

SENATE BILL 306

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71r1863
CF HB 1051

By: **Senator Stone**

Introduced and read first time: January 31, 2007

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 20, 2007

CHAPTER _____

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; authorizing
11 forfeited property to be sold by order of the court; requiring the proceeds of the
12 sale of forfeited property to be distributed in a certain manner; defining certain
13 terms; providing for the application of this Act; and generally relating to seizure
14 and forfeiture of property used in connection with a violation of the identity
15 fraud law.

16 BY adding to

17 Article – Criminal Procedure

18 Section 13–401 through 13–407 to be under the new subtitle “Subtitle 4.

19 Violations of Identity Fraud Laws”

20 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2001 Volume and 2006 Supplement)

2 Preamble

3 WHEREAS, Due to the great increase in the number of identity fraud crimes in
4 Maryland and the fact that the amount of money involved in these crimes has grown,
5 it is now necessary to attack the problem of identity fraud and seize the profits of
6 these crimes; and

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

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

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

18 WHEREAS, Thieves should not be allowed to keep what they steal; now,
19 therefore,

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

22 **Article – Criminal Procedure**

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

24 **13–401.**

25 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
26 INDICATED.

27 (B) “CONVICTED” MEANS FOUND GUILTY.

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

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

3 (2) **“OWNER” INCLUDES:**

4 (I) **A CO-OWNER;**

5 (II) **A LIFE TENANT;**

6 (III) **A REMAINDERMAN TO A LIFE TENANCY IN REAL**
7 **PROPERTY;**

8 (IV) **A HOLDER OF AN INCHOATE INTEREST IN REAL**
9 **PROPERTY; AND**

10 (V) **A BONA FIDE PURCHASER FOR VALUE.**

11 (E) (1) **“PROPERTY” INCLUDES:**

12 (I) **REAL PROPERTY AND ANYTHING GROWING ON OR**
13 **ATTACHED TO REAL PROPERTY;**

14 (II) **TANGIBLE AND INTANGIBLE PERSONAL PROPERTY,**
15 **INCLUDING:**

16 1. **SECURITIES;**

17 2. **NEGOTIABLE AND NONNEGOTIABLE**
18 **INSTRUMENTS;**

19 3. **VEHICLES AND CONVEYANCES OF ANY TYPE;**

20 4. **PRIVILEGES;**

21 5. **INTERESTS;**

22 6. **CLAIMS; AND**

23 7. **RIGHTS;**

1 (III) AN ITEM, OBJECT, TOOL, SUBSTANCE, DEVICE, OR
2 WEAPON USED IN CONNECTION WITH A CRIME UNDER THE IDENTITY FRAUD
3 LAW; AND

4 (IV) MONEY.

5 (2) "PROPERTY" DOES NOT INCLUDE:

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

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

14 (F) (1) "REAL PROPERTY" MEANS LAND OR AN IMPROVEMENT TO
15 LAND.

16 (2) "REAL PROPERTY" INCLUDES:

17 (I) A LEASEHOLD OR OTHER LIMITED INTEREST IN REAL
18 PROPERTY;

19 (II) AN EASEMENT; AND

20 (III) A REVERSIONARY INTEREST IN A 99-YEAR GROUND
21 LEASE RENEWABLE FOREVER.

22 **13-402.**

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

26 (1) CONVEYANCES, INCLUDING AIRCRAFT, VEHICLES, OR
27 VESSELS USED OR INTENDED TO BE USED IN CONNECTION WITH A CRIME UNDER
28 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) UNLESS POSTPONED BY CONSENT OF ALL PARTIES, A FORFEITURE
17 HEARING UNDER THIS SECTION SHALL BE HELD WITHIN 180 DAYS AFTER THE
18 SEIZING AUTHORITY SERVES NOTICE.

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

24 ~~(D)~~ (E) THE NOTICE SHALL CONTAIN A GENERAL DESCRIPTION OF
25 THE PROPERTY, INCLUDING AVAILABLE SERIAL OR REGISTRATION NUMBERS.

26 ~~(E)~~ (F) THE SEIZING LAW ENFORCEMENT AGENCY SHALL RETURN
27 THE PROPERTY TO THE OWNER ON A SHOWING THAT THE OWNER DID NOT KNOW
28 OF OR CONSENT TO A VIOLATION OF THE IDENTITY FRAUD LAW.

1 **13-406.**

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

6 **13-407.**

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

9 **(B) THE COURT SHALL ORDER THAT THE PROCEEDS OF THE SALE OF**
10 **FORFEITED PROPERTY BE DISTRIBUTED ~~TO THE UNIT HAVING BUDGETARY~~**
11 **~~AUTHORITY OVER THE SEIZING LAW ENFORCEMENT AGENCY AFTER DEDUCTION~~**
12 **OF IN THE FOLLOWING ORDER OF PRIORITY:**

13 **(1) FIRST, TO THE LOCAL LAW ENFORCEMENT AGENCY IN AN**
14 **AMOUNT EQUAL TO:**

15 **(I) THE EXPENSES INCURRED IN CONNECTION WITH THE**
16 **SALE OF THE FORFEITED PROPERTY; AND**

17 **(II) ANY REASONABLE AND NECESSARY TOWING AND**
18 **STORAGE CHARGES; AND**

19 **(2) SECOND, TO THE VICTIM OF THE IDENTITY FRAUD TO THE**
20 **EXTENT OF THE VICTIM'S UNCOMPENSATED LOSSES.**

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

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