

SENATE BILL 257

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2004 Regular Session
4r1446
CF 4r1196

By: **Senators Frosh, Britt, Brochin, Forehand, Green, Hughes, Jimeno, and Jones**

Introduced and read first time: January 29, 2004
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Identity Theft - Venue for Prosecution**

3 FOR the purpose of authorizing a State's Attorney or the Attorney General to
4 investigate and prosecute certain offenses relating to personal identifying
5 information fraud; authorizing the Attorney General to exercise all the powers
6 and duties of a State's Attorney to investigate and prosecute certain violations;
7 establishing that a prosecution for a violation of certain offenses relating to
8 personal identifying information fraud or other crimes based on a violation may
9 be commenced in a county in which an element of the crime occurred or in which
10 the victim resides; and generally relating to certain offenses relating to personal
11 identifying information fraud.

12 BY repealing and reenacting, with amendments,
13 Article - Criminal Law
14 Section 8-301
15 Annotated Code of Maryland
16 (2002 Volume and 2003 Supplement)

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

19 **Article - Criminal Law**

20 8-301.

21 (a) (1) In this section the following words have the meanings indicated.

22 (2) "Payment device number" has the meaning stated in § 8-213 of this
23 title.

24 (3) "Personal identifying information" means a name, address, telephone
25 number, driver's license number, Social Security number, place of employment,
26 employee identification number, mother's maiden name, bank or other financial

1 institution account number, date of birth, personal identification number, credit card
2 number, or other payment device number.

3 (b) A person may not knowingly, willfully, and with fraudulent intent possess,
4 obtain, or help another to possess or obtain any personal identifying information of an
5 individual, without the consent of the individual, in order to use, sell, or transfer the
6 information to get a benefit, credit, good, service, or other thing of value in the name
7 of the individual.

8 (c) A person may not knowingly and willfully assume the identity of another:

9 (1) to avoid identification, apprehension, or prosecution for a crime; or

10 (2) with fraudulent intent to:

11 (i) get a benefit, credit, good, service, or other thing of value; or

12 (ii) avoid the payment of debt or other legal obligation.

13 (d) (1) A person who violates this section where the benefit, credit, goods,
14 services, or other thing of value that is the subject of subsection (b) or (c) of this
15 section has a value of \$500 or greater is guilty of a felony and on conviction is subject
16 to imprisonment not exceeding 5 years or a fine not exceeding \$25,000 or both.

17 (2) A person who violates this section where the benefit, credit, goods,
18 services, or other thing of value that is the subject of subsection (b) or (c) of this
19 section has a value of less than \$500 is guilty of a misdemeanor and on conviction is
20 subject to imprisonment not exceeding 18 months or a fine not exceeding \$5,000 or
21 both.

22 (3) A person who violates this section under circumstances that
23 reasonably indicate that the person's intent was to manufacture, distribute, or
24 dispense another individual's personal identifying information without that
25 individual's consent is guilty of a felony and on conviction is subject to imprisonment
26 not exceeding 5 years or a fine not exceeding \$25,000 or both.

27 (4) A person who violates subsection (c)(1) of this section is guilty of a
28 misdemeanor and on conviction is subject to imprisonment not exceeding 18 months
29 or a fine not exceeding \$5,000 or both.

30 (5) When the violation of this section is pursuant to one scheme or
31 continuing course of conduct, whether from the same or several sources, the conduct
32 may be considered as one violation and the value of the benefit, credit, goods, services,
33 or other thing of value may be aggregated in determining whether the violation is a
34 felony or misdemeanor.

35 (e) A person who violates this section is subject to § 5-106(b) of the Courts
36 Article.

1 (f) In addition to restitution under Title 11, Subtitle 6 of the Criminal
2 Procedure Article, a court may order a person who pleads guilty or nolo contendere or
3 who is found guilty under this section to make restitution to the victim for reasonable
4 costs, including reasonable attorney's fees, incurred:

5 (1) for clearing the victim's credit history or credit rating; and

6 (2) in connection with a civil or administrative proceeding to satisfy a
7 debt, lien, judgment, or other obligation of the victim that arose because of the
8 violation.

9 (g) A sentence under this section may be imposed separate from and
10 consecutive to or concurrent with a sentence for any crime based on the act or acts
11 establishing the violation of this section.

12 (h) Notwithstanding any other law, the Department of State Police may
13 initiate investigations and enforce this section throughout the State without regard to
14 any limitation otherwise applicable to that department's activities in a municipal
15 corporation or other political subdivision.

16 (i) (1) Notwithstanding any other law, a law enforcement officer of the
17 Maryland Transportation Authority Police, the Maryland Port Administration Police,
18 or a municipal corporation or county may investigate violations of this section
19 throughout the State without any limitation as to jurisdiction and to the same extent
20 as a law enforcement officer of the Department of State Police.

21 (2) The authority granted in paragraph (1) of this subsection may be
22 exercised only in accordance with regulations that the Department of State Police
23 adopts.

24 (3) The regulations are not subject to Title 10, Subtitle 1 of the State
25 Government Article.

26 (4) The authority granted in paragraph (1) of this subsection may be
27 exercised only if an act related to the crime was committed in the investigating law
28 enforcement agency's jurisdiction or if the complaining witness resides in the
29 investigating law enforcement agency's jurisdiction.

30 (j) If action is taken under the authority granted in subsection (i) of this
31 section, notification of an investigation:

32 (1) in a municipal corporation, shall be made to the chief of police or
33 designee of the chief of police;

34 (2) in a county that has a county police department, shall be made to the
35 chief of police or designee of the chief of police;

36 (3) in a county without a police department, shall be made to the sheriff
37 or designee of the sheriff;

1 (4) in Baltimore City, shall be made to the Police Commissioner or the
2 Police Commissioner's designee; and

3 (5) on property owned, leased, or operated by or under the control of the
4 Maryland Transportation Authority, the Maryland Aviation Administration, or the
5 Maryland Port Administration, shall be made to the respective chief of police or the
6 chief's designee.

7 (k) When acting under the authority granted in subsection (h) or (i) of this
8 section, a law enforcement officer:

9 (1) in addition to any other immunities and exemptions to which the
10 officer may be entitled, has the immunities from liability and exemptions accorded to
11 a law enforcement officer of the Department of State Police; but

12 (2) remains an employee of the officer's employing agency.

13 (L) (1) A STATE'S ATTORNEY OR THE ATTORNEY GENERAL MAY
14 INVESTIGATE AND PROSECUTE A VIOLATION OF THIS SECTION OR A VIOLATION OF
15 ANY CRIME BASED ON THE ACT ESTABLISHING A VIOLATION OF THIS SECTION.

16 (2) IF THE ATTORNEY GENERAL EXERCISES AUTHORITY UNDER
17 PARAGRAPH (1) OF THIS SUBSECTION, THE ATTORNEY GENERAL HAS ALL THE
18 POWERS AND DUTIES OF A STATE'S ATTORNEY, INCLUDING THE USE OF A GRAND
19 JURY IN ANY COUNTY OR BALTIMORE CITY, TO INVESTIGATE AND PROSECUTE THE
20 VIOLATION.

21 (M) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE PROSECUTION
22 OF A VIOLATION OF THIS SECTION OR FOR A VIOLATION OF ANY CRIME BASED ON
23 THE ACT ESTABLISHING A VIOLATION OF THIS SECTION MAY BE COMMENCED IN
24 ANY COUNTY IN WHICH:

25 (1) AN ELEMENT OF THE CRIME OCCURRED; OR

26 (2) THE VICTIM RESIDES.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2004.