

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 692
Judiciary

(Delegates Zirkin and Morhaim)

Criminal Procedure - Identity Fraud - Seizure and Forfeiture

This bill authorizes a State or local law enforcement agency to seize property used or intended to be used in violation of identity fraud laws on process issued by a court of competent jurisdiction.

The bill has prospective application and may not be applied to any offense committed before October 1, 2006.

Fiscal Summary

State Effect: Potential minimal revenue increase from the proceeds of forfeited property. It is expected that the provisions of this bill could be implemented with existing resources.

Local Effect: Potential minimal revenue increase from the proceeds of forfeited property. Although the bill could cause an increase in search and seizure activity, it is anticipated that local law enforcement would be able to handle the provisions of this bill with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: Except as otherwise provided, on process issued by a court of competent jurisdiction, a State or local law enforcement agency may seize the following items that were used or intended to be used in connection with identity fraud:

- conveyances, including aircraft, vehicles, or vessels;
- books, records, telecommunications equipment, or computers;
- money or weapons;
- real property; and
- everything of value furnished or intended to be furnished in exchange for a payment device number, personal identifying information, or government identification document, as well as all proceeds traceable to the exchange, and all negotiable instruments and securities.

Money or weapons that are found in close proximity to the actions of the identity fraud violation are contraband and presumed to be forfeitable. A claimant for the money and weapons has the burden to rebut the presumption.

On process issued by a court of competent jurisdiction, a State or local law enforcement agency may seize the property specified in the bill's provisions without a warrant if the seizure is incident to an arrest, incident to a search made under a search warrant, made in accordance with a valid consent to search, or if the seizure is made with probable cause to believe that the property was used or was intended to be used for the purpose of identity fraud.

If the defendant is convicted of the applicable identity fraud provision, the court may direct the defendant to forfeit the seized property. Within 14 days after seizure, the law enforcement agency must return the property to the person unless a hearing has been scheduled to determine the propriety of the seizure and whether reasonable notice was given. The owner of the property subject to forfeiture must be served notice at least 10 days before the forfeiture hearing. If the owner of the property is not reasonably discoverable, the law enforcement agency may serve notice by publishing a forfeiture notice in a newspaper of general circulation in the county where the hearing is to be held at least 10 days before the day of the hearing. The notice must contain a general description of the property, including available serial or registration numbers. Upon a showing that the property owner did not know or consent to a violation of the identity fraud law, the property must be returned. A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party who did not know of or consent to the act or omission that comprised the identity fraud violation.

Property that is forfeited due to an identity fraud violation may be sold by court order. The court must order that the proceeds of the sale of forfeited property be distributed to the governmental unit that has budgetary authority over the seizing law enforcement unit after deduction of reasonable and necessary towing and storage charges.

Current Law: State laws authorizing search and seizure of property, money, or valuables do not apply to property that may have been used in furtherance of a violation of identity fraud provisions. Search and seizure provisions apply to property used or intended to be used to violate controlled dangerous substance, gambling, gun, and explosives laws.

Procedures vary for the search, seizure, and forfeiture of property depending on whether the offense involves controlled dangerous substances, gambling, guns, or explosives. Generally, raw materials, equipment, books, records, research, motor vehicles, other vehicles or vessels, real property, money, contraband, negotiable instruments, as well as other items of value may be subject to search, seizure, and forfeiture. Once the property is seized, a law enforcement authority must file a complaint seeking forfeiture. The owner of the seized property is entitled to notice and opportunity for hearing on the forfeiture claim. The courts are authorized to mitigate the impact of forfeiture or return all seized property to the owner. The courts are also authorized to take appropriate measures to safeguard and maintain forfeited property.

Once forfeiture is authorized, the governing body where the property was seized may keep the property for official use or dispose of or sell the property. If the property is sold by a State law enforcement unit, then proceeds from the sale must be deposited into the general fund of the State. If the property is sold by a local law enforcement unit, then proceeds from the sale must be deposited into the general fund of the political subdivision that has jurisdiction over the law enforcement unit.

A person may not knowingly, willfully, and with fraudulent intent possess, obtain, or help another to possess or obtain any individual's personal identifying information without the consent of that individual to use, sell, or transfer the information to get a benefit, credit, good, service, or other thing of value in the name of that individual. A person may not knowingly and willfully assume the identity of another to avoid identification, apprehension, or prosecution for a crime or with fraudulent intent to get a benefit, credit, good, service, or other thing of value or to avoid payment of debts or other legal obligations.

If the benefit, credit, good, service, or other thing that is the subject of the crime is valued at \$500 or more, then a person who violates this identity fraud provision is guilty of a felony and is subject to maximum penalties of imprisonment for five years and/or a fine

of \$25,000. If the benefit or other thing has a value of less than \$500, or if a person knowingly and willfully assumes the identity of another to avoid identification, apprehension, or prosecution for a crime, then the violator is guilty of a misdemeanor and is subject to maximum penalties of imprisonment for 18 months and/or a fine of \$5,000.

If circumstances reasonably indicate that a person's intent was to manufacture, distribute, or dispense another individual's personal identifying information without the individual's consent, the violator is guilty of a felony and is subject to imprisonment for up to five years and/or a fine of \$25,000. If the violation is committed pursuant to a scheme or continuing course of conduct, the conduct may be considered one offense. The value of goods or services may be combined to determine whether the violation is a felony or misdemeanor.

Notwithstanding any other provision of law, the State may institute a prosecution for the misdemeanor of identity fraud at any time. Under the Maryland Constitution, a person convicted of the misdemeanor offense of identity fraud is deemed to have committed a misdemeanor whose punishment is confinement in the penitentiary and may reserve a point or question for *in banc* review as provided by the Maryland Constitution. A violator of any of these provisions is subject to a court order for restitution and paying costs, including reasonable attorney's fees, related to restoring a victim's identity. A sentence under the identity fraud provisions may be imposed separate from and consecutive to, or concurrent with, a sentence for any crime based on the acts establishing the violation.

Law enforcement officers may operate without regard to jurisdictional boundaries to investigate identity fraud provisions, within specified limitations. The authority may be exercised only if an act related to the crime was committed in the jurisdiction of an investigative agency or a complaining witness resides in an investigating agency's jurisdiction. Notification of an investigation must be made to appropriate law enforcement personnel.

Background: Identity theft is commonly regarded as one of the fastest growing crimes in the United States. Thieves employ a variety of methods, including looking through dumpsters, watching people enter passwords, and "phishing" for personal information, over the telephone or via the Internet to siphon off the value of a person's good name and credit.

The Identity Theft Data Clearinghouse, sponsored by the Federal Trade Commission (FTC) and the Consumer Sentinel, a consortium of national and international law enforcement and private security entities, released *National and State Trends in Fraud and Identity Theft* for calendar 2005. In calendar 2005, the FTC received 255,565

identity theft complaints. In calendar 2004, the number of identity theft complaints was 246,847.

In Maryland, residents reported 4,848 instances of identity theft in 2005, or 86.6 complaints per 100,000 population, ranking Maryland eleventh in the nation for identity theft. As has been the case for the last several years, the most common type of identity theft was credit card fraud, which comprised 31% of all complaints. The highest number of complaints came from the State's major urban areas: Baltimore City, Silver Spring, Hyattsville, Rockville, and Gaithersburg.

All 50 states and the District of Columbia have provisions relating to identity theft. The federal Identity Theft and Assumption Deterrence Act of 1998 made it a federal crime to knowingly transfer or use the means of identification of another person with the intent to commit a violation of federal law or a felony under any state or local law. The federal Fair and Accurate Credit Transactions Act of 2003 provides additional deterrence to identity theft, but also contains preemptions of state authority relating to enforcement of identity theft provisions enacted after 2003.

Chapters 241 and 242 of 2005 established a 21-member legislative task force on identity theft. To date, 14 of 21 members have been appointed. The task force is charged with studying the problems associated with identity theft in Maryland and the privacy laws in other states. The task force is required to consult with federal agencies, agencies in other states, and identity theft experts during its investigation. The task force must also complete a survey of State agencies to determine compliance with State and federal laws regarding collection and use of Social Security numbers. Findings and recommendations for possible remedies to identity theft must be submitted to the General Assembly by December 31, 2006.

Local Fiscal Effect: The counties of Caroline, Howard, and Prince George's indicated that the bill's provisions could be implemented with existing resources. Howard County advises that seizures average less than \$30,000 annually and the procedures and staff are in place to handle a modest increase in activity. Also, Howard County excludes real estate seizures due to the extensive requirements to maintain and protect that asset class while court action proceeds. Montgomery County advises that the fiscal impact is indeterminate as the magnitude of what would be subject to forfeiture is unknown.

Additional Information

Prior Introductions: None.

Cross File: SB 517 (Senator Stone, *et al.*) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts,) Department of State Police, Caroline County, Howard County, Montgomery County, Prince George's County, Federal Trade Commission, National Conference of State Legislatures, Department of Legislative Services

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