

# 2C:66-1

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2003                    **CHAPTER:** 22  
**NJSA:** 2C:66-1                    (Attachment order for freezing assets)  
**BILL NO:** A1651                    (Substituted for S1261)

**SPONSOR(S):** Cohen and Sarlo

**DATE INTRODUCED:** January 31, 2002

**COMMITTEE:**                    **ASSEMBLY:** Banking and Insurance

**SENATE:** Judiciary

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**                    **ASSEMBLY:** January 23, 2003

**SENATE:** December 16, 2002

**DATE OF APPROVAL:** February 27, 2003

### FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (2nd reprint enacted)  
(Amendments during passage denoted by superscript numbers)

#### A1651

[SPONSORS STATEMENT](#): (Begins on page 4 of original bill)                    [Yes](#)

**COMMITTEE STATEMENT:**                    [ASSEMBLY:](#)                    [Yes](#)

[SENATE:](#)                    [Yes](#)

**FLOOR AMENDMENT STATEMENTS:**                    No

**LEGISLATIVE FISCAL ESTIMATE:**                    No

#### S1261

[SPONSORS STATEMENT](#): (Begins on page 4 of original bill)                    [Yes](#)

**COMMITTEE STATEMENT:**                    **ASSEMBLY:**                    No

[SENATE:](#)                    [Yes](#)

**FLOOR AMENDMENT STATEMENTS:**                    No

**LEGISLATIVE FISCAL ESTIMATE:**                    No

**VETO MESSAGE:**                    No

**GOVERNOR'S PRESS RELEASE ON SIGNING:**                    No

### FOLLOWING WERE PRINTED:

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** No

P.L. 2003, CHAPTER 22, *approved February 27, 2003*  
Assembly, No. 1651 (*Second Reprint*)

1 AN ACT concerning freezing certain funds or assets relating to  
2 terrorism and supplementing Title 2C of the New Jersey Statutes.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. Attachment of deposited funds.

8 a. As used in this <sup>2</sup>[section] act<sup>2</sup>:

9 <sup>2</sup>[(1)]<sup>2</sup> <sup>1</sup>"Financial institution" means a state or federally chartered  
10 bank, savings bank or savings and loan association or any other  
11 financial services company or provider, including, but not limited to,  
12 broker-dealers, investment companies, money market and mutual  
13 funds, credit unions and insurers.

14 <sup>2</sup>[(2)]<sup>1</sup>"Material support or resources" means currency or other  
15 financial securities, financial services, lodging, training, safehouses,  
16 false documentation or identification, communications equipment,  
17 facilities weapons, lethal substances, explosives, personnel,  
18 transportation and other physical assets, except medicine or religious  
19 materials.

20 <sup>1</sup>[(2)] (3)<sup>1</sup> "Terrorism" means any unlawful act involving the use  
21 of a deadly weapon, destructive device or any instrument, article or  
22 substance readily capable of causing death or serious physical injury  
23 or damage to property committed for political <sup>1</sup>reasons, political gain<sup>1</sup>  
24 or financial gain with the intent to intimidate <sup>1</sup>[or], <sup>1</sup>coerce <sup>1</sup>or  
25 disrupt<sup>1</sup> the State, any of its political subdivisions, agencies,  
26 instrumentalities, officers or agents or cause the impairment or  
27 interruption of public communications, public transportation, <sup>1</sup>public  
28 or private buildings,<sup>1</sup> common carriers, public utilities or other public  
29 services.]<sup>2</sup>

30 b. Upon application by the Attorney General, a court may issue an  
31 attachment order directing a financial institution to freeze some or all  
32 of the funds or assets deposited with or held by the financial institution  
33 by or on behalf of <sup>2</sup>[an account holder charged with the commission  
34 of a crime or]<sup>2</sup> an account holder <sup>2</sup>[the Attorney General has] when

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly ABI committee amendments adopted February 21, 2002.

<sup>2</sup> Senate SJU committee amendments adopted December 9, 2002.

1 there exists a<sup>2</sup> <sup>1</sup>[probable cause] reasonable suspicion<sup>1</sup> <sup>2</sup>[to believe  
 2 is involved with soliciting or providing material support or resources  
 3 to another person intending that the material support or resource will  
 4 be used, in whole or in part, to plan, prepare, carry out, or escape  
 5 from an act of terrorism] that the account holder has committed or is  
 6 about to commit the crime of terrorism in violation of section 2 of  
 7 P.L.2002, c.26 (C.2C:38-2) or soliciting or providing material support  
 8 or resources for terrorism in violation of section 5 of P.L.2002, c.26  
 9 (C.2C:38-5)<sup>2</sup>.

10  
 11 2. Application. The application of the Attorney General required  
 12 by this act shall contain:

13 a. <sup>2</sup>[a copy of a criminal complaint issued by a court that alleges  
 14 the commission of a crime by the account holder;

15 b.]<sup>2</sup> a statement of the <sup>1</sup>[actual] approximate<sup>1</sup> financial loss caused  
 16 by the account holder in the commission of the crime <sup>2</sup>[, if not already  
 17 stated in the complaint] of terrorism in violation of section 2 of  
 18 P.L.2002, c.26 (C.2C:38-2) or soliciting or providing material support  
 19 or resources for terrorism in violation of section 5 of P.L.2002, c.26  
 20 (C.2C:38-5)<sup>2</sup>;

21 <sup>2</sup>[c.] b.<sup>2</sup> a statement of facts relied upon by the <sup>2</sup>[applicant]  
 22 Attorney General,<sup>2</sup> including the details of the particular offense that  
 23 is about to <sup>1</sup>be<sup>1</sup> committed or that has been committed; and

24 <sup>2</sup>[d.]c.<sup>2</sup> identification of the account holder's name and financial  
 25 institution account number.

26  
 27 3. Issuance of an order. If the court finds that:

28 a. <sup>2</sup>[there is <sup>1</sup>[probable cause] reasonable suspicion to believe<sup>1</sup>  
 29 that the account holder was involved in the commission of a crime;

30 b.]<sup>2</sup> there <sup>2</sup>[is ] exists a<sup>2</sup> <sup>1</sup>[probable cause] reasonable suspicion<sup>1</sup>  
 31 <sup>2</sup>[to believe] <sup>2</sup> that the account holder <sup>2</sup>[is engaging in or was  
 32 engaged in soliciting or providing material support or resources to  
 33 another person intending that the support or resource will be used, in  
 34 whole or in part, to plan, prepare, carry out, or escape from an act of  
 35 terrorism] has committed or is about to commit the crime of terrorism  
 36 in violation of section 2 of P.L.2002, c.26 (C.2C:38-2) or the crime of  
 37 soliciting or providing material support or resources for terrorism in  
 38 violation of section 5 of P.L.2002, c.26 (C.2C:38-5)<sup>2</sup> ;

39 <sup>2</sup>[c.] b.<sup>2</sup> the accounts of the account holder are specifically  
 40 identified; and

41 <sup>2</sup>[d.] c.<sup>2</sup> it is necessary to freeze the account holder's funds or  
 42 assets to ensure eventual restitution to victims of the alleged offense,

43 the court may order the financial institution to freeze all or part of  
 44 the account holder's deposited funds or assets so that the funds or  
 45 assets may not be withdrawn or disposed of until further order of the

1 court.

2 As part of the consideration of an application in which there is no  
3 corroborative evidence offered, the judge shall inquire in camera as to  
4 the identity of any informants or any other additional information  
5 concerning the basis upon which the <sup>2</sup>[investigative or law  
6 enforcement officer or agency] Attorney General<sup>2</sup> has applied for the  
7 attachment order which the judge finds relevant in order to determine  
8 if there <sup>2</sup>[is] exists a<sup>2</sup> <sup>1</sup>[probable cause] reasonable suspicion<sup>1</sup>  
9 pursuant to this act.

10

11 4. Duty of financial institutions. Upon receipt of the order  
12 authorized by this act, a financial institution shall not permit any funds  
13 or assets that were frozen by the order to be withdrawn or disposed of  
14 until further order of the court.

15

16 5. Release of funds. a. The account holder may, upon notice and  
17 motion, have a hearing to contest the freezing of funds or assets and  
18 to seek the release of all or part of them.

19 b. The account holder is entitled to an order releasing <sup>2</sup>all or part  
20 of<sup>2</sup> the funds or assets by showing:

21 (1) that the account holder has posted a bond or other adequate  
22 surety, guaranteeing that, upon conviction, adequate funds or assets  
23 will be available to pay complete restitution to victims of the alleged  
24 offense;

25 (2) that there <sup>2</sup>[is no] does not exist a<sup>2</sup> <sup>1</sup>[probable cause]  
26 reasonable suspicion<sup>1</sup> <sup>2</sup>[to believe]<sup>2</sup> that the account holder <sup>2</sup>[was  
27 involved in] has committed or is about to commit<sup>2</sup> the alleged offense;

28 (3) that the amount of funds or assets frozen is more than is  
29 necessary to pay complete restitution to all victims of the alleged  
30 offense; or

31 (4) that the funds or assets should be returned in the interests of  
32 justice.

33 c. It is not grounds for the release of funds or assets that the  
34 particular accounts frozen do not contain funds or assets that were  
35 proceeds from or used in the commission of the <sup>1</sup>[crime]  
36 <sup>2</sup>[terrorism<sup>1</sup>] crime of terrorism in violation of section 2 of P.L.2002,  
37 c.26 (C.2C:38-2) or soliciting or providing material support or  
38 resources for terrorism in violation of section 5 of P.L.2002, c.26  
39 (C.2C:38-5)<sup>2</sup>.

40

41 6. Disposition of funds.

42 a. The court may order the financial institution to remit all or part  
43 of the frozen funds or assets to the court.

44 b. If the account holder is acquitted or the charges are dismissed  
45 <sup>2</sup>with prejudice<sup>2</sup>, the court shall issue an order releasing the freeze on  
46 the funds or assets.

1 <sup>1</sup>c. If the account holder is not acquitted or the charges are not  
2 dismissed, the frozen funds or assets shall become the property of the  
3 State and shall be used to provide restitution to victims of terrorism,  
4 <sup>2</sup>[for the purchase of law enforcement equipment and]<sup>2</sup> to fund State  
5 law enforcement anti-terrorism programs and activities <sup>2</sup>and for other  
6 law enforcement purposes<sup>2</sup> .<sup>1</sup>

7  
8 7. Time limit. The freeze permitted by this act expires 24 months  
9 after the date of the court's initial attachment order unless the time  
10 limit is extended by the court in writing upon a showing of good cause  
11 by the Attorney General.

12  
13 8. Notice. Within ten days after a court issues an attachment order  
14 under this act, the Attorney General shall send a copy of the order to  
15 the account holder's last known address or to the account holder's  
16 attorney, if known.

17  
18 <sup>1</sup>9. Rights and remedies of financial institution. A financial  
19 institution that is directed to block, freeze or encumber an account  
20 pursuant to this act shall be entitled during the period that the account  
21 is blocked, frozen or encumbered to exercise any right or remedy with  
22 respect to the account as provided by law, or in the deposit agreement  
23 and rules or regulations of the financial institution applicable to the  
24 account. The provision of this act shall not be construed to preclude  
25 a financial institution from exercising its right of set-off or to charge  
26 back or recoup a deposit to an account.<sup>1</sup>

27  
28 <sup>1</sup>10. No liability for freezing funds. Notwithstanding any other law  
29 to the contrary, a financial institution shall not be liable to any person  
30 for blocking, freezing encumbering or refusing to release any funds or  
31 assets held by the financial institution in response to an order issued by  
32 a court, or for any other action taken by the financial institution in  
33 good faith to comply with the requirements of this act. A financial  
34 institution shall not be required to give notice to an account holder or  
35 customer that the financial institution has taken any action pursuant to  
36 this act and shall not be liable for failure to provide the notice.<sup>1</sup>

37  
38 <sup>1</sup>11. Nothing contained in this act shall be construed to abrogate  
39 or affect the status, force or operation of the forfeiture provisions of  
40 the "New Jersey Code of Criminal Justice," N.J.S.2C:64-1 et seq., or  
41 any other provision of law.<sup>1</sup>

42  
43 <sup>1</sup>[9] 12.<sup>1</sup> This act shall take effect immediately.

1

\_\_\_\_\_

2

3 Provides for an attachment order to freeze certain funds or assets

4 relating to terrorism.

# ASSEMBLY, No. 1651

## STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED JANUARY 31, 2002

**Sponsored by:**

**Assemblyman NEIL M. COHEN**  
**District 20 (Union)**

**Co-Sponsored by:**

**Assemblymen Bateman and D'Amato**

**SYNOPSIS**

Provides for an attachment order to freeze certain funds or assets relating to terrorism.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/22/2002)**



1 AN ACT concerning freezing certain funds or assets relating to  
2 terrorism and supplementing Title 2C of the New Jersey Statutes.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. Attachment of deposited funds.

8 a. As used in this section:

9 (1) "Material support or resources" means currency or other  
10 financial securities, financial services, lodging, training, safehouses,  
11 false documentation or identification, communications equipment,  
12 facilities weapons, lethal substances, explosives, personnel,  
13 transportation and other physical assets, except medicine or religious  
14 materials.

15 (2) "Terrorism" means any unlawful act involving the use of a  
16 deadly weapon, destructive device or any instrument, article or  
17 substance readily capable of causing death or serious physical injury  
18 or damage to property committed for political or financial gain with  
19 the intent to intimidate or coerce the State, any of its political  
20 subdivisions, agencies, instrumentalities, officers or agents or cause  
21 the impairment or interruption of public communications, public  
22 transportation, common carriers, public utilities or other public  
23 services.

24 b. Upon application by the Attorney General, a court may issue an  
25 attachment order directing a financial institution to freeze some or all  
26 of the funds or assets deposited with or held by the financial institution  
27 by or on behalf of an account holder charged with the commission of  
28 a crime or an account holder the Attorney General has probable cause  
29 to believe is involved with soliciting or providing material support or  
30 resources to another person intending that the material support or  
31 resource will be used, in whole or in part, to plan, prepare, carry out,  
32 or escape from an act of terrorism.

33  
34 2. Application. The application of the Attorney General required  
35 by this act shall contain:

36 a. a copy of a criminal complaint issued by a court that alleges the  
37 commission of a crime by the account holder;

38 b. a statement of the actual financial loss caused by the account  
39 holder in the commission of the crime, if not already stated in the  
40 complaint;

41 c. a statement of facts relied upon by the applicant including the  
42 details of the particular offense that is about to be committed or that has  
43 been committed; and

44 d. identification of the account holder's name and financial  
45 institution account number.

1 3. Issuance of an order. If the court finds that:

2 a. there is probable cause that the account holder was involved in  
3 the commission of a crime;

4 b. there is probable cause to believe that the account holder is  
5 engaging in or was engaged in soliciting or providing material support  
6 or resources to another person intending that the support or resource  
7 will be used, in whole or in part, to plan, prepare, carry out, or escape  
8 from an act of terrorism;

9 c. the accounts of the account holder are specifically identified;and

10 d. it is necessary to freeze the account holder's funds or assets to  
11 ensure eventual restitution to victims of the alleged offense,

12 the court may order the financial institution to freeze all or part of  
13 the account holder's deposited funds or assets so that the funds or  
14 assets may not be withdrawn or disposed of until further order of the  
15 court.

16 As part of the consideration of an application in which there is no  
17 corroborative evidence offered, the judge shall inquire in camera as to  
18 the identity of any informants or any other additional information  
19 concerning the basis upon which the investigative or law enforcement  
20 officer or agency has applied for the attachment order which the judge  
21 finds relevant in order to determine if there is probable cause pursuant  
22 to this act.

23

24 4. Duty of financial institutions. Upon receipt of the order  
25 authorized by this act, a financial institution shall not permit any funds  
26 or assets that were frozen by the order to be withdrawn or disposed of  
27 until further order of the court.

28

29 5. Release of funds. a. The account holder may, upon notice and  
30 motion, have a hearing to contest the freezing of funds or assets and  
31 to seek the release of all or part of them.

32 b. The account holder is entitled to an order releasing the funds or  
33 assets by showing:

34 (1) that the account holder has posted a bond or other adequate  
35 surety, guaranteeing that, upon conviction, adequate funds or assets  
36 will be available to pay complete restitution to victims of the alleged  
37 offense;

38 (2) that there is no probable cause to believe that the account  
39 holder was involved in the alleged offense;

40 (3) that the amount of funds or assets frozen is more than is  
41 necessary to pay complete restitution to all victims of the alleged  
42 offense; or

43 (4) that the funds or assets should be returned in the interests of  
44 justice.

45 c. It is not grounds for the release of funds or assets that the  
46 particular accounts frozen do not contain funds or assets that were

1 proceeds from or used in the commission of the crime.

2 6. Disposition of funds. a. The court may order the financial  
3 institution to remit all or part of the frozen funds or assets to the  
4 court.

5 b. If the account holder is acquitted or the charges are dismissed,  
6 the court shall issue an order releasing the freeze on the funds or  
7 assets.

8

9 7. Time limit. The freeze permitted by this act expires 24 months  
10 after the date of the court's initial attachment order unless the time  
11 limit is extended by the court in writing upon a showing of good cause  
12 by the Attorney General.

13

14 8. Notice. Within ten days after a court issues an attachment order  
15 under this act, the Attorney General shall send a copy of the order to  
16 the account holder's last known address or to the account holder's  
17 attorney, if known.

18

19 9. This act shall take effect immediately.

20

21

22 STATEMENT

23

24 In the days following the September 11, 2001 attacks on the World  
25 Trade Center and the Pentagon it became clear that funds and assets  
26 which these terrorists used to plan these atrocious acts were  
27 deposited or held in financial institutions in this country. It is the  
28 sponsor's intent to establish a mechanism by which law enforcement  
29 can request an order freezing the funds or assets of individuals they  
30 suspect are carrying out acts of terrorism.

31 This bill would provide that upon application by the Attorney  
32 General, a court may issue an attachment order directing a financial  
33 institution to freeze some or all of the funds or assets of an account  
34 holder who is charged with the commission of the crime of terrorism  
35 or an account holder the Attorney General has probable cause to  
36 believe is involved with soliciting or providing material support or  
37 resources to another person intending that the material support or  
38 resource will be used in whole or in or in part, to plan, prepare, carry  
39 out, or escape from an act of terrorism.

40 The bill sets forth the application requirements the Attorney  
41 General is required to satisfy before the court would consider issuing  
42 the attachment order. The application would include: a copy of a  
43 criminal complaint issued by a court that alleges the commission of a  
44 crime by the account holder; a statement of the actual financial loss  
45 caused by the account holder in the commission of the crime, if not  
46 already stated in the complaint; a statement of facts relied upon by the

1 applicant including the details of the particular offense that is about to  
2 committed or that has been committed; and identification of the  
3 account holder's name and financial institution account number.

4 The court may order the financial institution to freeze all or part of  
5 the account holder's deposited funds or assets, if it finds that: there is  
6 probable cause that the account holder was involved in the commission  
7 of a crime; there is probable cause to believe that the account holder  
8 is engaging in or was engaging in soliciting or providing material  
9 support or resources to another person intending that the support or  
10 resource will be used, in whole or in part, to plan, prepare, carry out,  
11 or escape from an act of terrorism; the accounts of the account holder  
12 are specifically identified; and it is necessary to freeze the account  
13 holder's funds or assets to ensure eventual restitution to victims of the  
14 alleged offense. If there is no corroborative evidence offered, the judge  
15 shall inquire in camera as to the identity of any informants or any other  
16 additional information concerning the basis upon which the  
17 investigative or law enforcement officer or agency has applied for the  
18 attachment order which the judge finds relevant in order to determine  
19 if there is probable cause pursuant to this section.

20 Once the financial institution receives the order it would not permit  
21 any funds or assets that were frozen by the order to be withdrawn or  
22 be disposed of until further order of the court.

23 The account holder can, upon notice and motion, have a hearing to  
24 contest the freezing of funds or assets and to seek the release of all or  
25 part of them. In order to release assets the account holder must show:  
26 that the account holder has posted a bond or other adequate surety,  
27 guaranteeing that, upon conviction, adequate funds or assets will be  
28 available to pay complete restitution to victims of the alleged offense;  
29 that there is no probable cause to believe that the account holder was  
30 involved in the alleged offense; that the amount of funds or assets  
31 frozen is more than is necessary to pay complete restitution to all  
32 victims of the alleged offense; or that the funds or assets should be  
33 returned in the interests of justice. It is not grounds for the release of  
34 funds or assets that the particular accounts frozen do not contain funds  
35 or assets that were proceeds from or used in the commission of the  
36 crime.

37 If the account holder is acquitted or the charges are dismissed, the  
38 court shall issue an order releasing the freeze on the funds or assets.

39 The freeze permitted by this act expires 24 months after the date of  
40 the court's initial attachment order unless the time limit is extended by  
41 the court in writing upon a showing of good cause by the Attorney  
42 General.

# ASSEMBLY BANKING AND INSURANCE COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 1651**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: FEBRUARY 21, 2002

The Assembly Banking and Insurance Committee reports favorably, and with committee amendments, Assembly Bill No. 1651.

This bill, as amended by the committee, provides that upon application by the Attorney General, a court may issue an attachment order directing a financial institution to freeze some or all of the funds or assets of an account holder who is charged with the commission of the crime of terrorism or an account holder the Attorney General has probable cause to believe is involved with soliciting or providing material support or resources to another person intending that the material support or resource will be used in whole or in or in part, to plan, prepare, carry out, or escape from an act of terrorism.

The bill defines "financial institution" as a state or federally chartered bank, savings bank or savings and loan association or any other financial services company or provider, including, but not limited to, broker-dealers, investment companies, money market and mutual funds, credit unions and insurers. The bill provides that the financial institution shall retain certain rights and remedies with respect to blocked, frozen or encumbered accounts and that the financial institution shall not be liable to any person if it is required to comply with an order to freeze accounts or assets.

The bill sets forth the requirements the Attorney General must satisfy in his application before the court may issue the attachment order. The application shall include: a copy of a criminal complaint issued by a court that alleges the commission of a crime by the account holder; a statement of the approximate financial loss caused by the account holder in the commission of the crime, if not already stated in the complaint; a statement of facts relied upon by the applicant including the details of the particular offense that is about to be committed or that has been committed; and identification of the account holder's name and financial institution account number.

The court may order the financial institution to freeze all or part of the account holder's deposited funds or assets, if it finds that: there is reasonable suspicion to believe that the account holder was involved in the commission of a crime; there is reasonable suspicion to believe that the account holder is engaging in or was engaging in soliciting or

providing material support or resources to another person intending that the support or resource will be used, in whole or in part, to plan, prepare, carry out, or escape from an act of terrorism; the accounts of the account holder are specifically identified; and it is necessary to freeze the account holder's funds or assets to ensure eventual restitution to victims of the alleged offense. If there is no corroborative evidence offered, the judge shall inquire in camera as to the identity of any informants or any other additional information concerning the basis upon which the investigative or law enforcement officer or agency has applied for the attachment order which the judge finds relevant in order to determine if there is reasonable suspicion to support the order.

Once the financial institution receives the attachment order, any funds or assets that are frozen cannot be withdrawn or disposed of until further order of the court. The court may order the financial institution to remit all or part of the frozen funds or assets to the court.

The account holder may, upon notice and motion, have a hearing to contest the freezing of funds or assets and to seek the release of all or part of them. In order to release assets the account holder must show: that the account holder has posted a bond or other adequate surety, guaranteeing that, upon conviction, adequate funds or assets will be available to pay complete restitution to victims of the alleged offense; that there is no reasonable suspicion to believe that the account holder was involved in the alleged offense; that the amount of funds or assets frozen is more than is necessary to pay complete restitution to all victims of the alleged offense; or that the funds or assets should be returned in the interests of justice. It is not grounds for the release of funds or assets that the particular accounts frozen do not contain funds or assets that were proceeds from or used in the commission of the terrorism.

If the account holder is acquitted or the charges are dismissed, the court shall issue an order releasing the funds or assets. However, if the account holder is not acquitted or the charges are not dismissed, the bill provides that the frozen funds or assets shall become the property of the State and shall be used to provide restitution to victims of terrorism, for the purchase of law enforcement equipment and to fund State law enforcement anti-terrorism programs and activities.

The attachment of funds permitted under the bill would expire 24 months after the date of the court's initial attachment order unless the time limit is extended by the court, in writing, upon a showing of good cause by the Attorney General.

The committee amended the bill to add the provisions concerning the rights and remedies of financial institutions; to change the standard for the Attorney General from "probable cause" to "reasonable suspicion" and to make certain other amendments.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

[First Reprint]

## **ASSEMBLY, No. 1651**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 9, 2002

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 1651 (1R).

As amended, this bill provides that upon application by the Attorney General a court may issue an attachment order directing a financial institution to freeze some or all of the funds or assets of an account holder who is charged with the commission of the crime of terrorism or an account holder when a reasonable suspicion exists that the account holder has committed or is about to commit terrorism or soliciting or providing material support or resources for terrorism.

As amended, the bill sets forth the requirements the Attorney General must satisfy in his application before the court may issue the attachment order. The application shall include: a statement of the approximate financial loss caused by the account holder in the commission of the crime; a statement of facts relied upon by the Attorney General including the details of the particular offense that is about to be committed or that has been committed; and identification of the account holder's name and financial institution account number.

The court may order the financial institution to freeze all or part of the account holder's deposited funds or assets, if it finds that: there is a reasonable suspicion that the account holder was involved in the commission of the crime of terrorism; there is a reasonable suspicion to believe that the account holder has committed or is about to commit the crime of soliciting or providing material support or resources for terrorism; the accounts of the account holder are specifically identified; and it is necessary to freeze the account holder's funds or assets to ensure eventual restitution to victims of the alleged offense. If there is no corroborative evidence offered, the judge shall inquire in camera as to the identity of any informants or any other additional information concerning the basis upon which the Attorney General has applied for the attachment order which the judge finds relevant in order to determine if there is a reasonable suspicion to support the order.

Once the financial institution receives the attachment order, any

funds or assets that are frozen cannot be withdrawn or disposed of until further order of the court. The court may order the financial institution to remit all or part of the frozen funds or assets to the court.

The account holder may, upon notice and motion, have a hearing to contest the freezing of funds or assets and to seek the release of all or part of them. In order to release the funds or assets the account holder must show: that the account holder has posted a bond or other adequate surety, guaranteeing that, upon conviction, adequate funds or assets will be available to pay complete restitution to victims of the alleged offense; that there is no reasonable suspicion to believe that the account holder has committed or is about to commit the alleged offense; that the amount of funds or assets frozen is more than is necessary to pay complete restitution to all victims of the alleged offense; or that the funds or assets should be returned in the interests of justice. It is not grounds for the release of funds or assets that the particular accounts frozen do not contain funds or assets that were proceeds from or used in the commission of the crime of terrorism.

If the account holder is acquitted or the charges are dismissed, the court shall issue an order releasing the funds or assets. However, if the account holder is not acquitted or the charges are not dismissed, the bill provides that the frozen funds or assets shall become the property of the State and be used to provide restitution to terrorism victims and other law enforcement purposes.

The attachment of funds permitted under the bill would expire 24 months after the date of the court's initial attachment order unless the time limit is extended by the court, in writing, upon a showing of good cause by the Attorney General.

The bill provides that the financial institution shall retain certain rights and remedies with respect to blocked, frozen or encumbered accounts. The bill would not preclude a financial institution from exercising its right of set-off or to charge back or recoup a deposit to an account. Under the provisions of the a financial institution would not be liable to any person if it is required to comply with an order to freeze accounts or assets.

The committee amendments conform definitions in the bill to the recently enacted "September 11, 2001 Anti-Terrorism Act" (P.L.2002, c.26) for the definitions of terrorism now set forth in N.J.S.A.2C:38-2 and soliciting or providing material support or resources in N.J.S.A.2C:38-5. These amendments make some additional language changes including changing references to "involvement" in terrorism to "committed or is about to commit" an act of terrorism; referencing in section 6 the court releasing the freeze on assets if the charges are dismissed "with prejudice" to avoid the entire procedure again if the dismissal is on a technicality that may be cured on refiling if the dismissal is without prejudice; and permitting the State to use captured funds for "other law enforcement purposes," also in section 6.

As amended, this bill is identical to Senate, No. 1261 (1R).



**SENATE, No. 1261**

**STATE OF NEW JERSEY**  
**210th LEGISLATURE**

INTRODUCED MARCH 7, 2002

**Sponsored by:**

**Senator DIANE ALLEN**

**District 7 (Burlington and Camden)**

**Senator PETER A. INVERSO**

**District 14 (Mercer and Middlesex)**

**Co-Sponsored by:**

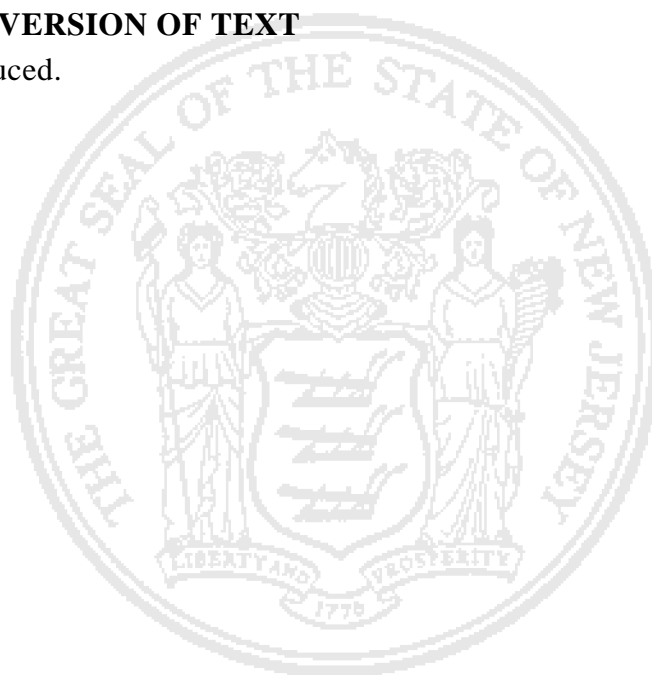
**Senators Palaia, Cafiero and Matheussen**

**SYNOPSIS**

Provides for an attachment order to freeze certain funds or assets relating to terrorism.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/28/2002)**

1 AN ACT concerning freezing certain funds or assets relating to  
2 terrorism and supplementing Title 2C of the New Jersey Statutes.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. Attachment of deposited funds.

8 a. As used in this section:

9 (1) "Financial institution" means a state or federally chartered bank,  
10 savings bank or savings and loan association or any other financial  
11 services company or provider, including, but not limited to, broker-  
12 dealers, investment companies, money market and mutual funds, credit  
13 unions and insurers.

14 (2) "Material support or resources" means currency or other  
15 financial securities, financial services, lodging, training, safehouses,  
16 false documentation or identification, communications equipment,  
17 facilities weapons, lethal substances, explosives, personnel,  
18 transportation and other physical assets, except medicine or religious  
19 materials.

20 (3) "Terrorism" means any unlawful act involving the use of a  
21 deadly weapon, destructive device or any instrument, article or  
22 substance readily capable of causing death or serious physical injury  
23 or damage to property committed for political reasons, political gain  
24 or financial gain with the intent to intimidate, coerce or disrupt the  
25 State, any of its political subdivisions, agencies, instrumentalities,  
26 officers or agents or cause the impairment or interruption of public  
27 communications, public transportation, public or private buildings,  
28 common carriers, public utilities or other public services.

29 b. Upon application by the Attorney General, a court may issue an  
30 attachment order directing a financial institution to freeze some or all  
31 of the funds or assets deposited with or held by the financial institution  
32 by or on behalf of an account holder charged with the commission of  
33 a crime or an account holder the Attorney General has reasonable  
34 suspicion to believe is involved with soliciting or providing material  
35 support or resources to another person intending that the material  
36 support or resource will be used, in whole or in part, to plan, prepare,  
37 carry out, or escape from an act of terrorism.

38  
39 2. Application. The application of the Attorney General required  
40 by this act shall contain:

41 a. a copy of a criminal complaint issued by a court that alleges the  
42 commission of a crime by the account holder;

43 b. a statement of the approximate financial loss caused by the  
44 account holder in the commission of the crime, if not already stated in  
45 the complaint;

1 c. a statement of facts relied upon by the applicant including the  
2 details of the particular offense that is about to be committed or that  
3 has been committed; and

4 d. identification of the account holder's name and financial  
5 institution account number.

6  
7 3. Issuance of an order. If the court finds that:

8 a. there is reasonable suspicion to believe that the account holder  
9 was involved in the commission of a crime;

10 b. there is reasonable suspicion to believe that the account holder  
11 is engaging in or was engaged in soliciting or providing material  
12 support or resources to another person intending that the support or  
13 resource will be used, in whole or in part, to plan, prepare, carry out,  
14 or escape from an act of terrorism;

15 c. the accounts of the account holder are specifically identified; and

16 d. it is necessary to freeze the account holder's funds or assets to  
17 ensure eventual restitution to victims of the alleged offense,

18 the court may order the financial institution to freeze all or part of  
19 the account holder's deposited funds or assets so that the funds or  
20 assets may not be withdrawn or disposed of until further order of the  
21 court.

22 As part of the consideration of an application in which there is no  
23 corroborative evidence offered, the judge shall inquire in camera as to  
24 the identity of any informants or any other additional information  
25 concerning the basis upon which the investigative or law enforcement  
26 officer or agency has applied for the attachment order which the judge  
27 finds relevant in order to determine if there is reasonable suspicion  
28 pursuant to this act.

29  
30 4. Duty of financial institutions. Upon receipt of the order  
31 authorized by this act, a financial institution shall not permit any funds  
32 or assets that were frozen by the order to be withdrawn or disposed of  
33 until further order of the court.

34  
35 5. Release of funds. a. The account holder may, upon notice and  
36 motion, have a hearing to contest the freezing of funds or assets and  
37 to seek the release of all or part of them.

38 b. The account holder is entitled to an order releasing the funds or  
39 assets by showing:

40 (1) that the account holder has posted a bond or other adequate  
41 surety, guaranteeing that, upon conviction, adequate funds or assets  
42 will be available to pay complete restitution to victims of the alleged  
43 offense;

44 (2) that there is no reasonable suspicion to believe that the account  
45 holder was involved in the alleged offense;

1 (3) that the amount of funds or assets frozen is more than is  
2 necessary to pay complete restitution to all victims of the alleged  
3 offense; or

4 (4) that the funds or assets should be returned in the interests of  
5 justice.

6 c. It is not grounds for the release of funds or assets that the  
7 particular accounts frozen do not contain funds or assets that were  
8 proceeds from or used in the commission of the terrorism.

9

10 6. Disposition of funds.

11 a. The court may order the financial institution to remit all or part  
12 of the frozen funds or assets to the court.

13 b. If the account holder is acquitted or the charges are dismissed,  
14 the court shall issue an order releasing the freeze on the funds or  
15 assets.

16 c. If the account holder is not acquitted or the charges are not  
17 dismissed, the frozen funds or assets shall become the property of the  
18 State and shall be used to provide restitution to victims of terrorism,  
19 for the purchase of law enforcement equipment and to fund State law  
20 enforcement anti-terrorism programs and activities.

21

22 7. Time limit. The freeze permitted by this act expires 24 months  
23 after the date of the court's initial attachment order unless the time  
24 limit is extended by the court in writing upon a showing of good cause  
25 by the Attorney General.

26

27 8. Notice. Within ten days after a court issues an attachment order  
28 under this act, the Attorney General shall send a copy of the order to  
29 the account holder's last known address or to the account holder's  
30 attorney, if known.

31

32 9. Rights and remedies of financial institution. A financial  
33 institution that is directed to block, freeze or encumber an account  
34 pursuant to this act shall be entitled during the period that the account  
35 is blocked, frozen or encumbered to exercise any right or remedy with  
36 respect to the account as provided by law, or in the deposit agreement  
37 and rules or regulations of the financial institution applicable to the  
38 account. The provisions of this act shall not be construed to preclude  
39 a financial institution from exercising its right of set-off or to charge  
40 back or recoup a deposit to an account.

41

42 10. No liability for freezing funds. Notwithstanding any other law  
43 to the contrary, a financial institution shall not be liable to any person  
44 for blocking, freezing encumbering or refusing to release any funds or  
45 assets held by the financial institution in response to an order issued by  
46 a court, or for any other action taken by the financial institution in

1 good faith to comply with the requirements of this act. A financial  
2 institution shall not be required to give notice to an account holder or  
3 customer that the financial institution has taken any action pursuant to  
4 this act and shall not be liable for failure to provide the notice.

5  
6 11. Nothing contained in this act shall be construed to abrogate or  
7 affect the status, force or operation of the forfeiture provisions of the  
8 "New Jersey Code of Criminal Justice," N.J.S. 2C:64-1 et seq., or any  
9 other provision of law.

10  
11 12. This act shall take effect immediately.

12  
13  
14 STATEMENT

15  
16 This bill provides that upon application by the Attorney General a  
17 court may issue an attachment order directing a financial institution to  
18 freeze some or all of the funds or assets of an account holder who is  
19 charged with the commission of the crime of terrorism or an account  
20 holder the Attorney General has reasonable suspicion to believe is  
21 involved with soliciting or providing material support or resources to  
22 another person intending that the material support or resource will be  
23 used in whole or in or in part, to plan, prepare, carry out, or escape  
24 from an act of terrorism.

25 The bill sets forth the requirements the Attorney General must  
26 satisfy in his application before the court may issue the attachment  
27 order. The application shall include: a copy of a criminal complaint  
28 issued by a court that alleges the commission of a crime by the account  
29 holder; a statement of the approximate financial loss caused by the  
30 account holder in the commission of the crime, if not already stated in  
31 the complaint; a statement of facts relied upon by the applicant  
32 including the details of the particular offense that is about to be  
33 committed or that has been committed; and identification of the  
34 account holder's name and financial institution account number.

35 The court may order the financial institution to freeze all or part of  
36 the account holder's deposited funds or assets, if it finds that: there is  
37 reasonable suspicion to believe that the account holder was involved  
38 in the commission of a crime; there is reasonable suspicion to believe  
39 that the account holder is engaging in or was engaging in soliciting or  
40 providing material support or resources to another person intending  
41 that the support or resource will be used, in whole or in part, to plan,  
42 prepare, carry out, or escape from an act of terrorism; the accounts of  
43 the account holder are specifically identified; and it is necessary to  
44 freeze the account holder's funds or assets to ensure eventual  
45 restitution to victims of the alleged offense. If there is no  
46 corroborative evidence offered, the judge shall inquire in camera as to

1 the identity of any informants or any other additional information  
2 concerning the basis upon which the investigative or law enforcement  
3 officer or agency has applied for the attachment order which the judge  
4 finds relevant in order to determine if there is reasonable suspicion to  
5 support the order.

6 Once the financial institution receives the attachment order, any  
7 funds or assets that are frozen cannot be withdrawn or disposed of  
8 until further order of the court. The court may order the financial  
9 institution to remit all or part of the frozen funds or assets to the  
10 court. A "financial institution" is defined as a state or federally  
11 chartered bank, savings bank or savings and loan association or any  
12 other financial services company or provider, including, but not limited  
13 to, broker-dealers, investment companies, money market and mutual  
14 funds, credit unions and insurers.

15 The account holder may, upon notice and motion, have a hearing to  
16 contest the freezing of funds or assets and to seek the release of all or  
17 part of them. In order to release assets the account holder must show:  
18 that the account holder has posted a bond or other adequate surety,  
19 guaranteeing that, upon conviction, adequate funds or assets will be  
20 available to pay complete restitution to victims of the alleged offense;  
21 that there is no reasonable suspicion to believe that the account holder  
22 was involved in the alleged offense; that the amount of funds or assets  
23 frozen is more than is necessary to pay complete restitution to all  
24 victims of the alleged offense; or that the funds or assets should be  
25 returned in the interests of justice. It is not grounds for the release of  
26 funds or assets that the particular accounts frozen do not contain funds  
27 or assets that were proceeds from or used in the commission of the  
28 terrorism.

29 If the account holder is acquitted or the charges are dismissed, the  
30 court shall issue an order releasing the funds or assets. However, if  
31 the account holder is not acquitted or the charges are not dismissed,  
32 the bill provides that the frozen funds or assets shall become the  
33 property of the State and shall be used to provide restitution to victims  
34 of terrorism, for the purchase of law enforcement equipment and to  
35 fund State law enforcement anti-terrorism programs and activities.

36 The attachment of funds permitted under the bill would expire  
37 24 months after the date of the court's initial attachment order unless  
38 the time limit is extended by the court, in writing, upon a showing of  
39 good cause by the Attorney General.

40 The bill provides that the financial institution shall retain certain  
41 rights and remedies with respect to blocked, frozen or encumbered  
42 accounts. The bill would not preclude a financial institution from  
43 exercising its right of set-off or to charge back or recoup a deposit to  
44 an account. Under the provisions of the a financial institution would  
45 not be liable to any person if it is required to comply with an order to  
46 freeze accounts or assets.

**S1261 ALLEN, INVERSO**

7

1       The bill also provides that nothing contained in the act should be  
2 construed to abrogate or affect the status, force or operation of the  
3 forfeiture provisions of the criminal code.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### **SENATE, No. 1261**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 9, 2002

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1261.

As amended, this bill provides that upon application by the Attorney General a court may issue an attachment order directing a financial institution to freeze some or all of the funds or assets of an account holder who is charged with the commission of the crime of terrorism or an account holder when a reasonable suspicion exists that the account holder has committed or is about to commit terrorism or soliciting or providing material support or resources for terrorism.

As amended, the bill sets forth the requirements the Attorney General must satisfy in his application before the court may issue the attachment order. The application shall include: a statement of the approximate financial loss caused by the account holder in the commission of the crime; a statement of facts relied upon by the Attorney General including the details of the particular offense that is about to be committed or that has been committed; and identification of the account holder's name and financial institution account number.

The court may order the financial institution to freeze all or part of the account holder's deposited funds or assets, if it finds that: there is a reasonable suspicion that the account holder was involved in the commission of the crime of terrorism; there is a reasonable suspicion to believe that the account holder has committed or is about to commit the crime of soliciting or providing material support or resources for terrorism; the accounts of the account holder are specifically identified; and it is necessary to freeze the account holder's funds or assets to ensure eventual restitution to victims of the alleged offense. If there is no corroborative evidence offered, the judge shall inquire in camera as to the identity of any informants or any other additional information concerning the basis upon which the Attorney General has applied for the attachment order which the judge finds relevant in order to determine if there is a reasonable suspicion to support the order.

Once the financial institution receives the attachment order, any funds or assets that are frozen cannot be withdrawn or disposed of until further order of the court. The court may order the financial



institution to remit all or part of the frozen funds or assets to the court.

The account holder may, upon notice and motion, have a hearing to contest the freezing of funds or assets and to seek the release of all or part of them. In order to release the funds or assets the account holder must show: that the account holder has posted a bond or other adequate surety, guaranteeing that, upon conviction, adequate funds or assets will be available to pay complete restitution to victims of the alleged offense; that there is no reasonable suspicion to believe that the account holder has committed or is about to commit the alleged offense; that the amount of funds or assets frozen is more than is necessary to pay complete restitution to all victims of the alleged offense; or that the funds or assets should be returned in the interests of justice. It is not grounds for the release of funds or assets that the particular accounts frozen do not contain funds or assets that were proceeds from or used in the commission of the crime of terrorism.

If the account holder is acquitted or the charges are dismissed, the court shall issue an order releasing the funds or assets. However, if the account holder is not acquitted or the charges are not dismissed, the bill provides that the frozen funds or assets shall become the property of the State and be used to provide restitution to terrorism victims and other law enforcement purposes.

The attachment of funds permitted under the bill would expire 24 months after the date of the court's initial attachment order unless the time limit is extended by the court, in writing, upon a showing of good cause by the Attorney General.

The bill provides that the financial institution shall retain certain rights and remedies with respect to blocked, frozen or encumbered accounts. The bill would not preclude a financial institution from exercising its right of set-off or to charge back or recoup a deposit to an account. Under the provisions of the a financial institution would not be liable to any person if it is required to comply with an order to freeze accounts or assets.

The committee amendments conform definitions in the bill to the recently enacted "September 11, 2001 Anti-Terrorism Act" (P.L.2002, c.26) for the definitions of terrorism now set forth in N.J.S.A.2C:38-2 and soliciting or providing material support or resources in N.J.S.A.2C:38-5. These amendments make some additional language changes including changing references to "involvement" in terrorism to "committed or is about to commit" an act of terrorism; referencing in section 6 the court releasing the freeze on assets if the charges are dismissed "with prejudice" to avoid the entire procedure again if the dismissal is on a technicality that may be cured on refiling if the dismissal is without prejudice; and permitting the State to use captured funds for "other law enforcement purposes," also in section 6.

As amended, this bill is identical to Assembly, No. 1651 (2R).