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By: **Delegates Zirkin and Morhaim**

Introduced and read first time: February 6, 2006

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - 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 in 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, inclusive, to be under the new subtitle "Subtitle

17 4. Violations of Identity Fraud"

18 Annotated Code of Maryland

19 (2001 Volume and 2005 Supplement)

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.

1 (C) "IDENTITY FRAUD LAW" MEANS TITLE 8, SUBTITLE 3 OF THE CRIMINAL  
2 LAW ARTICLE.

3 (D) (1) "OWNER" MEANS A PERSON HAVING A LEGAL, EQUITABLE, OR  
4 POSSESSORY INTEREST IN PROPERTY.

5 (2) "OWNER" INCLUDES:

6 (I) A CO-OWNER;

7 (II) A LIFE TENANT;

8 (III) A REMAINDERMAN TO A LIFE TENANCY IN REAL PROPERTY;

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

10 AND

11 (V) A BONA FIDE PURCHASER FOR VALUE.

12 (E) (1) "PROPERTY" INCLUDES:

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

15 (II) TANGIBLE AND INTANGIBLE PERSONAL PROPERTY,

16 INCLUDING:

17 1. SECURITIES;

18 2. NEGOTIABLE AND NONNEGOTIABLE INSTRUMENTS;

19 3. VEHICLES AND CONVEYANCES OF ANY TYPE;

20 4. PRIVILEGES;

21 5. INTERESTS;

22 6. CLAIMS; AND

23 7. RIGHTS;

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

26 (IV) MONEY.

27 (2) "PROPERTY" DOES NOT INCLUDE:

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

1 (II) A LESSOR'S INTEREST IN PROPERTY SUBJECT TO A BONA FIDE  
2 LEASE, UNLESS THE FORFEITING AUTHORITY CAN SHOW THAT THE LESSOR  
3 PARTICIPATED IN A CRIME UNDER THE IDENTITY FRAUD LAW OR THAT THE  
4 PROPERTY WAS THE PROCEEDS OF A CRIME UNDER THE IDENTITY FRAUD LAW.

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

6 (2) "REAL PROPERTY" INCLUDES:

7 (I) A LEASEHOLD OR OTHER LIMITED INTEREST IN REAL  
8 PROPERTY;

9 (II) AN EASEMENT; AND

10 (III) A REVERSIONARY INTEREST IN A 99-YEAR GROUND LEASE  
11 RENEWABLE FOREVER.

12 13-402.

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

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

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

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

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

27 (5) EVERYTHING OF VALUE FURNISHED, OR INTENDED TO BE  
28 FURNISHED, IN EXCHANGE FOR A PAYMENT DEVICE NUMBER, PERSONAL  
29 IDENTIFYING INFORMATION, OR GOVERNMENT IDENTIFICATION DOCUMENT IN  
30 VIOLATION OF THE IDENTITY FRAUD LAW, ALL PROCEEDS TRACEABLE TO THE  
31 EXCHANGE, AND ALL NEGOTIABLE INSTRUMENTS AND SECURITIES USED, OR  
32 INTENDED TO BE USED, TO FACILITATE ANY VIOLATION OF THE IDENTITY FRAUD  
33 LAW.

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

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

3 13-403.

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

7 (1) INCIDENT TO AN ARREST;

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

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

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

13 13-404.

14 ON CONVICTION, THE COURT MAY DIRECT THE DEFENDANT TO FORFEIT THE  
15 PROPERTY SEIZED IN ACCORDANCE WITH THIS SUBTITLE.

16 13-405.

17 (A) WITHIN 14 DAYS AFTER THE SEIZURE, THE SEIZING LAW ENFORCEMENT  
18 AGENCY SHALL RETURN PROPERTY TO A PERSON FROM WHOM THE PROPERTY WAS  
19 SEIZED UNLESS A HEARING HAS BEEN SCHEDULED TO DETERMINE WHETHER:

20 (1) THE SEIZURE OF THE PROPERTY WAS PROPER; AND

21 (2) REASONABLE NOTICE HAS BEEN GIVEN.

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

24 (C) IF THE OWNER OF PROPERTY TO BE FORFEITED IS NOT REASONABLY  
25 DISCOVERABLE, THE SEIZING LAW ENFORCEMENT AGENCY MAY SERVE NOTICE BY  
26 PUBLISHING A NOTICE OF THE FORFEITURE HEARING IN A NEWSPAPER OF GENERAL  
27 CIRCULATION IN THE COUNTY IN WHICH THE HEARING IS TO BE HELD AT LEAST 10  
28 DAYS BEFORE THE DAY OF THE HEARING.

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

31 (E) THE SEIZING LAW ENFORCEMENT AGENCY SHALL RETURN THE  
32 PROPERTY TO THE OWNER ON A SHOWING THAT THE OWNER DID NOT KNOW OF OR  
33 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 KNOW  
4 OF OR CONSENT TO THE ACT OR OMISSION CONSTITUTING A VIOLATION OF THE  
5 IDENTITY FRAUD LAW.

6 13-407.

7 (A) PROPERTY FORFEITED UNDER THIS SUBTITLE MAY BE SOLD BY ORDER OF  
8 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 OF  
12 ANY REASONABLE AND NECESSARY TOWING AND STORAGE CHARGES.

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

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
18 October 1, 2006.