

SENATE BILL 542

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2004 Regular Session
4r2397
CF HB 190

By: **Senators Forehand and Jones**

Introduced and read first time: February 6, 2004

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Identity Theft - Victim - Expungement of False Criminal Record**

3 FOR the purpose of authorizing a court to order a defendant who pleads guilty or is
4 found guilty of using another person's name or other identification without
5 consent or authorization to make restitution to the victim for certain costs
6 associated with an expungement proceeding for the victim that arose because of
7 the identity theft; allowing a person to file a petition for expungement of certain
8 records if the records resulted from the arrest of another using the person's
9 name or other identification without consent or authorization; requiring the
10 court, if it finds the person is entitled to expungement, to note in writing that
11 expungement is ordered because the person is the victim of identity theft;
12 clarifying a certain provision concerning not being entitled to expungement of
13 criminal records for certain reasons; and generally relating to identity theft.

14 BY repealing and reenacting, without amendments,
15 Article - Criminal Law
16 Section 8-301(a), (b), and (c)
17 Annotated Code of Maryland
18 (2002 Volume and 2003 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article - Criminal Law
21 Section 8-301(f)
22 Annotated Code of Maryland
23 (2002 Volume and 2003 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article - Criminal Procedure
26 Section 10-105(a), (d), and (e)
27 Annotated Code of Maryland
28 (2001 Volume and 2003 Supplement)

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

3 **Article - Criminal Law**

4 8-301.

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

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

8 (3) "Personal identifying information" means a name, address, telephone
9 number, driver's license number, Social Security number, place of employment,
10 employee identification number, mother's maiden name, bank or other financial
11 institution account number, date of birth, personal identification number, credit card
12 number, or other payment device number.

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

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

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

20 (2) with fraudulent intent to:

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

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

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

27 (1) for clearing the victim's credit history or credit rating; [and]

28 (2) in connection with a civil or administrative proceeding to satisfy a
29 debt, lien, judgment, or other obligation of the victim that arose because of the
30 violation; AND

31 (3) IN CONNECTION WITH AN EXPUNGEMENT PROCEEDING UNDER §
32 10-105(A)(2) OF THE CRIMINAL PROCEDURE ARTICLE FOR THE VICTIM THAT AROSE
33 BECAUSE OF THE VIOLATION.

1

Article - Criminal Procedure

2 10-105.

3 (a) (1) A person who has been charged with the commission of a crime,
4 including a violation of the Transportation Article for which a term of imprisonment
5 may be imposed, may file a petition listing relevant facts for expungement of a police
6 record, court record, or other record maintained by the State or a political subdivision
7 of the State if:

8 [(1)] (I) the person is acquitted;

9 [(2)] (II) the charge is otherwise dismissed;

10 [(3)] (III) a probation before judgment is entered, unless the person is
11 charged with a violation of § 21-902 of the Transportation Article or Title 2, Subtitle
12 5 or § 3-211 of the Criminal Law Article;

13 [(4)] (IV) a nolle prosequi is entered;

14 [(5)] (V) the court indefinitely postpones trial of a criminal charge by
15 marking the criminal charge "stet" on the docket;

16 [(6)] (VI) the case is compromised under § 3-207 of the Criminal Law
17 Article;

18 [(7)] (VII) the charge was transferred to the juvenile court under § 4-202
19 of this article; or

20 [(8)] (VIII) the person:

21 [(i)] 1. is convicted of only one criminal act, and that act is not a
22 crime of violence; and

23 [(ii)] 2. is granted a full and unconditional pardon by the
24 Governor.

25 (2) A PERSON MAY FILE A PETITION FOR EXPUNGEMENT OF A POLICE
26 RECORD, COURT RECORD, OR OTHER RECORD MAINTAINED BY THE STATE OR A
27 POLITICAL SUBDIVISION OF THE STATE IF THE RECORD RESULTED FROM THE
28 ARREST OF ANOTHER PERSON USING, WITHOUT CONSENT OR AUTHORIZATION IN
29 VIOLATION OF § 8-301 OF THE CRIMINAL LAW ARTICLE, THE NAME OR OTHER
30 IDENTIFICATION OF THE PERSON SEEKING EXPUNGEMENT.

31 (d) (1) The court shall have a copy of a petition for expungement served on
32 the State's Attorney.

33 (2) Unless the State's Attorney files an objection to the petition for
34 expungement within 30 days after the petition is served, the court shall:

1 (I) pass an order requiring the expungement of all police records
2 and court records about the charge; AND

3 (II) IF THE PETITION FOR EXPUNGEMENT IS FILED UNDER
4 SUBSECTION (A)(2) OF THIS SECTION, NOTE IN WRITING THAT THE EXPUNGEMENT IS
5 ORDERED BECAUSE THE PERSON IS THE VICTIM OF A VIOLATION OF § 8-301 OF THE
6 CRIMINAL LAW ARTICLE.

7 (e) (1) If the State's Attorney files a timely objection to the petition, the
8 court shall hold a hearing.

9 (2) If the court at the hearing finds that the person is entitled to
10 expungement, the court shall:

11 (I) order the expungement of all police records and court records
12 about the charge; AND

13 (II) IF THE PETITION FOR EXPUNGEMENT IS FILED UNDER
14 SUBSECTION (A)(2) OF THIS SECTION, NOTE IN WRITING THAT THE EXPUNGEMENT IS
15 ORDERED BECAUSE THE PERSON IS THE VICTIM OF A VIOLATION OF § 8-301 OF THE
16 CRIMINAL LAW ARTICLE.

17 (3) If the court finds that the person is not entitled to expungement, the
18 court shall deny the petition.

19 (4) The person is not entitled to expungement UNDER SUBSECTION (A)(1)
20 OF THIS SECTION if:

21 (i) the petition is based on the entry of probation before judgment,
22 a nolle prosequi, or a stet, or the grant of a pardon by the Governor; and

23 (ii) the person:

24 1. since the full and unconditional pardon or entry, has been
25 convicted of a crime other than a minor traffic violation; or

26 2. is a defendant in a pending criminal proceeding.

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