

SENATE BILL 846

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8lr2955

By: **Senator Kelley**

Introduced and read first time: February 11, 2008

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Identity Fraud – Seizure and Forfeiture of Property**

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

18 BY repealing and reenacting, without amendments,

19 Article – Criminal Procedure

20 Section 12–101(c), (f), (g), (i), (k), and (o), 12–202, 12–203, 12–208 through
21 12–211, 12–301 through 12–308, 12–402, and 12–403

22 Annotated Code of Maryland

23 (2001 Volume and 2007 Supplement)

24 BY adding to

25 Article – Criminal Procedure

26 Section 13–401 through 13–409 to be under the new subtitle “Subtitle 4.
27 Violations of Identity Fraud Law”

28 Annotated Code of Maryland

29 (2001 Volume and 2007 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Criminal Procedure**

4 12–101.

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

7 (f) “Forfeiting authority” means:

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

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

16 (g) “Governing body” includes:

17 (1) the State, if the seizing authority is a unit of the State;

18 (2) a county, if the seizing authority is a unit of a county;

19 (3) a municipal corporation, if the seizing authority is a unit of a
20 municipality; and

21 (4) Baltimore City, if the seizing authority is the Police Department of
22 Baltimore City.

23 (i) “Lienholder” means a person who has a lien or a secured interest on
24 property created before the seizure.

25 (k) (1) “Owner” means a person having a legal, equitable, or possessory
26 interest in property.

27 (2) “Owner” includes:

28 (i) a co-owner;

29 (ii) a life tenant;

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

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

2 (v) a bona fide purchaser for value.

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

6 12-202.

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

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

10 (2) without a warrant when:

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

13 (ii) the seizure is incident to an inspection under an
14 administrative inspection warrant;

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

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

20 (v) there is probable cause to believe that the property has been
21 used or is intended to be used in violation of the Controlled Dangerous Substances law
22 or this title.

23 (b) The seizing authority that seizes money that is contraband shall
24 immediately:

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

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

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

31 12-203.

1 (a) Property seized under this title:

2 (1) is not repleviable; but

3 (2) is in the custody of the seizing authority, subject only to the orders,
4 judgments, and decrees of the court or the official having jurisdiction over the
5 property.

6 (b) A seizing authority may place seized property under seal and remove the
7 property to a place designated by the court.

8 12–208.

9 (a) (1) Except as provided in §§ 12–209 and 12–210 of this subtitle, an
10 owner of seized property who wishes to obtain possession of the property, to convey an
11 interest in real property, or to remove a building or fixture from real property shall
12 notify the clerk of the proper court.

13 (2) If forfeiture proceedings have begun, the proper court is the court
14 where the proceedings have begun.

15 (3) If criminal proceedings have begun but forfeiture proceedings have
16 not begun, the proper court is the court where the criminal proceedings have begun.

17 (4) If neither forfeiture nor criminal proceedings have begun, the
18 proper court is the circuit court for the county where the property was seized.

19 (b) (1) Unless the forfeiting authority and the owner agree to a bond in
20 another amount, if a motor vehicle is not needed for evidentiary purposes in a judicial
21 proceeding:

22 (i) the court shall appraise the value of the motor vehicle on the
23 basis of the average value of the motor vehicle set forth in the National Automobile
24 Dealer's Association official used car guide; or

25 (ii) if the owner shows that a lien is on the motor vehicle and
26 the owner agrees to make the required payments to the lienholder, the court shall
27 require a bond in an amount of the average value of the motor vehicle set forth in the
28 National Automobile Dealer's Association official used car guide, less the amount owed
29 on the lien.

30 (2) For a motor vehicle, the court shall appraise the value in the
31 manner provided in this subsection and provide the appraisal in writing to the clerk of
32 the court.

1 (c) (1) If property other than a motor vehicle is not needed for evidentiary
2 purposes in a judicial proceeding, the clerk shall obtain an independent appraisal of
3 the value of the property.

4 (2) The sheriff or other person responsible for an appraisal under this
5 subsection shall promptly:

6 (i) inspect and appraise the value of the property; and

7 (ii) return the appraisal in writing under oath to the clerk of the
8 court.

9 (d) Notice of the appraisal shall be sent to all lienholders shown in the
10 records required by law for notice or the perfection of the lien.

11 (e) (1) On the filing of an appraisal, the owner may give bond payable to
12 the clerk of the court in an amount equal to the greater of:

13 (i) the appraised value of the property plus any accrued costs;
14 or

15 (ii) the aggregate amount of the liens on the property that are
16 shown in the records required by law for the notice or perfection of liens.

17 (2) A person may give a bond under this section by cash, through a
18 surety, through a lien on real property, or by other means that the clerk approves.

19 (3) A bond authorized under this section:

20 (i) shall be conditioned for performance on final judgment by
21 the court;

22 (ii) shall be filed in the District Court or circuit court where the
23 criminal action that gave rise to the seizure is pending; and

24 (iii) unless a complaint for forfeiture has been filed, shall be part
25 of the same criminal proceeding.

26 (4) If a criminal action is not pending or a forfeiture complaint has not
27 been filed, the bond shall be filed in the circuit court or District Court where the
28 property was seized.

29 (f) (1) If the court orders that property or an interest or equity in the
30 property or proceeds be forfeited under this title, the court shall enter judgment in the
31 amount of the bond against the obligors on the bond without further proceedings.

32 (2) Payment of the amount of the bond shall be applied as provided
33 under § 12-402(d)(2) of this title.

1 12–209.

2 Seizure of real property occurs on the earlier of the filing:

3 (1) of a complaint for forfeiture under this title; or

4 (2) of a notice of pending litigation in the circuit court of the county
5 where the real property is located.

6 12–210.

7 (a) Subject to the rights of a lienholder to sell the real property, an owner or
8 owner’s tenant may remain in possession of seized real property until forfeiture is
9 ordered.

10 (b) The forfeiting authority may apply to the court for the appointment of a
11 receiver to apply income from income–producing property.

12 (c) If a person who is an owner or owner’s tenant and remains in possession
13 of the real property and the person’s interest in the real property is forfeited, the
14 person shall immediately surrender the real property to the seizing authority in
15 substantially the same condition as when seized.

16 12–211.

17 (a) This section does not apply if:

18 (1) an act is agreed to by a forfeiting authority or is ordered by the
19 court; or

20 (2) an owner posts a bond under § 12–208 of this subtitle.

21 (b) Subject to subsection (a) of this section, until the court enters judgment
22 in favor of the owner, an owner may not attempt:

23 (1) to convey or encumber an interest in seized real property; or

24 (2) to remove a building or fixture on seized real property.

25 12–301.

26 Except as provided in § 12–304(c) of this subtitle, if property is seized under §
27 12–202(a)(2)(iv) and (v) of this title because there is probable cause to believe that the
28 property is directly or indirectly dangerous to health or safety and that the property
29 was or will be used to violate this title, forfeiture proceedings under this subtitle shall
30 be filed promptly.

1 12-302.

2 (a) To apply for the forfeiture of money, the appropriate local financial
3 authority or the Attorney General shall file a complaint and affidavit in the District
4 Court or the circuit court for the county in which the money was seized.

5 (b) The complaint and affidavit shall be served in accordance with the
6 Maryland Rules of Procedure.

7 12-303.

8 Except as provided in § 12-302 of this subtitle and § 4-401(9) of the Courts
9 Article, the appropriate forfeiting authority shall file proceedings under this title in
10 the circuit court.

11 12-304.

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

14 (1) 90 days after the seizure; or

15 (2) 1 year after the final disposition of the criminal charge for the
16 violation giving rise to the forfeiture.

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

19 (c) (1) A proceeding about money shall be filed within 90 days after the
20 final disposition of criminal proceedings that arise out of the Controlled Dangerous
21 Substances law.

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

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

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

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

30 12-305.

31 (a) A complaint seeking forfeiture shall contain:

- 1 (1) a description of the property seized;
 - 2 (2) the date and place of the seizure;
 - 3 (3) the name of the owner, if known;
 - 4 (4) the name of the person in possession, if known;
 - 5 (5) the name of each lienholder, if known or reasonably subject to
6 discovery;
 - 7 (6) an allegation that the property is subject to forfeiture;
 - 8 (7) if the forfeiting authority seeks to forfeit a lienholder's interest in
9 property, an allegation that the lien was created with actual knowledge that the
10 property was being or was to be used in violation of the Controlled Dangerous
11 Substances law;
 - 12 (8) a statement of the facts and circumstances surrounding the
13 seizure;
 - 14 (9) a statement setting forth the specific grounds for forfeiture; and
 - 15 (10) an oath or affirmation by the forfeiting authority that the contents
16 of the complaint are true to the best of the forfeiting authority's knowledge,
17 information, and belief.
- 18 (b) Within 20 days after the filing of the complaint, copies of the summons
19 and complaint shall be sent by certified mail requesting "restricted delivery – show to
20 whom, date, address of delivery" and first class mail to all known owners and
21 lienholders whose identities are reasonably subject to discovery, including all real
22 property owners and lienholders shown in the records required by law for notice or
23 perfection of the lien.
- 24 12–306.
- 25 (a) A notice shall be signed by the clerk and shall:
 - 26 (1) include the caption of the case;
 - 27 (2) describe the substance of the complaint and the relief sought;
 - 28 (3) state the latest date on which a response may be filed;
 - 29 (4) state that the property shall be forfeited if a response is not filed
30 on time;

1 (5) state that the owner of the property may have possession of the
2 property pending forfeiture by posting a bond as provided in § 12–208 of this title; and

3 (6) tell where to file a response and whom to contact for more
4 information concerning the forfeiture.

5 (b) Within 20 days after the filing of the complaint, the notice shall be:

6 (1) posted by the sheriff on the door of the courthouse where the action
7 is pending or on a bulletin board within the immediate vicinity of the door;

8 (2) posted by the sheriff in a conspicuous place on the land, if
9 forfeiture of real property is sought; and

10 (3) published at least once a week in each of 3 successive weeks in a
11 newspaper of general circulation published in the county in which the action is
12 pending, unless the property is a boat or motor vehicle.

13 12–307.

14 The answer to a complaint shall:

15 (1) comply with the Maryland Rules;

16 (2) state the nature and extent of the person's right in, title to, or
17 interest in the property;

18 (3) state how and when the person acquired a right in, title to, or
19 interest in the property; and

20 (4) contain a request for relief and a request for a prompt hearing.

21 12–308.

22 (a) If an answer has been filed on time, the court shall set a hearing on the
23 forfeiture claim within 60 days after the later of:

24 (1) posting of notice under § 12–306(b)(1) or (2) of this subtitle; or

25 (2) final publication of notice under § 12–306(b)(3) of this subtitle.

26 (b) Without a hearing, the court may order forfeiture of the property interest
27 of a person who fails to timely file an answer.

28 12–402.

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

1 (b) Subject to § 12-403(b) of this subtitle, if the court determines that the
2 property should be forfeited, the court shall order that the property be forfeited to the
3 appropriate governing body.

4 (c) If the court determines that the forfeited property is subject to a valid
5 lien created without actual knowledge of the lienholder that the property was being or
6 was to be used in violation of the Controlled Dangerous Substances law, the court
7 shall order that the property be released within 5 days to the first priority lienholder.

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

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

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

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

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

16 (iv) except as provided in § 12-403(b) of this subtitle, to the
17 General Fund of the State or of the political subdivision that seized the property.

18 12-403.

19 (a) (1) Whenever property is forfeited under this title, the governing body
20 where the property was seized may:

21 (i) keep the property for official use;

22 (ii) require an appropriate unit to take custody of the property
23 and destroy or otherwise dispose of it; or

24 (iii) sell the property if:

25 1. the law does not require the property to be destroyed;

26 and

27 2. the property is not harmful to the public.

28 (2) The proceeds of a sale under this subsection shall first be used to
29 pay all proper expenses of the proceedings for forfeiture and sale, including expenses
30 of seizure, maintenance of custody, advertising, and court costs.

31 (b) If the seizing authority was a State law enforcement unit:

1 (1) under § 12–402(b) of this subtitle, the court shall order the
2 property to be forfeited to the State law enforcement unit; or

3 (2) under § 12–402(d)(2)(iv) of this subtitle, the proceeds of the sale
4 shall be paid to the State law enforcement unit.

5 (c) Except as provided in subsection (d) of this section, the State law
6 enforcement unit that receives forfeited property or proceeds from a sale of forfeited
7 property under this section shall:

8 (1) dispose of the forfeited property as provided in subsection (a) of
9 this section; and

10 (2) pay to the General Fund of the State any proceeds of the sale of the
11 forfeited property.

12 (d) Except as otherwise provided under federal law, a law enforcement unit
13 other than a State law enforcement unit that participated with a State law
14 enforcement unit in seizing property forfeited under this section:

15 (1) shall be paid by the State law enforcement unit the share of the
16 proceeds from the sale of the forfeited property as agreed by the law enforcement
17 units; or

18 (2) may ask the Governor’s Office of Crime Control and Prevention to
19 determine its share.

20 (e) Proceeds that a law enforcement unit other than a State law enforcement
21 unit receives under subsection (d) of this section shall be deposited in the general fund
22 of the political subdivision of that law enforcement unit.

23 **SUBTITLE 4. VIOLATIONS OF IDENTITY FRAUD LAW.**

24 **13–401.**

25 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
26 **INDICATED.**

27 **(B) “IDENTITY FRAUD LAW” MEANS TITLE 8, SUBTITLE 3 OF THE**
28 **CRIMINAL LAW ARTICLE.**

29 **(C) “FORFEITING AUTHORITY” HAS THE MEANING STATED IN § 12–101**
30 **OF THIS ARTICLE.**

1 (I) AN ITEM UNLAWFULLY IN THE POSSESSION OF A
2 PERSON OTHER THAN THE OWNER WHEN USED IN CONNECTION WITH A
3 VIOLATION OF THE IDENTITY FRAUD LAW; OR

4 (II) A LESSOR'S INTEREST IN PROPERTY SUBJECT TO A
5 BONA FIDE LEASE, UNLESS THE FORFEITING AUTHORITY CAN SHOW THAT THE
6 LESSOR PARTICIPATED IN A VIOLATION OF THE IDENTITY FRAUD LAW OR THAT
7 THE PROPERTY WAS THE PROCEEDS OF A VIOLATION OF THE IDENTITY FRAUD
8 LAW.

9 (I) "SEIZING AUTHORITY" HAS THE MEANING STATED IN § 12-101 OF
10 THIS ARTICLE.

11 13-402.

12 THE FOLLOWING PROPERTY IS SUBJECT TO SEIZURE OR FORFEITURE
13 UNDER THIS SUBTITLE:

14 (1) PROPERTY OBTAINED BY OR THROUGH OR DERIVED
15 DIRECTLY OR INDIRECTLY FROM A VIOLATION OF THE IDENTITY FRAUD LAW;

16 (2) PROPERTY RECEIVED AS AN INDUCEMENT TO VIOLATE THE
17 IDENTITY FRAUD LAW;

18 (3) PROPERTY USED OR INTENDED TO BE USED TO COMMIT OR TO
19 FACILITATE THE COMMISSION OF A VIOLATION OF THE IDENTITY FRAUD LAW;
20 AND

21 (4) PROCEEDS OF PROPERTY DESCRIBED IN THIS SECTION.

22 13-403.

23 (A) PROPERTY OR AN INTEREST IN PROPERTY MAY NOT BE FORFEITED
24 IF THE OWNER ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT
25 THE VIOLATION OF THE IDENTITY FRAUD LAW WAS COMMITTED WITHOUT THE
26 ACTUAL KNOWLEDGE OF THE OWNER.

27 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
28 SUBSECTION, REAL PROPERTY USED AS THE PRINCIPAL FAMILY RESIDENCE
29 MAY NOT BE FORFEITED UNDER THIS SUBTITLE UNLESS ONE OF THE OWNERS
30 OF THE REAL PROPERTY WAS CONVICTED OF A VIOLATION OF THE IDENTITY
31 FRAUD LAW.

1 **(2) A COURT MAY ORDER A FORFEITURE OF REAL PROPERTY**
2 **USED AS THE PRINCIPAL FAMILY RESIDENCE WITHOUT A CONVICTION IF THE**
3 **OWNER OF THE FAMILY RESIDENCE:**

4 **(I) FAILS TO APPEAR FOR A REQUIRED COURT**
5 **APPEARANCE; AND**

6 **(II) FAILS TO SURRENDER TO THE JURISDICTION OF THE**
7 **COURT WITHIN 180 DAYS AFTER THE REQUIRED COURT APPEARANCE.**

8 **(C) REAL PROPERTY USED AS THE PRINCIPAL FAMILY RESIDENCE BY A**
9 **HUSBAND AND WIFE AND HELD BY THE HUSBAND AND WIFE AS TENANTS BY THE**
10 **ENTIRETY MAY NOT BE FORFEITED UNLESS:**

11 **(1) THE PROPERTY WAS USED IN CONNECTION WITH A VIOLATION**
12 **OF THE IDENTITY FRAUD LAW OR AN ATTEMPT OR CONSPIRACY TO VIOLATE**
13 **THE IDENTITY FRAUD LAW; AND**

14 **(2) BOTH THE HUSBAND AND WIFE ARE CONVICTED OF A**
15 **VIOLATION OF THE IDENTITY FRAUD LAW OR OF AN ATTEMPT OR CONSPIRACY**
16 **TO VIOLATE THE IDENTITY FRAUD LAW.**

17 **13-404.**

18 **(A) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) OF THIS**
19 **SECTION, SEIZURE OF PROPERTY UNDER THIS SUBTITLE SHALL BE SUBJECT TO**
20 **THE PROCEDURES SET FORTH IN §§ 12-202, 12-203, AND 12-208 THROUGH**
21 **12-211 OF THIS ARTICLE.**

22 **(B) FOR THE PURPOSES OF THIS SUBTITLE, THE PROBABLE CAUSE**
23 **DESCRIBED IN § 12-202(A)(2)(V) OF THIS ARTICLE IS PROBABLE CAUSE TO**
24 **BELIEVE THAT THE PROPERTY HAS BEEN USED OR IS INTENDED TO BE USED IN**
25 **VIOLATION OF THE IDENTITY FRAUD LAW.**

26 **(C) PAYMENT OF THE AMOUNT OF THE BOND UNDER § 12-208(F)(2) OF**
27 **THIS ARTICLE SHALL BE APPLIED AS PROVIDED UNDER § 13-408(D) OF THIS**
28 **SUBTITLE.**

29 **13-405.**

30 **(A) THE CHIEF LAW ENFORCEMENT OFFICER OF THE SEIZING**
31 **AUTHORITY THAT SEIZES A MOTOR VEHICLE USED IN VIOLATION OF THIS**
32 **SUBTITLE SHALL RECOMMEND TO THE APPROPRIATE FORFEITING AUTHORITY**
33 **IN WRITING THAT THE MOTOR VEHICLE BE FORFEITED ONLY IF THE OFFICER:**

1 (1) DETERMINES FROM THE RECORDS OF THE MOTOR VEHICLE
2 ADMINISTRATION THE NAMES AND ADDRESSES OF ALL REGISTERED OWNERS
3 AND SECURED PARTIES AS DEFINED IN THE CODE;

4 (2) PERSONALLY REVIEWS THE FACTS AND CIRCUMSTANCES OF
5 THE SEIZURE; AND

6 (3) PERSONALLY DETERMINES, CONSIDERING THE
7 CIRCUMSTANCES LISTED IN SUBSECTION (B) OF THIS SECTION, AND
8 REPRESENTS IN WRITING THAT THE TOTAL CIRCUMSTANCES OF THE CASE
9 DICTATE THAT SEIZURE AND FORFEITURE ARE JUSTIFIED.

10 (B) CIRCUMSTANCES TO BE CONSIDERED IN DECIDING WHETHER
11 SEIZURE AND FORFEITURE ARE JUSTIFIED INCLUDE:

12 (1) AN EXTENSIVE CRIMINAL RECORD OF THE VIOLATOR;

13 (2) A PREVIOUS CONVICTION OF THE VIOLATOR UNDER THE
14 IDENTITY FRAUD LAW;

15 (3) EVIDENCE THAT THE MOTOR VEHICLE WAS ACQUIRED BY USE
16 OF PROCEEDS FROM A TRANSACTION INVOLVING IDENTITY FRAUD;

17 (4) CIRCUMSTANCES OF THE ARREST; AND

18 (5) THE WAY IN WHICH THE MOTOR VEHICLE WAS USED.

19 (C) (1) A SWORN AFFIDAVIT BY THE CHIEF LAW ENFORCEMENT
20 OFFICER THAT THE OFFICER FOLLOWED THE REQUIREMENTS OF THIS SECTION
21 IS ADMISSIBLE IN EVIDENCE IN A PROCEEDING UNDER THIS SUBTITLE.

22 (2) THE CHIEF LAW ENFORCEMENT OFFICER MAY NOT BE
23 SUBPOENAED OR COMPELLED TO APPEAR AND TESTIFY IF ANOTHER LAW
24 ENFORCEMENT OFFICER WITH PERSONAL KNOWLEDGE OF THE FACTS AND
25 CIRCUMSTANCES SURROUNDING THE SEIZURE AND THE RECOMMENDATION OF
26 FORFEITURE APPEARS AND TESTIFIES AT THE PROCEEDING.

27 (D) THE FORFEITING AUTHORITY SHALL SURRENDER THE MOTOR
28 VEHICLE ON REQUEST TO THE OWNER IF THE FORFEITING AUTHORITY
29 DETERMINES, INDEPENDENT OF THE DECISION OF THE SEIZING AUTHORITY,
30 THAT THE SEIZURE AND FORFEITURE ARE NOT JUSTIFIED BASED ON THE
31 CIRCUMSTANCES LISTED IN SUBSECTION (B) OF THIS SECTION.

1 **(E) IN A PROCEEDING UNDER THIS SUBTITLE, THE COURT MAY**
2 **DETERMINE, BASED ON THE CIRCUMSTANCES LISTED IN SUBSECTION (B) OF**
3 **THIS SECTION, WHETHER THE SEIZING AUTHORITY OR FORFEITING AUTHORITY**
4 **ABUSED DISCRETION OR WAS CLEARLY ERRONEOUS:**

5 **(1) IN RECOMMENDING THE FORFEITURE OF A MOTOR VEHICLE;**
6 **OR**

7 **(2) IN NOT SURRENDERING ON REQUEST A MOTOR VEHICLE TO**
8 **AN OWNER.**

9 **13-406.**

10 **(A) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) OF THIS**
11 **SECTION, FORFEITURE OF PROPERTY UNDER THIS SUBTITLE SHALL BE**
12 **SUBJECT TO THE PROCEDURES SET FORTH IN §§ 12-301 THROUGH 12-308 OF**
13 **THIS ARTICLE.**

14 **(B) FOR CRIMINAL PROCEEDINGS THAT ARISE OUT OF THE IDENTITY**
15 **FRAUD LAW:**

16 **(1) A FORFEITURE PROCEEDING ABOUT MONEY SHALL FOLLOW**
17 **THE PROCEDURES IN § 12-304(C) OF THIS ARTICLE; AND**

18 **(2) IF THE OWNER FAILS TO ASK FOR THE RETURN OF THE MONEY**
19 **WITHIN 1 YEAR AFTER THE FINAL DISPOSITION OF CRIMINAL PROCEEDINGS,**
20 **THE MONEY SHALL BE DISTRIBUTED AS PROVIDED UNDER § 13-408(D) OF THIS**
21 **SUBTITLE.**

22 **(C) THE ALLEGATION REQUIRED BY § 12-305(A)(7) OF THIS ARTICLE**
23 **SHALL REFER TO THE IDENTITY FRAUD LAW RATHER THAN THE CONTROLLED**
24 **DANGEROUS SUBSTANCES LAW.**

25 **13-407.**

26 **(A) EXCEPT AS PROVIDED IN THIS SECTION AND IN § 13-403(C) OF THIS**
27 **SUBTITLE, AN OWNER'S INTEREST IN REAL PROPERTY MAY BE FORFEITED IF**
28 **THE REAL PROPERTY WAS USED IN CONNECTION WITH A VIOLATION OF THE**
29 **IDENTITY FRAUD LAW.**

30 **(B) FORFEITURE PROCEEDINGS FOR REAL PROPERTY MAY BE**
31 **BROUGHT IN THE JURISDICTION WHERE:**

32 **(1) THE CRIMINAL CHARGES ARE PENDING;**

1 **(2) THE OWNER RESIDES; OR**

2 **(3) THE REAL PROPERTY IS LOCATED.**

3 **(C) (1) IF FORFEITURE PROCEEDINGS FOR REAL PROPERTY ARE**
4 **BROUGHT IN A JURISDICTION OTHER THAN WHERE THE REAL PROPERTY IS**
5 **LOCATED, A NOTICE OF PENDING LITIGATION SHALL BE FILED IN THE**
6 **JURISDICTION WHERE THE PROPERTY IS LOCATED.**

7 **(2) A NOTICE OF PENDING LITIGATION REQUIRED UNDER THIS**
8 **SUBSECTION SHALL INCLUDE AT LEAST:**

9 **(I) THE NAME AND ADDRESS OF THE OWNER OF THE REAL**
10 **PROPERTY;**

11 **(II) A DESCRIPTION OF THE REAL PROPERTY; AND**

12 **(III) A DESCRIPTION OF THE REASONS FOR THE FILING OF**
13 **THE FORFEITURE PROCEEDINGS AND NOTICE OF PENDING LITIGATION.**

14 **(D) IF AN OWNER OF REAL PROPERTY USED AS THE PRINCIPAL FAMILY**
15 **RESIDENCE IS CONVICTED UNDER THE IDENTITY FRAUD LAW AND THE OWNER**
16 **FILES AN APPEAL OF THE CONVICTION, THE COURT SHALL STAY FORFEITURE**
17 **PROCEEDINGS UNDER SUBSECTION (F) OF THIS SECTION OR UNDER § 13-403(C)**
18 **OF THIS SUBTITLE AGAINST THE REAL PROPERTY DURING THE PENDENCY OF**
19 **THE APPEAL.**

20 **(E) (1) EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION,**
21 **THERE IS A REBUTTABLE PRESUMPTION THAT PROPERTY OR PART OF A**
22 **PROPERTY IN WHICH A PERSON HAS AN OWNERSHIP INTEREST IS SUBJECT TO**
23 **FORFEITURE AS PROCEEDS, IF THE STATE ESTABLISHES BY CLEAR AND**
24 **CONVINCING EVIDENCE THAT:**

25 **(I) THE PERSON HAS VIOLATED THE IDENTITY FRAUD LAW;**

26 **(II) THE PROPERTY WAS ACQUIRED BY THE PERSON DURING**
27 **THE VIOLATION OR WITHIN A REASONABLE TIME AFTER THE VIOLATION; AND**

28 **(III) THERE WAS NO OTHER LIKELY SOURCE FOR THE**
29 **PROPERTY.**

30 **(2) A CLAIMANT OF THE PROPERTY HAS THE BURDEN OF PROOF**
31 **TO REBUT THE PRESUMPTION IN PARAGRAPH (1) OF THIS SUBSECTION.**

1 **(F) REAL PROPERTY USED AS THE PRINCIPAL FAMILY RESIDENCE MAY**
2 **NOT BE FORFEITED UNDER THIS SECTION UNLESS:**

3 **(1) AN OWNER OF THE REAL PROPERTY WAS CONVICTED UNDER**
4 **THE IDENTITY FRAUD LAW; OR**

5 **(2) THE REAL PROPERTY IS COVERED BY § 13-403(B)(2) OF THIS**
6 **SUBTITLE.**

7 **13-408.**

8 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
9 **MEANINGS INDICATED.**

10 **(2) “IDENTIFIABLE LOSSES RESULTING FROM THE OFFENSE”**
11 **INCLUDE:**

12 **(I) EXPENSES NECESSARY TO CANCEL, STOP PAYMENT ON,**
13 **OR REPLACE STOLEN ITEMS SUCH AS CREDIT CARDS, CHECKS, DRIVERS’**
14 **LICENSES, AND OTHER DOCUMENTS;**

15 **(II) COSTS INCURRED IN DISCOVERING THE EXTENT OF THE**
16 **IDENTITY FRAUD, IN REPAIRING DAMAGE FROM THE FRAUD SUCH AS DAMAGE**
17 **TO CREDIT RATINGS AND REPORTS, AND PREVENTING FURTHER DAMAGES**
18 **FROM THE FRAUD;**

19 **(III) LONG DISTANCE TELEPHONE CHARGES TO LAW**
20 **ENFORCEMENT OFFICIALS, GOVERNMENT OFFICES, AND BUSINESSES IN**
21 **REGARD TO THE FRAUD; AND**

22 **(IV) LOST WAGES FROM THE TIME AWAY FROM WORK**
23 **REQUIRED TO OBTAIN NEW PERSONAL IDENTIFYING INFORMATION.**

24 **(3) “VICTIM” INCLUDES A BUSINESS THAT LOSES MONEY,**
25 **MERCHANDISE, OR OTHER THINGS OF VALUE AS A RESULT OF THE OFFENSE.**

26 **(B) EXCEPT AS PROVIDED IN THIS SECTION, DISPOSITION OF PROPERTY**
27 **AFTER FORFEITURE UNDER THIS SUBTITLE SHALL BE SUBJECT TO TITLE 12,**
28 **SUBTITLE 4 OF THIS ARTICLE.**

29 **(C) THE COURT DETERMINATION UNDER § 12-402(C) OF THIS ARTICLE**
30 **SHALL INCLUDE THAT THE PROPERTY WAS BEING USED OR WAS TO BE USED IN**

1 VIOLATION OF THE IDENTITY FRAUD LAW RATHER THAN THE CONTROLLED
2 DANGEROUS SUBSTANCES LAW.

3 (D) ORDERS OF FORFEITURE OF PROPERTY UNDER THIS SUBTITLE
4 SHALL BE SUBJECT TO THE PROCEDURES IN SUBSECTION (E) OF THIS SECTION
5 AND NOT SUBJECT TO § 12-403 OF THIS ARTICLE.

6 (E) (1) DISPOSITION OF FORFEITED PROPERTY UNDER THIS
7 SUBTITLE SHALL FOLLOW THE PROCEDURES IN THIS SUBSECTION.

8 (2) THE GOVERNING BODY WHERE THE PROPERTY WAS SEIZED
9 SHALL SELL PROPERTY FORFEITED UNDER THIS SUBTITLE AT PUBLIC AUCTION.

10 (3) THE PROCEEDS OF A SALE UNDER THIS SUBSECTION SHALL
11 BE DISTRIBUTED AS FOLLOWS:

12 (I) FIRST, TO PAY ALL PROPER EXPENSES OF THE
13 PROCEEDINGS FOR FORFEITURE AND SALE, INCLUDING EXPENSES OF SEIZURE,
14 MAINTENANCE OF CUSTODY, ADVERTISING, AND COURT COSTS;

15 (II) SECOND, FOR RESTITUTION AS ORDERED BY THE COURT
16 TO THE PERSON OR PERSONS WHOSE IDENTITY WAS STOLEN TO PAY FOR
17 IDENTIFIABLE LOSSES RESULTING FROM THE OFFENSE;

18 (III) THIRD, FOR RESTITUTION AS ORDERED BY THE COURT
19 TO OTHER VICTIMS TO PAY FOR IDENTIFIABLE LOSSES RESULTING FROM THE
20 OFFENSE; AND

21 (IV) FINALLY, TO THE GENERAL FUND OF THE STATE.

22 **13-409.**

23 LIENHOLDERS OF PROPERTY SEIZED UNDER THIS SUBTITLE SHALL HAVE
24 THE RIGHTS AND OBLIGATIONS SET FORTH IN TITLE 12, SUBTITLE 5 OF THIS
25 ARTICLE.

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

30 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 June 1, 2008.