dri The Voice of the Defense Bar™

2013 Law Student Diversity Scholarship Application
Submission Deadline: April 19, 2013

Scholarship Requirements

DRI announces its annual Law Student Diversity Scholarship program open to incoming second and third-year African American, Hispanic, Asian, and Native American students. Incoming second and third-year female law students are also eligible, regardless of race or ethnicity. Incoming second and third-year law students who also come from backgrounds that would add to the cause of diversity, regardless of race or gender are eligible to apply. Students who are members of the American Association for Justice (AAJ), Law School or Law Student members of AAJ or students otherwise affiliated with or employed by AAJ are not eligible for DRI Law Student Diversity Scholarships. To qualify for this scholarship, candidate must be a full-time student. Evening students also qualify for consideration who have completed one-third or more of the total credit hours required for a degree by the applicant's law school. The goal of these scholarships is to provide financial assistance to two worthy law students from ABA accredited law schools in order to promote, in a tangible way, the DRI Diversity Statement in Principle. See page three of this application for the DRI Diversity Statement.

Two scholarships in the amount of $10,000 each will be awarded to applicants who best meet the following criteria:

Demonstrated academic excellence
Service to the profession
Service to the community
Service to the cause of diversity

Applications must include three recommendations, one each from the following individuals:

A) The Dean or an Associate Dean of the student's law school
B) A current or past law professor
C) An individual who is personally acquainted with the applicant, but who is not related by blood line or adoption.

Additionally, each applicant must include a cover letter with their application. In that cover letter each applicant should identify his or her academic, personal and/or professional accomplishments and how those accomplishments qualify him or her for DRI's Law Student Diversity Scholarship award.

Essay Requirements

In addition to submitting the attached application and required recommendations, applicants must complete an essay of no more than 1,000 words based upon the following question:

The National Conference of Commissioners on Uniform State Laws (NCCUS) has adopted a final version of a proposed Uniform Asset-Freezing Orders Act (attached), and it has made its way onto the early 2013 legislative agendas in several states. The NCCUS anticipates introducing the bill in more jurisdictions during the year. The act will apparently apply to most actions where monetary damages are sought, including tort litigation. The only exemptions identified in the act are cases involving consumer debt and actions that arise under a state's family or domestic relations law. Parties must promptly comply with an asset freezing order once served, taking into account the manner, time, and place of service and other factors that reasonably affect the party's ability to comply. Under this proposal, a party in litigation would effectively be operating as if it were a debtor in possession in a bankruptcy reorganization for the duration of the litigation, required to obtain advance approval even for normal operating expenses and the like.

Please discuss the pros and cons of the passage of the act with regard to its effect on defendant businesses in civil litigation, commenting on those provisions that will have the most dramatic effect on business and indicating why. In your commentary also please address at least two provisions of the act that could be revised to accomplish the goal of giving civil plaintiffs security that any judgment they obtain will be satisfied. Finally, please discuss a possible statutory provision that might be superior to the act in striking a balance between plaintiffs and defendants in civil cases.

Submission Deadline

Applications and all other requested materials must be **received by April 19, 2013**. Scholarship winners will be notified in advance and officially announced at the DRI Diversity for Success Seminar May 30-31, 2013 in Chicago, Illinois.

Late or incomplete applications will not be considered.

All applications, essays and required materials must be submitted in hard copy format to:

Tim Kolly, Director of Communications
DRI – *The Voice of the Defense Bar*
55 West Monroe Street, Suite 2000
Chicago, IL 60603

2013 Law Student Diversity Scholarship Application
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SECTION ONE: Personal Information

Full Name:

_____

Last *First* *M.I.*

Current Mailing Address:

_____

Street Address *Apt/Unit #*

_____

City *State* *Zip Code*

Permanent Mailing Address:

_____

Street Address *Apt/Unit #*

_____

City *State* *Zip Code*

Email Address: _____

DRI Diversity Statement

DRI is the largest international membership organization of attorneys defending the interests of business and individuals in civil litigation.

Diversity is a core value at DRI. Indeed, diversity is fundamental to the success of the organization, and we seek out and embrace the innumerable benefits and contributions that the perspectives, backgrounds, cultures, and life experiences a diverse membership provides.

Inclusiveness is the chief means to increase the diversity of DRI's membership and leadership positions. DRI's members and potential leaders are often also members and leaders of other defense organizations. Accordingly, DRI encourages all national, state, and local defense organizations to promote diversity and inclusion in their membership and leadership.

SECTION TWO: Academic Information

High School Name: _____

City: _____ **State:** _____

Undergraduate Institution Name: _____

City: _____ **State:** _____

Dates of Attendance: _____ **Date of Graduation:** _____

Degree Earned: _____

Honors, Awards or Other Special Recognition:

_____

_____

_____

_____

_____

Extracurricular Activities:

_____

_____

_____

_____

_____

SECTION TWO: Academic Information (continued)

Graduate Institution Name (other than law school):

_____

City: _____ **State:** _____

Degree Earned: _____

Honors, Awards or Other Special Recognition:

_____

_____

_____

_____

_____

Extracurricular Activities:

_____

_____

_____

_____

_____

Law School Name: _____

City: _____ **State:** _____

Anticipated date of graduation: _____

GPA _____ **Grading Scale** _____

SECTION TWO: Academic Information (continued)

Law School Information (Continued)

Class Rank: _____

Honors, Awards or Other Special Recognition:

Extracurricular Activities:

Have you previously attended any other law school? If so, please explain.

SECTION THREE: Community Service Information

Describe any community service activities.

Dates	Organization/Activity	Role/Position

SECTION FOUR: Work Experience

Describe any relevant work experience (attach resume if necessary).

Dates	Company/Organization	Position/Title

SECTION FIVE: Other Information

Have you ever been arrested and/or convicted of a crime, other than a moving traffic violation? If so, please describe below and/or attach a detailed description.

SECTION FIVE: Other Information (continued)

What are your career goals?

_____

_____

_____

_____

_____

SECTION SIX: Applicant's Certification

1) I am currently registered as a full-time, incoming second-year or incoming third-year law student at an ABA accredited law school identified in this application, or I am an evening student who has completed one-third or more of the total credit hours required for a degree from the law school I now attend.

2) I am not a member of the American Association for Justice (AAJ), a Law School or Law Student Member of AAJ, or otherwise affiliated with or employed by AAJ.

3) I am eligible to apply for this scholarship under the criteria.

4) All information contained in this application is true and correct.

Signature: _____

Date: _____

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
NASHVILLE, TENNESSEE
JULY 13 - JULY 19, 2012

WITH PREFATORY NOTE AND COMMENTS

October 15, 2012

ABOUT ULC

The **Uniform Law Commission** (ULC), also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 121st year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- ULC strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.
- ULC statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government.
- ULC keeps state law up-to-date by addressing important and timely legal issues.
- ULC's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.
- ULC's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.
- Uniform Law Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service, and receive no salary or compensation for their work.
- ULC's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.

ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

DRAFTING COMMITTEE ON UNIFORM ASSET-FREEZING ORDERS ACT

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

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Copies of this Act may be obtained from:

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ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
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312/450-6600
www.uniformlaws.org

UNIFORM ASSET-FREEZING ORDERS ACT

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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. An asset-freezing order is in the nature of injunctive relief and, thus, the violation of an asset-freezing order is punishable by contempt.

English Courts and the courts in other common law countries have been using asset-freezing orders since at least 1975, when the leading decisions were issued. 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 in the context of pre-judgment attachments. 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. They have done so in the context of injunctive proceedings, where the issue often arose as to whether there is "irreparable harm" in a party's inability to satisfy a judgment. Unlike the in rem pre-judgment attachment, which as a policy matter was rooted in fraud prevention, the asset-freezing order is focused on the intentional dissipation of assets in certain circumstances.

The viability of asset-freezing orders was the subject of the United States Supreme Court opinion in *Grupo Mexicano de Dessarolo 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 seventy-five 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

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. *Grupo Mexicano* also placed the United States at odds with other common law countries in which reciprocity of enforcement has become a priority when assets may be transferred instantly with the push of a button.

The Uniform Asset-Freezing Orders Act remedies this lack uniformity 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 rooted in due process.

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 and rights 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 and builds upon accepted principles addressing nonparty conduct regarding post-judgment collection issues and injunction practice.

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(c) provides for the same notice to nonparties when an asset-freezing order is vacated or modified as was given to the nonparty originally.

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 and loss caused by the order whether or not the motion for the order was granted properly.

B. Recognition and Enforcement of Asset-Freezing Orders

Because asset-freezing orders are not final judgments, they are not afforded automatic "full faith and credit" recognition. Consequently, there is a lack of uniformity in the approach courts take to the recognition and enforcement of non-final 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. The Act also adopts the principles set forth in the Uniform Foreign Country Money Judgment Recognition Act (UFCMJRA) to facilitate recognition and enforcement of asset-freezing orders issued by foreign courts and arbitration panels.

C. Relation to Other Rights and Remedies

This uniform act is a statute which confers on courts the power to prevent the dissipation of assets through the issuance of asset-freezing orders and to recognize and enforce asset-freezing orders issued by other courts. It is a procedural statute which does not, in any way, alter existing rights and remedies.

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, 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 from dissipating an asset directly or indirectly.

(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 the asset;

(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 on or notice given to the person.

(8) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal 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. SCOPE.

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

(1) the nonparty has been served with the 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 file, record, or docket the order to give notice of, establish, or perfect a lien, security interest, mortgage, or comparable interest, and the order as filed, recorded, or docketed, if it were a judicial lien in favor of a party, would give priority to the interest of a party over the interest of the nonparty under applicable law.

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

(d) This [act] does not affect a right or remedy including a right or remedy arising from the creation, perfection, priority, or enforcement of a security interest or other interests that existed before an order takes effect.

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

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

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

Comment

This section is designed to clarify the scope of this act and to make clear that an asset-freezing order does not confer any proprietary rights on successful applicants or alter the law relating to secured interests in any way. Under the provisions of section 3(a), however, the act applies to nonparty rights accruing after the entry of an asset-freezing order under certain limited circumstances. The act refers generally to the issuance of an asset-freezing order, and is intended to permit recognition and enforcement of such an order whether issued by a court or an arbitral tribunal. Courts have authority to issue orders in aid of arbitration and otherwise enforce such orders, and the authority of a court to enforce an asset freezing order issued in an arbitration proceeding is implicit in this act.

As an in personam remedy, the asset-freezing order precludes the entity against which it is issued from doing acts that are contrary to the order. However, in order to ensure compliance, the act also provides for notice to nonparties so that they do not permit the enjoined party to violate the asset- freezing order. The act seeks to balance the nonparty's obligations under applicable law with the obligations imposed by this act. As such, the act applies to nonparties which have been placed on constructive notice as well as actual notice. Section 3(a)(1) provides that the nonparty is bound by knowledge of the order. However, constructive notice by filing or recording does not necessarily reach all secured interest holders, such as those who perfect interests by possession. In order to address this issue, Section 3(a)(2) provides for constructive knowledge from a public filing of the order where the public filing would give the party obtaining the order priority over the interest of the nonparty if the order were a judicial lien. In addition, this Section is meant to address notice and application; it is not the intention of this Section 3 to otherwise affect the normal rules of priority for interests competing with perfected security interests under part 3 of Article 9, which rules of priority are preserved. See, e.g, Uniform Commercial Code sections 9-317(a) and 9-323.

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

The [act] also does not apply in cases which arise under the family or domestic law of a state. The term family law encompasses proceedings relating to divorce, annulments of marriages, custody and support of children and the granting and enforcement of alimony. A wife in a divorce action, for example, could not use the provisions of this act to attempt to freeze the assets of her husband. Likewise, this act could not be used to enforce an asset freezing order in a divorce action issued by a foreign court. It was a policy decision of the Uniform Law Commission to exempt actions for consumer debt and family and domestic relations cases from the scope of the act

Sections 3(c)-3(g) reinforce the notion that this [act] is not intended to limit or supersede any currently existing remedies that a secured creditor or lienholder may have. The asset-freezing order does not establish any liens, choate or inchoate, in the property which is the subject of the asset freezing order. The purpose of the asset- freezing order is the prevention of wrongful voluntary conveyances of any interest in the subject property. It would not, for example, affect existing law that absent fraud or collusion with the party against whom the asset-freezing order is issued, other creditors of that party could obtain involuntary liens against the subject property.

The effective date of an order under Section 3(c)(2) for a nonparty is the date on which the nonparty would be bound under Section 3(a).

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

By way of example, it would not prevent involuntary seizures of the debtor's property to the extent that a party wishes to pursue an action on contract, seek an attachment, seek to enforce a judgment, or seek to enforce common law rights of set-off or recoupment, or their contractual equivalent in certain circumstances such as "netting" in financial instruments. However, once the asset-freezing order is in place, any person with notice of the order could not cooperate with the debtor to place a new mortgage on an asset, or enter into a new contract containing rights of set-off. If the mortgage or contract were in place prior to issuance of the asset-freezing order, then efforts to enforce those rights, as involuntary acts against the debtor, are excluded.
Unless displaced by the particular provisions of this act, the principles of law and equity, including the law relevant to remedies of creditors and the rights of debtors supplement its provisions.

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 with 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 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 by complying with the order is clearly 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 relief from 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 the party that obtained an asset-freezing order, a party against which the order is issued may apply for an order permitting it to pay its ordinary living expenses, business expenses, and legal representation.

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

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

Comment

Because the issuance of an asset-freezing order is in the nature of injunctive relief, section 4(a) generally adopts the standards for the issuance of a preliminary injunction under currently existing law. Section 4(a)(1), specifically requires that a party seeking an asset-freezing order show that "there is substantial likelihood of success". The committee recognizes that the "substantial likelihood" showing is not the standard in all states. The more stringent standard was intentionally chosen by the committee because of the potentially intrusive nature of asset-freezing orders. See e.g. *Envtl. Servs., Inc. v. Carter*, 9 So.3d 1258, 1261 (Fla. 5th DCA 2009)[to demonstrate that a temporary injunction is warranted, a party must plead and establish ...(3) a substantial likelihood of success on the merits] The states which do not require the "substantial likelihood" showing, require a "likelihood of success" showing which is arguably a lesser standard. See e.g. *Arthur J. Gallagher & Co. v. Marchese*, 96 A.2d 3d 791,791-92, 946 N.Y.S.2d 243, 244 (N.Y. 2012)[to obtain a preliminary injunction, a movant must establish, by clear and convincing evidence, (1) a likelihood of success on the merits.] These standards are to be applied to the underlying law on which the action is brought and not to this act itself. This act creates no independent cause of action.

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

An asset-freezing order cannot normally be applied to assets which are owned by a nonparty. However, where the assets are owned jointly by a nonparty and a party against which an asset freezing order has been entered, the order also applies to the nonparty. In that situation, the non-party, under Section 6(e) of this act, may apply to the court for an order removing the asset from the scope of the order. Nothing in this act is meant to change existing law with regard to joint ownership.

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 the affidavit or verified pleading all material facts that weigh against the issuance of the order; and

(2) disclose in the affidavit or verified pleading 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

later than 14 days after the court issues the order, unless before that time:

(1) the court, for good cause, extends the order and states in the order of extension the reason 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 to the party that obtained the order and may apply for relief under Section 4(c) and (d). The court shall hear and decide the motion or application on an expedited basis.

Comment

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

Sections 5 draws heavily from currently existing law relating to a temporary restraining order issued without notice in both state and federal courts. Section 5(b)(1) is an extremely important provision drawn from English and Canadian law and reflects the heightened disclosure obligation imposed on a party who seeks an asset-freezing order without notice. This section imposes a duty on counsel to make reasonable inquiry to ascertain material facts and to disclose to the court all material facts that weigh against the issuance of the order.

By way of example, the English courts define this duty of disclosure as follows:

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

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 [one day] after service.

(b) Subject to subsection (e), 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 comply promptly 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 move 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 court shall hear and decide the motion on an expedited basis.

(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 in the same manner as the nonparty was originally given notice.

(d) Except as otherwise provided for in subsection (b), 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.

Comment

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

Section 6(a) permits service on nonparties so that the party obtaining the asset-freezing order is not obligated to rely upon means of constructive notice. The act relies upon current

principles of applicable law as to the proper entity for service in particular circumstances. If the party does seek to serve the nonparty, the orders should be served on the most directly involved entity. For example, if a nonparty holds securities, the order should be served on the immediate holder of the securities rather than the so-called upper tier holders.

Section 6(b) is a self-executing provision which requires a non-party in a state that has adopted this [act] 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 [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) requires prompt action to freeze the assets but also cautions that the determination as to whether compliance with an asset-freezing order was indeed prompt shall take into account the manner time and place of service and other factors that reasonably affect the nonparty's ability to comply. This language in Section 6(b) is modeled on §4-303 of the Uniform Commercial Code.

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

Section 6 (c) provides for the instances where an asset-freezing order is vacated or modified. It directs the party who obtained the vacated or modified order to provide notice of the order in the same manner as notice was originally given. If notice was originally given as described in Section 3(a)(1), it is again to be given in the same manner. If notice was originally given as described in Section 3(a)(2), it is again to be given in the same manner.

Because of the multi-jurisdictional nature of these orders, there are possible instances where notice was given under both Sections 3(a)(1) and 3(a)(2). Upon modification or vacation, it would again be given under both Sections 3(a)(1) and 3(a)(2).

SECTION 7. SECURITY; INDEMNITY.

(a) The court may require security from 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 and compensate for any loss caused by the order.

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 and to compensate the nonparty for loss caused by the order. This requirement exists whether or not the motion for the order was granted properly.

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 ANOTHER 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) jurisdiction was based only on personal service and 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.

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 and are not otherwise

entitled to full faith and credit recognition, 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 foreign courts. 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 in a foreign country 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 in which the issuing court is located;

(2) voluntarily appeared in the proceeding other than for the purpose of protecting property seized or threatened with seizure in the proceeding or 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 with 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 the foreign country and the proceeding involved a [cause of action][claim for relief] arising out of the business done by the party through that office; 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. A court of this state may recognize a 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.

Comment

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

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

Comment

Article IV, Section 1 of the United States Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." Section 3 of the Uniform Foreign-Country Money Judgments Recognition Act provides that "The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit." Similarly, the Restatement (Second) Conflict of Laws Section 102, titled "Enforcement of Judgment Ordering or Enjoining Act," provides that "[a] valid judgment that orders the doing of an act other than the payment of money, or that enjoins the doing of an act, may be enforced, or be the subject of remedies, in other states." Non-final orders are therefore not entitled to automatic recognition and enforcement as a matter of current law, but rather, are left to comity. *See, e.g., Padron v. Lopez*, 220 P. 3d 345 (Kan. Sup. Ct. 2009)("an ex parte temporary injunction is not entitled to full faith and credit because it is a prejudgment, temporary order. Therefore, it is not subject to enforcement under either the Foreign Judgments Act or the Full Faith and Credit Clause of the United States Constitution, Article 4, § 1.")

To resolve this and provide statutory authority for recognition and enforcement of asset-freezing orders issued pursuant to this act among states that have adopted the act, this section provides expressly for the recognition and enforcement of asset-freezing orders in the same manner as a judgment, which requires application of the full faith and credit clause, but recognizes that they are not judgments themselves.

As previously noted, because an asset-freezing order is in the nature of injunctive relief, the remedy for violation of an asset-freezing order is contempt.

[SECTION 11. APPEAL. The [insert name of appropriate appellate court] has jurisdiction of an appeal, including an interlocutory appeal, 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, or supersedes the 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 electronic 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...