

SENATE BILL 306

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7lr1863
CF 7lr1862

By: **Senator Stone**
Introduced and read first time: January 31, 2007
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Identity Fraud – Seizure and Forfeiture**

3 FOR the purpose of authorizing a State or local law enforcement agency, on process
4 issued by a court of competent jurisdiction, to seize certain property used or
5 intended for use in connection with violation of certain identity fraud laws;
6 establishing that certain property is contraband and presumed to be forfeitable;
7 placing the burden of rebutting a certain presumption on a certain property
8 claimant; authorizing the seizure of certain property with or without a warrant
9 under certain circumstances; authorizing a court to direct a certain defendant to
10 forfeit certain property; establishing a certain forfeiture proceeding; defining
11 certain terms; providing for the application of this Act; and generally relating to
12 seizure and forfeiture of property used in connection with a violation of the
13 identity fraud law.

14 BY adding to
15 Article – Criminal Procedure
16 Section 13–401 through 13–407 to be under the new subtitle “Subtitle 4.
17 Violations of Identity Fraud Laws”
18 Annotated Code of Maryland
19 (2001 Volume and 2006 Supplement)

20 Preamble

21 WHEREAS, Due to the great increase in the number of identity fraud crimes in
22 Maryland and the fact that the amount of money involved in these crimes has grown,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 it is now necessary to attack the problem of identity fraud and seize the profits of
2 these crimes; and

3 WHEREAS, Under current Maryland law, law enforcement officers cannot seize
4 the assets of identity fraud thieves. If thieves convert the proceeds of their identity
5 frauds into tangible assets such as cash, real estate, automobiles, jewelry, and other
6 items, these assets cannot be seized as part of the identity fraud case; and

7 WHEREAS, The issue of identity fraud surfaced years ago in the prosecution of
8 drug cases. The drug dealers used the profits from drug dealing to purchase tangible
9 assets, and the drug forfeiture laws were passed to address the problem of drug
10 dealers keeping the profits of their crimes; and

11 WHEREAS, Under this Act, identity fraud thieves will not be able to keep what
12 they steal, even if the form of the stolen goods changes from an identity to cash, a
13 house, a car, jewelry, or any other tangible asset; and

14 WHEREAS, Thieves should not be allowed to keep what they steal; now,
15 therefore,

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – Criminal Procedure**

19 **SUBTITLE 4. VIOLATIONS OF IDENTITY FRAUD LAWS.**

20 **13-401.**

21 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
22 INDICATED.

23 (B) “CONVICTED” MEANS FOUND GUILTY.

24 (C) “IDENTITY FRAUD LAW” MEANS TITLE 8, SUBTITLE 3 OF THE
25 CRIMINAL LAW ARTICLE.

26 (D) (1) “OWNER” MEANS A PERSON HAVING A LEGAL, EQUITABLE, OR
27 POSSESSORY INTEREST IN PROPERTY.

28 (2) “OWNER” INCLUDES:

- 1 (I) A CO-OWNER;
- 2 (II) A LIFE TENANT;
- 3 (III) A REMAINDERMAN TO A LIFE TENANCY IN REAL
- 4 PROPERTY;
- 5 (IV) A HOLDER OF AN INCHOATE INTEREST IN REAL
- 6 PROPERTY; AND
- 7 (V) A BONA FIDE PURCHASER FOR VALUE.

8 (E) (1) **“PROPERTY” INCLUDES:**

9 (I) REAL PROPERTY AND ANYTHING GROWING ON OR

10 ATTACHED TO REAL PROPERTY;

11 (II) TANGIBLE AND INTANGIBLE PERSONAL PROPERTY,

12 INCLUDING:

- 13 1. SECURITIES;
- 14 2. NEGOTIABLE AND NONNEGOTIABLE
- 15 INSTRUMENTS;
- 16 3. VEHICLES AND CONVEYANCES OF ANY TYPE;
- 17 4. PRIVILEGES;
- 18 5. INTERESTS;
- 19 6. CLAIMS; AND
- 20 7. RIGHTS;

21 (III) AN ITEM, OBJECT, TOOL, SUBSTANCE, DEVICE, OR

22 WEAPON USED IN CONNECTION WITH A CRIME UNDER THE IDENTITY FRAUD

23 LAW; AND

1 (IV) MONEY.

2 (2) "PROPERTY" DOES NOT INCLUDE:

3 (I) AN ITEM UNLAWFULLY IN THE POSSESSION OF A
4 PERSON OTHER THAN THE OWNER WHEN USED IN CONNECTION WITH A CRIME
5 UNDER THE IDENTITY FRAUD LAW; OR

6 (II) A LESSOR'S INTEREST IN PROPERTY SUBJECT TO A
7 BONA FIDE LEASE, UNLESS THE FORFEITING AUTHORITY CAN SHOW THAT THE
8 LESSOR PARTICIPATED IN A CRIME UNDER THE IDENTITY FRAUD LAW OR THAT
9 THE PROPERTY WAS THE PROCEEDS OF A CRIME UNDER THE IDENTITY FRAUD
10 LAW.

11 (F) (1) "REAL PROPERTY" MEANS LAND OR AN IMPROVEMENT TO
12 LAND.

13 (2) "REAL PROPERTY" INCLUDES:

14 (I) A LEASEHOLD OR OTHER LIMITED INTEREST IN REAL
15 PROPERTY;

16 (II) AN EASEMENT; AND

17 (III) A REVERSIONARY INTEREST IN A 99-YEAR GROUND
18 LEASE RENEWABLE FOREVER.

19 **13-402.**

20 (A) EXCEPT AS PROVIDED IN § 13-403 OF THIS SUBTITLE, A STATE OR
21 LOCAL LAW ENFORCEMENT AGENCY, ON PROCESS ISSUED BY A COURT OF
22 COMPETENT JURISDICTION, MAY SEIZE:

23 (1) CONVEYANCES, INCLUDING AIRCRAFT, VEHICLES, OR
24 VESSELS USED OR INTENDED TO BE USED IN CONNECTION WITH A CRIME UNDER
25 THE IDENTITY FRAUD LAW;

1 (2) BOOKS, RECORDS, TELECOMMUNICATION EQUIPMENT, OR
2 COMPUTERS USED OR INTENDED FOR USE IN CONNECTION WITH A CRIME
3 UNDER THE IDENTITY FRAUD LAW;

4 (3) SUBJECT TO SUBSECTION (B) OF THIS SECTION, MONEY OR
5 WEAPONS USED OR INTENDED TO BE USED IN CONNECTION WITH A CRIME
6 UNDER THE IDENTITY FRAUD LAW;

7 (4) REAL PROPERTY USED OR INTENDED TO BE USED IN
8 CONNECTION WITH A CRIME UNDER THE IDENTITY FRAUD LAW; AND

9 (5) EVERYTHING OF VALUE FURNISHED, OR INTENDED TO BE
10 FURNISHED, IN EXCHANGE FOR A PAYMENT DEVICE NUMBER, PERSONAL
11 IDENTIFYING INFORMATION, OR GOVERNMENT IDENTIFICATION DOCUMENT IN
12 VIOLATION OF THE IDENTITY FRAUD LAW, ALL PROCEEDS TRACEABLE TO THE
13 EXCHANGE, AND ALL NEGOTIABLE INSTRUMENTS AND SECURITIES USED, OR
14 INTENDED TO BE USED, TO FACILITATE ANY VIOLATION OF THE IDENTITY
15 FRAUD LAW.

16 (B) (1) MONEY OR WEAPONS THAT ARE FOUND IN CLOSE PROXIMITY
17 TO AN ACT IN VIOLATION OF THE IDENTITY FRAUD LAW ARE CONTRABAND AND
18 PRESUMED TO BE FORFEITABLE.

19 (2) A CLAIMANT OF MONEY OR WEAPONS HAS THE BURDEN TO
20 REBUT THE PRESUMPTION.

21 **13-403.**

22 A MEMBER OF A STATE OR LOCAL LAW ENFORCEMENT AGENCY, ON
23 PROCESS ISSUED BY A COURT OF COMPETENT JURISDICTION, MAY SEIZE
24 PROPERTY DESCRIBED IN THIS SUBTITLE WITHOUT A WARRANT WHEN THE
25 SEIZURE IS:

26 (1) INCIDENT TO AN ARREST;

27 (2) INCIDENT TO A SEARCH MADE UNDER A SEARCH WARRANT;

28 (3) MADE IN ACCORDANCE WITH A VALID CONSENT TO SEARCH;

29 **OR**

1 **(4) MADE WITH PROBABLE CAUSE TO BELIEVE THAT THE**
2 **PROPERTY HAS BEEN USED OR IS INTENDED TO BE USED IN CONNECTION WITH**
3 **A CRIME UNDER THE IDENTITY FRAUD LAW.**

4 **13-404.**

5 **ON CONVICTION, THE COURT MAY DIRECT THE DEFENDANT TO FORFEIT**
6 **THE PROPERTY SEIZED IN ACCORDANCE WITH THIS SUBTITLE.**

7 **13-405.**

8 **(A) WITHIN 90 DAYS AFTER THE SEIZURE, THE SEIZING LAW**
9 **ENFORCEMENT AGENCY SHALL RETURN PROPERTY TO A PERSON FROM WHOM**
10 **THE PROPERTY WAS SEIZED UNLESS A HEARING HAS BEEN SCHEDULED TO**
11 **DETERMINE WHETHER:**

12 **(1) THE SEIZURE OF THE PROPERTY WAS PROPER; AND**

13 **(2) REASONABLE NOTICE HAS BEEN GIVEN.**

14 **(B) THE OWNER OF PROPERTY TO BE FORFEITED SHALL BE SERVED**
15 **NOTICE AT LEAST 10 DAYS BEFORE THE FORFEITURE HEARING.**

16 **(C) IF THE OWNER OF PROPERTY TO BE FORFEITED IS NOT**
17 **REASONABLY DISCOVERABLE, THE SEIZING LAW ENFORCEMENT AGENCY MAY**
18 **SERVE NOTICE BY PUBLISHING A NOTICE OF THE FORFEITURE HEARING IN A**
19 **NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY IN WHICH THE**
20 **HEARING IS TO BE HELD AT LEAST 10 DAYS BEFORE THE DAY OF THE HEARING.**

21 **(D) THE NOTICE SHALL CONTAIN A GENERAL DESCRIPTION OF THE**
22 **PROPERTY, INCLUDING AVAILABLE SERIAL OR REGISTRATION NUMBERS.**

23 **(E) THE SEIZING LAW ENFORCEMENT AGENCY SHALL RETURN THE**
24 **PROPERTY TO THE OWNER ON A SHOWING THAT THE OWNER DID NOT KNOW OF**
25 **OR CONSENT TO A VIOLATION OF THE IDENTITY FRAUD LAW.**

26 **13-406.**

1 **A FORFEITURE OF PROPERTY ENCUMBERED BY A BONA FIDE SECURITY**
2 **INTEREST IS SUBJECT TO THE INTEREST OF A SECURED PARTY WHO DID NOT**
3 **KNOW OF OR CONSENT TO THE ACT OR OMISSION CONSTITUTING A VIOLATION**
4 **OF THE IDENTITY FRAUD LAW.**

5 **13-407.**

6 **(A) PROPERTY FORFEITED UNDER THIS SUBTITLE MAY BE SOLD BY**
7 **ORDER OF THE COURT.**

8 **(B) THE COURT SHALL ORDER THAT THE PROCEEDS OF THE SALE OF**
9 **FORFEITED PROPERTY BE DISTRIBUTED TO THE UNIT HAVING BUDGETARY**
10 **AUTHORITY OVER THE SEIZING LAW ENFORCEMENT AGENCY AFTER DEDUCTION**
11 **OF ANY REASONABLE AND NECESSARY TOWING AND STORAGE CHARGES.**

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
13 construed to apply only prospectively and may not be applied or interpreted to have
14 any effect on or application to any offense committed before the effective date of this
15 Act.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2007.