount determined by the court.
- 24 4. On at least twenty-four hours' notice to the party that obtained an asset-freezing order,
25 a party against which the order is issued may apply for an order permitting it to pay its
26 ordinary living expenses, business expenses, and legal representation.
- 27 5. The court may limit an asset-freezing order to a certain amount or type of assets and
28 may order appropriate accounting requirements.
- 29 6. An asset-freezing order remains in effect until it is vacated by the court, or the dispute
30 is resolved by agreement of the parties, operation of law, or satisfaction of a judgment
31 entered against the party against which the order was issued.

1 **SECTION 4.**

2 **Asset-freezing order issued without notice.**

- 3 1. The court may issue an asset-freezing order on motion without the notice required by
4 subsection 1 of section 3 of this Act if the court finds that facts in an affidavit or verified
5 pleading offered in support of the motion establish that the moving party is entitled to
6 the order under subsection 1 of section 3 of this Act.
- 7 2. A party moving for an asset-freezing order under subsection 1 shall:
- 8 a. Conduct a reasonable inquiry and disclose in the affidavit or verified pleading all
9 material facts that weigh against the issuance of the order; and
- 10 b. Disclose in the affidavit or verified pleading all efforts to give notice or the
11 reasons why notice should not be required.
- 12 3. An asset-freezing order issued without notice expires on a date set by the court, not
13 later than fourteen days after the court issues the order, unless before that time:
- 14 a. The court, for good cause, extends the order and states in the order of extension
15 the reason for the extension; or
- 16 b. The nonmoving party consents in a record to an extension.
- 17 4. 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 to the party that obtained
19 the order and may apply for relief under subsections 3 and 4 of section 3 of this Act.
20 The court shall hear and decide the motion or application on an expedited basis.

21 **SECTION 5.**

22 **Obligation of nonparty served with asset-freezing order.**

- 23 1. An asset-freezing order may be served on a nonparty. If the party that obtained the
24 order serves a nonparty with the order, the party shall give notice to all parties in the
25 action of the name and address of the nonparty not later than one day after service.
- 26 2. Subject to subsection 5, a nonparty served with an asset-freezing order shall freeze
27 the assets of the party against which the order is issued until further order of the court.
28 The nonparty shall comply promptly with this subsection, taking into account the
29 manner, time, and place of service and other factors that reasonably affect the
30 nonparty's ability to comply. If the nonparty believes, in good faith, that complying with
31 the asset-freezing order would violate foreign law, create liability under a foreign legal

1 system or violate an order issued by a foreign sovereign or tribunal, the nonparty
2 immediately may move the court that issued the asset-freezing order to dissolve or
3 modify the order. If the court finds that the nonparty acted in good faith, it may not find
4 the nonparty in contempt of court for failing to comply with the order during the
5 pendency of the petition. The court shall hear and decide the motion on an expedited
6 basis.

7 3. If an asset-freezing order is vacated or modified, a party obtaining the order shall give
8 notice promptly to a nonparty that was served with the order in the same manner as
9 the nonparty was originally given notice.

10 4. Except as otherwise provided for in subsection 2, a nonparty served with an
11 asset-freezing order may not knowingly assist in or permit a violation of the order.

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

14 **SECTION 6.**

15 **Security - Indemnity.**

16 1. The court may require security from a party on whose behalf an asset-freezing order is
17 issued. If the court determines that security is required, it shall require the party to give
18 security to pay for costs and damages sustained by the party against which the order
19 is issued if the order is later determined to have been improvidently granted.

20 2. A party on whose behalf an asset-freezing order is issued shall indemnify a nonparty
21 for the reasonable costs of compliance with the order and compensate for any loss
22 caused by the order.

23 **SECTION 7.**

24 **Recognition of asset-freezing order issued by another court.**

25 1. A court of this state shall recognize an asset-freezing order issued by a court in
26 another state unless:

27 a. Recognition would violate the public policy of this state; or

28 b. The order was issued without notice and the issuing court did not use procedures
29 substantially similar to those in section 4 of this Act.

- 1 2. Except as otherwise provided in subsection 3 and subject to subsection 4, a court of
2 this state shall recognize an asset-freezing order issued by a court outside the United
3 States.
- 4 3. A court of this state may not recognize an asset-freezing order issued by a court
5 outside the United States if:
- 6 a. The order was rendered under a judicial system that does not provide impartial
7 tribunals or procedures compatible with the requirements of due process of law;
8 b. The issuing court did not have personal jurisdiction over the party against which
9 the order was issued; or
- 10 c. The issuing court did not have jurisdiction over the subject matter.
- 11 4. A court of this state need not recognize an asset-freezing order issued by a court
12 outside the United States if:
- 13 a. The order was issued without notice to the party against which the order was
14 issued and the issuing court did not use procedures substantially similar to those
15 in section 4 of this Act;
- 16 b. The party against which the order was issued did not receive notice of the
17 proceeding in sufficient time to allow the order to be modified or dissolved and
18 the interest of justice requires a hearing to determine the issue;
- 19 c. The order was obtained by fraud that deprived the losing party of an opportunity
20 to oppose the order;
- 21 d. The order or the underlying claim for relief is repugnant to the public policy of this
22 state or the United States;
- 23 e. The order conflicts with another order;
- 24 f. The proceeding in the issuing court was contrary to an agreement of the parties
25 under which the dispute in question was to be determined otherwise than by
26 proceedings in the court outside the United States;
- 27 g. Jurisdiction was based only on personal service and the court outside the United
28 States was a seriously inconvenient forum for the hearing regarding the order;
- 29 h. The order was issued in circumstances that raise substantial doubt about the
30 integrity of the issuing court with respect to the order; or

- 1 i. The specific proceedings in the issuing court leading to the issuance of the order
2 were not compatible with the requirements of due process of law.
3 5. A party resisting recognition of an asset-freezing order issued by a court outside the
4 United States has the burden of proving that a ground for nonrecognition in
5 subsection 3 or 4 applies.

6 **SECTION 8.**

7 **Personal jurisdiction.**

- 8 1. An asset-freezing order issued by a court in a foreign country may not be refused
9 recognition for lack of personal jurisdiction if the party against which the order was
10 entered:
11 a. Was served with process personally in a foreign country in which the issuing
12 court is located;
13 b. Voluntarily appeared in the proceeding other than for the purpose of protecting
14 property seized or threatened with seizure in the proceeding or contesting the
15 jurisdiction of the court over the defendant;
16 c. Before the commencement of the proceeding, had agreed to submit to the
17 jurisdiction of the court with respect to the subject matter involved;
18 d. Was domiciled in the foreign country when the proceeding was instituted or was a
19 corporation or other form of business organization that had its principal place of
20 business in, or was organized under the laws of, the foreign country;
21 e. Had a business office in the foreign country and the proceeding involved a cause
22 of action arising out of the business done by the party through that office; or
23 f. Operated a motor vehicle or airplane in the foreign country and the proceeding
24 involved a cause of action arising out of that operation.
25 2. The list of bases for personal jurisdiction in subsection 1 is not exclusive. A court of
26 this state may recognize a bases for personal jurisdiction other than those listed in
27 subsection 1 as sufficient to support an asset-freezing order issued by a court outside
28 the United States.

29 **SECTION 9.**

1 **Enforcement of asset-freezing order.**

2 An asset-freezing order issued or recognized by a court of this state is entitled to full faith
3 and credit in the same manner as a judgment.

4 **SECTION 10.**

5 **Appeal.**

6 The supreme court has jurisdiction of an appeal, including an interlocutory appeal, from an
7 order granting, continuing, modifying, refusing, or dissolving an asset-freezing order.

8 **SECTION 11.**

9 **Relation to Electronic Signatures in Global and National Commerce Act.**

10 This Act modifies, limits, and supersedes the Electronic Signatures in Global and National
11 Commerce Act [15 U.S.C. 7001 et seq.] but does not modify, limit, or supersede section 101(c)
12 of that Act [15 U.S.C. 7001(c)] or authorize electronic delivery of any of the notices described in
13 section 103(b) of that Act [15 U.S.C. 7003(b)].