

HOUSE BILL 1096

E2

8lr2080

By: **Delegates Lee, Barkley, Barnes, Benson, Bobo, Bromwell, Dumais, Howard, James, Jones, Kaiser, Krebs, Kullen, McComas, Montgomery, Pena-Melnyk, Pendergrass, Ramirez, Schuh, Schuler, Stocksdale, Valderrama, and Waldstreicher**

Introduced and read first time: February 7, 2008

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Identity Fraud – Seizure and Forfeiture**

3 FOR the purpose of establishing that certain property that is used or intended for use
4 in connection with a violation of the Identity Fraud law is subject to seizure and
5 forfeiture; establishing conditions that would exclude certain property from
6 forfeiture; establishing how certain property subject to forfeiture may be seized,
7 with certain exceptions; establishing circumstances that must be considered
8 when determining whether to seize certain property; establishing a certain
9 deadline for filing a complaint seeking forfeiture; providing for the contents and
10 distribution of a certain complaint; providing for the forfeiture of interest in
11 certain real property; providing for a stay of forfeiture of a certain family
12 residence under certain circumstances; establishing a certain rebuttable
13 presumption; providing for certain post-hearing orders; providing for the
14 application of proceeds from a certain sale of forfeited property; providing for
15 the application of this Act; and generally relating to seizure and forfeiture of
16 property used in connection with a violation of the Identity Fraud law.

17 BY repealing and reenacting, with amendments,

18 Article – Criminal Procedure

19 Section 12–101, 12–102, 12–103, 12–202, 12–204, 12–205, 12–304, 12–305,
20 12–309, 12–311, 12–312 and 12–402 to be under the amended title “Title
21 12. Forfeiture – Controlled Dangerous Substances and Identity Fraud
22 Violations”

23 Annotated Code of Maryland

24 (2001 Volume and 2007 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Criminal Procedure**

2 Title 12. Forfeiture – Controlled Dangerous Substances **AND IDENTITY FRAUD**
3 Violations.

4 12–101.

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

6 (b) “Chief executive officer” means:

7 (1) for Baltimore City, the Mayor;

8 (2) for a charter county, the county executive or, if there is no county
9 executive, the county council;

10 (3) for a code county, the county commissioners or county council;

11 (4) for a county commissioner county, the county commissioners; or

12 (5) for a municipal corporation, the legislative body established by
13 municipal charter.

14 (c) “Controlled Dangerous Substances law” means Title 5 of the Criminal
15 Law Article.

16 (d) “Convicted” means found guilty.

17 (e) “Final disposition” means a dismissal, entry of a nolle prosequi, the
18 marking of a criminal charge “stet” on the docket, entry of a not guilty verdict, the
19 pronouncement of sentence, or imposition of probation under § 6–220 of this article.

20 (f) “Forfeiting authority” means:

21 (1) the unit or person designated by agreement between the State’s
22 Attorney for a county and the chief executive officer of the governing body having
23 jurisdiction over assets subject to forfeiture to act on behalf of the governing body
24 regarding those assets; or

25 (2) if the seizing authority is a unit of the State, a unit or person that
26 the Attorney General or the Attorney General’s designee designates by agreement
27 with a State’s Attorney, county attorney, or municipal attorney to act on behalf of the
28 State regarding assets subject to forfeiture by the State.

29 (g) “Governing body” includes:

- 1 (1) the State, if the seizing authority is a unit of the State;
- 2 (2) a county, if the seizing authority is a unit of a county;
- 3 (3) a municipal corporation, if the seizing authority is a unit of a
4 municipality; and
- 5 (4) Baltimore City, if the seizing authority is the Police Department of
6 Baltimore City.

7 **(H) “IDENTITY FRAUD LAW” MEANS TITLE 8, SUBTITLE 3 OF THE**
8 **CRIMINAL LAW ARTICLE.**

9 [(h)] (I) “Lien” includes a mortgage, deed of trust, pledge, security interest,
10 encumbrance, or right of setoff.

11 [(i)] (J) “Lienholder” means a person who has a lien or a secured interest
12 on property created before the seizure.

13 [(j)] (K) “Local financial authority” means:

14 (1) if the seizing authority is a unit of a county, the treasurer or
15 director of finance of the county; or

16 (2) if the seizing authority is a unit of a municipal corporation, the
17 treasurer or director of finance of that municipal corporation.

18 [(k)] (L) (1) “Owner” means a person having a legal, equitable, or
19 possessory interest in property.

20 (2) “Owner” includes:

21 (i) a co-owner;

22 (ii) a life tenant;

23 (iii) a remainderman to a life tenancy in real property;

24 (iv) a holder of an inchoate interest in real property; and

25 (v) a bona fide purchaser for value.

26 [(l)] (M) “Proceeds” includes property derived directly or indirectly in
27 connection with or as a result of a crime under the Controlled Dangerous Substances
28 law **OR IDENTITY FRAUD LAW.**

29 [(m)] (N) (1) “Property” includes:

1 (i) real property and anything growing on or attached to real
2 property;

3 (ii) tangible and intangible personal property, including:

4 1. securities;

5 2. negotiable and nonnegotiable instruments;

6 3. vehicles and conveyances of any type;

7 4. privileges;

8 5. interests;

9 6. claims; and

10 7. rights;

11 (iii) an item, object, tool, substance, device, or weapon used in
12 connection with a crime under the Controlled Dangerous Substances law **OR**
13 **IDENTITY FRAUD LAW**; and

14 (iv) money.

15 (2) "Property" does not include:

16 (i) an item unlawfully in the possession of a person other than
17 the owner when used in connection with a crime under the Controlled Dangerous
18 Substances law **OR IDENTITY FRAUD LAW**; or

19 (ii) a lessor's interest in property subject to a bona fide lease,
20 unless the forfeiting authority can show that the lessor participated in a crime under
21 the Controlled Dangerous Substances law **OR IDENTITY FRAUD LAW** or that the
22 property was the proceeds of a crime under the Controlled Dangerous Substances law
23 **OR IDENTITY FRAUD LAW**.

24 [(n)] (O) (1) "Real property" means land or an improvement to land.

25 (2) "Real property" includes:

26 (i) a leasehold or other limited interest in real property;

27 (ii) an easement; and

1 (iii) a reversionary interest in a 99-year ground lease renewable
2 forever.

3 [(o)] (P) "Seizing authority" means a law enforcement unit in the State that
4 is authorized to investigate violations of the Controlled Dangerous Substances law **OR**
5 **IDENTITY FRAUD LAW** and that has seized property under this title.

6 12-102.

7 (a) The following are subject to forfeiture:

8 (1) controlled dangerous substances manufactured, distributed,
9 dispensed, acquired, or possessed in violation of the Controlled Dangerous Substances
10 law;

11 (2) raw materials, products, and equipment used, or intended for use,
12 in manufacturing, compounding, processing, delivering, importing, or exporting a
13 controlled dangerous substance in violation of the Controlled Dangerous Substances
14 law;

15 (3) **PRODUCTS AND EQUIPMENT USED, OR INTENDED FOR USE, IN**
16 **MANUFACTURING, PROCESSING, DELIVERING, IMPORTING, OR EXPORTING A**
17 **PAYMENT DEVICE NUMBER, PERSONAL IDENTIFYING INFORMATION, OR**
18 **GOVERNMENT IDENTIFICATION DOCUMENT IN VIOLATION OF THE IDENTITY**
19 **FRAUD LAW;**

20 [(3)] (4) property used or intended for use as a container for property
21 described in item (1) [or (2)], **(2), OR (3)** of this subsection;

22 [(4)] (5) except as provided in § 12-103 of this subtitle, conveyances,
23 including aircraft, vehicles, or vessels used or intended to be used to transport, or
24 facilitate the transportation, sale, receipt, possession, or concealment of property
25 described in item (1) [or (2)], **(2), OR (3)** of this subsection;

26 [(5)] (6) books, records, and research, including formulas, microfilm,
27 tapes, and data used or intended for use in violation of the Controlled Dangerous
28 Substances law **OR IDENTITY FRAUD LAW;**

29 [(6)] (7) subject to subsection (b) of this section, money or weapons
30 used or intended to be used in connection with the unlawful manufacture, distribution,
31 dispensing, or possession of a controlled dangerous substance or controlled
32 paraphernalia **IN VIOLATION OF THE CONTROLLED DANGEROUS SUBSTANCES**
33 **LAW OR A PAYMENT DEVICE NUMBER, PERSONAL IDENTIFYING INFORMATION,**
34 **OR GOVERNMENT IDENTIFICATION DOCUMENT IN VIOLATION OF THE IDENTITY**
35 **FRAUD LAW;**

1 (iii) the municipal corporation in which the money or weapons
2 were seized, if the seizing authority was a law enforcement unit of a municipal
3 corporation.

4 (3) The money or weapons may be returned to the claimant only as
5 this title provides.

6 12-103.

7 (a) Property or an interest in property described in [§ 12-102(a)(4), (10), and
8 (11)] **§ 12-102(A)(4), (11), AND (12)** of this subtitle may not be forfeited if the owner
9 establishes by a preponderance of the evidence that the violation of the Controlled
10 Dangerous Substances law **OR IDENTITY FRAUD LAW** was committed without the
11 owner's actual knowledge.

12 (b) (1) A conveyance used as a common carrier or vehicle for hire in the
13 transaction of business as a common carrier or vehicle for hire may not be seized or
14 forfeited under this title unless it appears that the owner or other person in charge of
15 the conveyance was a consenting party or privy to a violation of the Controlled
16 Dangerous Substances law **OR IDENTITY FRAUD LAW**.

17 (2) A conveyance may not be forfeited under this title for an act or
18 omission that the owner shows was committed or omitted by a person other than the
19 owner while the person other than the owner possessed the conveyance in criminal
20 violation of federal law or the law of any state.

21 (c) An owner's interest in real property may not be forfeited for a violation of
22 § 5-601, § 5-619, or § 5-620 of the Criminal Law Article.

23 (d) (1) Except as provided in paragraph (2) of this subsection, real
24 property used as the principal family residence may not be forfeited under this subtitle
25 unless one of the owners of the real property was convicted of a violation of §§ 5-602
26 through 5-609, §§ 5-612 through 5-614, § 5-617, § 5-618, [or] § 5-628, **OR A FELONY**
27 **VIOLATION OF § 8-301** of the Criminal Law Article or of an attempt or conspiracy to
28 violate Title 5 **OR A FELONY UNDER TITLE 8, SUBTITLE 3** of the Criminal Law
29 Article.

30 (2) Without a conviction, a court may order a forfeiture of real
31 property used as the principal family residence if the owner of the family residence:

32 (i) fails to appear for a required court appearance; and

33 (ii) fails to surrender to the jurisdiction of the court within 180
34 days after the required court appearance.

1 (e) Real property used as the principal family residence by a husband and
2 wife and held by the husband and wife as tenants by the entirety may not be forfeited
3 unless:

4 (1) the property was used in connection with a violation of §§ 5-602
5 through 5-609, §§ 5-612 through 5-614, § 5-617, § 5-618, [or] § 5-628, **OR A FELONY**
6 **VIOLATION OF § 8-301** of the Criminal Law Article or with an attempt or conspiracy
7 to violate Title 5 **OR A FELONY UNDER TITLE 8, SUBTITLE 3** of the Criminal Law
8 Article; and

9 (2) both the husband and wife are convicted of a violation of §§ 5-602
10 through 5-609, §§ 5-612 through 5-614, § 5-617, § 5-618, [or] § 5-628, **OR A**
11 **FELONY VIOLATION OF § 8-301** of the Criminal Law Article or of an attempt or
12 conspiracy to violate Title 5 **OR A FELONY UNDER TITLE 8, SUBTITLE 3** of the
13 Criminal Law Article.

14 12-202.

15 (a) Property subject to forfeiture under this title may be seized:

16 (1) on a warrant issued by a court that has jurisdiction over the
17 property; and

18 (2) without a warrant when:

19 (i) the seizure is incident to an arrest or a search under a
20 search warrant;

21 (ii) the seizure is incident to an inspection under an
22 administrative inspection warrant;

23 (iii) the property subject to seizure has been the subject of a
24 prior judgment in favor of the State in a criminal injunction or forfeiture proceeding
25 under this title;

26 (iv) there is probable cause to believe that the property is
27 directly or indirectly dangerous to health or safety; or

28 (v) there is probable cause to believe that the property has been
29 used or is intended to be used in violation of the Controlled Dangerous Substances
30 law, **IDENTITY FRAUD LAW**, or this title.

31 (b) The seizing authority that seizes money that is contraband shall
32 immediately:

33 (1) photograph the contraband money and record the quantity of each
34 denomination of coin or currency seized; and

1 (2) deposit the money to the account of the appropriate local financial
2 authority.

3 (c) A photograph taken under subsection (b) of this section may be
4 substituted for money as evidence in a criminal or forfeiture proceeding.

5 12-204.

6 (a) In exercising the authority to seize motor vehicles under this title, a
7 seizing authority shall apply the standards listed in subsection (b) of this section.

8 (b) A motor vehicle used in violation of the Controlled Dangerous Substances
9 law, **IDENTITY FRAUD LAW**, or this title shall be seized and forfeiture shall be
10 recommended to the forfeiting authority if:

11 (1) any quantity of a controlled dangerous substance is sold or
12 attempted to be sold in violation of the Controlled Dangerous Substances law or this
13 title;

14 (2) an amount of the controlled dangerous substance or paraphernalia
15 is found that reasonably shows that the violator intended to sell the controlled
16 dangerous substance in violation of the Controlled Dangerous Substances law; [or]

17 **(3) ANY QUANTITY OR AMOUNT OF PAYMENT DEVICE NUMBERS,**
18 **PERSONAL IDENTIFYING INFORMATION, OR GOVERNMENT IDENTIFICATION**
19 **DOCUMENTS FOUND THAT REASONABLY SHOWS THAT THE VIOLATOR INTENDED**
20 **TO USE THE MATERIALS AND INFORMATION IN VIOLATION OF THE IDENTITY**
21 **FRAUD LAW; OR**

22 ~~[(3)]~~ (4) the total circumstances of the case as listed in subsection (c)
23 of this section dictate that seizure and forfeiture are justified.

24 (c) Circumstances to be considered in deciding whether seizure and
25 forfeiture are justified include:

26 (1) the possession of controlled dangerous substances **FOR A**
27 **VIOLATOR OF THE CONTROLLED DANGEROUS SUBSTANCES LAW;**

28 **(2) THE POSSESSION OF FRAUDULENT PAYMENT DEVICE**
29 **NUMBERS, PERSONAL IDENTIFYING INFORMATION, OR GOVERNMENT**
30 **IDENTIFICATION DOCUMENTS FOR A VIOLATOR OF THE IDENTITY FRAUD LAW;**

31 ~~[(2)]~~ (3) an extensive criminal record of the violator;

1 [(3)] (4) a previous conviction [of the violator] for a controlled
2 dangerous substances crime **OF A VIOLATOR OF THE CONTROLLED DANGEROUS**
3 **SUBSTANCES LAW OR A PREVIOUS CONVICTION FOR A VIOLATION OF THE**
4 **IDENTITY FRAUD LAW OF A VIOLATOR OF THE IDENTITY FRAUD LAW;**

5 [(4)] (5) evidence that the motor vehicle was acquired by use of
6 proceeds from a transaction involving a controlled dangerous substance **OR A**
7 **VIOLATION OF THE IDENTITY FRAUD LAW;**

8 [(5)] (6) circumstances of the arrest; and

9 [(6)] (7) the way in which the motor vehicle was used.

10 12–205.

11 A motor vehicle used in violation of this title may not be seized and forfeiture
12 may not be recommended to the forfeiting authority if:

13 (1) the motor vehicle falls within § 12–103(b) of this title;

14 (2) (i) an innocent registered owner lends the motor vehicle to
15 another person; and

16 (ii) that person, or someone invited into the motor vehicle by
17 that person, brings a controlled dangerous substance or paraphernalia **OR**
18 **FRAUDULENT PAYMENT DEVICE NUMBERS, PERSONAL IDENTIFYING**
19 **INFORMATION, OR GOVERNMENT IDENTIFICATION DOCUMENTS** into the motor
20 vehicle without the registered owner’s knowledge; or

21 (3) (i) a member of the family other than the registered owner uses
22 the motor vehicle, and a controlled dangerous substance or paraphernalia is in the
23 motor vehicle in an amount insufficient to suggest a sale is contemplated;

24 (ii) a sale was not made or attempted; and

25 (iii) the registered owner did not know that the controlled
26 dangerous substance or paraphernalia was in the motor vehicle.

27 12–304.

28 (a) Except as provided under subsections (b) and (c) of this section, a
29 complaint seeking forfeiture shall be filed within the earlier of:

30 (1) 90 days after the seizure; or

31 (2) 1 year after the final disposition of the criminal charge for the
32 violation giving rise to the forfeiture.

1 (b) A complaint for the forfeiture of a motor vehicle shall be filed within 45
2 days after the motor vehicle is seized.

3 (c) (1) A proceeding about money shall be filed within 90 days after the
4 final disposition of criminal proceedings that arise out of the Controlled Dangerous
5 Substances law **OR IDENTITY FRAUD LAW**.

6 (2) If the State or a political subdivision does not file proceedings
7 about money within the 90-day period, the money seized under this title shall be
8 returned to the owner on request by the owner.

9 (3) If the owner fails to ask the return of the money within 1 year after
10 the final disposition of criminal proceedings, as provided under § 12-403 of this title,
11 the money shall revert to:

12 (i) the political subdivision in which the money was seized; or

13 (ii) the State, if the money was seized by State authorities.

14 12-305.

15 (a) A complaint seeking forfeiture shall contain:

16 (1) a description of the property seized;

17 (2) the date and place of the seizure;

18 (3) the name of the owner, if known;

19 (4) the name of the person in possession, if known;

20 (5) the name of each lienholder, if known or reasonably subject to
21 discovery;

22 (6) an allegation that the property is subject to forfeiture;

23 (7) if the forfeiting authority seeks to forfeit a lienholder's interest in
24 property, an allegation that the lien was created with actual knowledge that the
25 property was being or was to be used in violation of the Controlled Dangerous
26 Substances law **OR IDENTITY FRAUD LAW**;

27 (8) a statement of the facts and circumstances surrounding the
28 seizure;

29 (9) a statement setting forth the specific grounds for forfeiture; and

1 (10) an oath or affirmation by the forfeiting authority that the contents
2 of the complaint are true to the best of the forfeiting authority's knowledge,
3 information, and belief.

4 (b) Within 20 days after the filing of the complaint, copies of the summons
5 and complaint shall be sent by certified mail requesting "restricted delivery – show to
6 whom, date, address of delivery" and first class mail to all known owners and
7 lienholders whose identities are reasonably subject to discovery, including all real
8 property owners and lienholders shown in the records required by law for notice or
9 perfection of the lien.

10 12–309.

11 Except as provided in §§ 12–103(e) and 12–312 of this title, an owner's interest
12 in real property may be forfeited if the real property was used in connection with a
13 violation of §§ 5–602 through 5–609, §§ 5–612 through 5–614, § 5–617, § 5–618, [or] §
14 5–628, **OR A FELONY VIOLATION OF § 8–301** of the Criminal Law Article or is
15 convicted of an attempt or conspiracy to violate Title 5 **OR A FELONY UNDER TITLE**
16 **8, SUBTITLE 3** of the Criminal Law Article.

17 12–311.

18 If an owner of real property used as the principal family residence is convicted
19 under §§ 5–602 through 5–609, §§ 5–612 through 5–614, § 5–617, § 5–618, [or] §
20 5–628, **OR A FELONY VIOLATION OF § 8–301** of the Criminal Law Article or is
21 convicted of an attempt or conspiracy to violate Title 5 **OR A FELONY UNDER TITLE**
22 **8, SUBTITLE 3** of the Criminal Law Article and the owner files an appeal of the
23 conviction, the court shall stay forfeiture proceedings under § 12–103(e) or § 12–312(b)
24 of this title against the real property during the pendency of the appeal.

25 12–312.

26 (a) (1) Except as provided in subsection (b) of this section, there is a
27 rebuttable presumption that property or part of a property in which a person has an
28 ownership interest is subject to forfeiture as proceeds, if the State establishes by clear
29 and convincing evidence that:

30 (i) the person has violated §§ 5–602 through 5–609, §§ 5–612
31 through 5–614, § 5–617, § 5–618, [or] § 5–628, **OR A FELONY VIOLATION OF § 8–301**
32 of the Criminal Law Article or has attempted or conspired to violate Title 5 **OR A**
33 **FELONY UNDER TITLE 8, SUBTITLE 3** of the Criminal Law Article;

34 (ii) the property was acquired by the person during the violation
35 or within a reasonable time after the violation; and

36 (iii) there was no other likely source for the property.

1 (2) A claimant of the property has the burden of proof to rebut the
2 presumption in paragraph (1) of this subsection.

3 (b) Real property used as the principal family residence may not be forfeited
4 under this section unless:

5 (1) an owner of the real property was convicted of a crime described
6 under subsection (a)(1) of this section; or

7 (2) the real property is covered by § 12–103(d)(2) of this title.

8 12–402.

9 (a) After a full hearing, if the court determines that the property should not
10 be forfeited, the court shall order that the property be released.

11 (b) Subject to § 12–403(b) of this subtitle, if the court determines that the
12 property should be forfeited, the court shall order that the property be forfeited to the
13 appropriate governing body.

14 (c) If the court determines that the forfeited property is subject to a valid
15 lien created without actual knowledge of the lienholder that the property was being or
16 was to be used in violation of the Controlled Dangerous Substances law **OR IDENTITY**
17 **FRAUD LAW**, the court shall order that the property be released within 5 days to the
18 first priority lienholder.

19 (d) (1) The lienholder shall sell the property in a commercially reasonable
20 manner.

21 (2) The proceeds of the sale shall be applied as follows:

22 (i) to the court costs of the forfeiture proceeding;

23 (ii) to the balance due the lienholder, including all reasonable
24 costs incident to the sale;

25 (iii) to payment of all other expenses of the proceedings for
26 forfeiture, including expenses of seizure or maintenance of custody; and

27 (iv) except as provided in § 12–403(b) of this subtitle **AND**
28 **PARAGRAPH (3) OF THIS SUBSECTION**, to the General Fund of the State or of the
29 political subdivision that seized the property.

30 (3) (I) **THIS PARAGRAPH APPLIES ONLY TO A PROCEEDS FROM**
31 **THE SALE OF PROPERTY FORFEITED DUE TO A VIOLATION OF THE IDENTITY**
32 **FRAUD LAW.**

1 **(II) AFTER PAYMENT OF ITEMS (I), (II), AND (III) OF**
2 **PARAGRAPH (2) OF THIS SUBSECTION, THE PROCEEDS FROM THE SALE SHALL**
3 **BE APPLIED AS FOLLOWS:**

4 **1. TO A VICTIM OF THE IDENTITY FRAUD WHO IS AN**
5 **INDIVIDUAL FOR THE GREATER OF:**

6 **A. ANY RESTITUTION ORDERED IN ACCORDANCE**
7 **WITH TITLE 11, SUBTITLE 6 OF THIS ARTICLE AND § 8-301(F) OF THE CRIMINAL**
8 **LAW ARTICLE; OR**

9 **B. \$2,500;**

10 **2. TO OTHER VICTIMS OF THE IDENTITY FRAUD FOR**
11 **ANY RESTITUTION ORDERED IN ACCORDANCE WITH TITLE 11, SUBTITLE 6 OF**
12 **THIS ARTICLE AND § 8-301(F) OF THE CRIMINAL LAW ARTICLE; AND**

13 **3. INTO THE STATE VICTIMS OF CRIME FUND**
14 **ESTABLISHED UNDER § 11-916 OF THIS ARTICLE.**

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

19 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2008.