

HOUSE BILL 737

E2
HB 1371/14 – JUD

5lr1248
CF SB 288

By: **Delegates B. Wilson, Folden, Kittleman, Shoemaker, and Turner**

Introduced and read first time: February 13, 2015

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Financial Crimes Against Vulnerable and Elder Adults –**
3 **Petition to Freeze Assets**

4 FOR the purpose of authorizing a State’s Attorney to file a petition to freeze assets of a
5 defendant charged with a certain financial crime involving a vulnerable or elder
6 adult under certain circumstances; requiring that a petition to freeze assets be
7 served in accordance with the Maryland Rules and include certain information;
8 requiring that a petition to freeze assets be mailed to certain lienholders and certain
9 financial institutions; authorizing a court to grant a petition to freeze assets and
10 issue an order to freeze assets under certain circumstances; requiring that an order
11 to freeze assets remain in effect for a certain period of time; authorizing the court to
12 modify an order to freeze assets under certain circumstances; specifying that a
13 certain lienholder is not prohibited from exercising certain rights if a default occurs
14 in the obligation giving rise to the lien; specifying that a certain financial institution
15 is not prohibited from exercising certain rights; defining certain terms; and generally
16 relating to petitions to freeze assets.

17 BY adding to
18 Article – Criminal Procedure
19 Section 4–206
20 Annotated Code of Maryland
21 (2008 Replacement Volume and 2014 Supplement)

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

24 **Article – Criminal Procedure**

25 **4–206.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
2 INDICATED.

3 (2) “FINAL DISPOSITION” MEANS A DISMISSAL, AN ENTRY OF A NOLLE
4 PROSEQUI, THE MARKING OF A CRIMINAL CHARGE “STET” ON THE DOCKET, AN
5 ENTRY OF A NOT GUILTY VERDICT, THE PRONOUNCEMENT OF A SENTENCE, OR THE
6 IMPOSITION OF PROBATION UNDER § 6-220 OF THIS ARTICLE.

7 (3) “FINANCIAL INSTITUTION” HAS THE MEANING STATED IN §
8 1-101 OF THE FINANCIAL INSTITUTIONS ARTICLE.

9 (4) “FREEZE ASSETS” MEANS TO PROHIBIT A PERSON FROM
10 TRANSFERRING THE PERSON’S MONEY OR PERSONAL OR REAL PROPERTY BY
11 PLACING THE PROPERTY UNDER SEAL OR REMOVING THE PROPERTY TO A PLACE
12 DESIGNATED BY A COURT.

13 (5) “LIENHOLDER” MEANS A PERSON WHO HAS A LIEN ON OR A
14 SECURED INTEREST IN PERSONAL OR REAL PROPERTY.

15 (B) A STATE’S ATTORNEY MAY FILE A PETITION TO FREEZE ASSETS OF A
16 DEFENDANT CHARGED WITH VIOLATING § 8-801 OF THE CRIMINAL LAW ARTICLE
17 WITH THE CIRCUIT COURT OF THE COUNTY IN WHICH THE DEFENDANT WAS
18 CHARGED IF:

19 (1) THE PETITION IS FILED WITHIN 60 DAYS OF THE DEFENDANT
20 BEING CHARGED WITH A VIOLATION OF § 8-801 OF THE CRIMINAL LAW ARTICLE;

21 (2) THE ALLEGED VALUE OF LOST OR STOLEN PROPERTY IN THE
22 CRIMINAL CHARGE GIVING RISE TO THE PETITION IS \$10,000 OR MORE;

23 (3) THE AMOUNT OF MONEY OR PROPERTY SUBJECT TO THE PETITION
24 DOES NOT EXCEED THE ALLEGED VALUE OF LOST OR STOLEN PROPERTY IN THE
25 CRIMINAL CHARGE GIVING RISE TO THE PETITION; AND

26 (4) THE STATE’S ATTORNEY SENDS A NOTICE OF INTENT TO FILE A
27 PETITION TO EACH:

28 (I) LIENHOLDER OF PROPERTY SUBJECT TO THE PETITION;
29 AND

30 (II) FINANCIAL INSTITUTION IN POSSESSION OF PROPERTY
31 SUBJECT TO THE PETITION.

1 (C) (1) A PETITION TO FREEZE ASSETS SHALL BE SERVED IN
2 ACCORDANCE WITH THE MARYLAND RULES AND INCLUDE:

3 (I) THE NAME OF THE DEFENDANT;

4 (II) THE CASE NUMBER OF THE CHARGE GIVING RISE TO THE
5 PETITION;

6 (III) A DESCRIPTION OF THE MONEY OR PROPERTY THAT IS
7 SUBJECT TO THE PETITION;

8 (IV) IF KNOWN OR REASONABLY SUBJECT TO DISCOVERY, THE
9 NAME OF EACH LIENHOLDER ON ANY OF THE PROPERTY;

10 (V) IF KNOWN OR REASONABLY SUBJECT TO DISCOVERY, THE
11 NAME OF EACH FINANCIAL INSTITUTION IN POSSESSION OF ANY OF THE PROPERTY;
12 AND

13 (VI) AN OATH OR AFFIRMATION THAT THE CONTENTS OF THE
14 PETITION ARE TRUE TO THE BEST OF THE STATE'S ATTORNEY'S KNOWLEDGE,
15 INFORMATION, AND BELIEF.

16 (2) A PETITION TO FREEZE ASSETS SHALL BE MAILED TO EACH:

17 (I) LIENHOLDER OF PROPERTY SUBJECT TO THE PETITION;
18 AND

19 (II) FINANCIAL INSTITUTION IN POSSESSION OF PROPERTY
20 SUBJECT TO THE PETITION.

21 (D) A COURT MAY GRANT A PETITION TO FREEZE ASSETS AND ISSUE AN
22 ORDER TO FREEZE ASSETS IF THE STATE'S ATTORNEY PROVES BY A
23 PREPONDERANCE OF THE EVIDENCE THAT:

24 (1) THE DEFENDANT HAS A LEGAL, EQUITABLE, OR POSSESSORY
25 INTEREST IN THE MONEY OR PROPERTY LISTED IN THE PETITION; AND

26 (2) THE MONEY OR PROPERTY LISTED IN THE PETITION IS NOT
27 JOINTLY HELD UNLESS THE STATE'S ATTORNEY ALSO PROVES BY A
28 PREPONDERANCE OF THE EVIDENCE THAT:

29 (I) THE DEFENDANT TRANSFERRED THE DEFENDANT'S MONEY
30 OR PROPERTY TO AVOID BEING SUBJECT TO AN ORDER TO FREEZE ASSETS; OR

1 **(II) THE MONEY OR PROPERTY LISTED IN THE PETITION WAS**
2 **USED IN CONNECTION WITH A VIOLATION OF § 8-801 OF THE CRIMINAL LAW**
3 **ARTICLE.**

4 **(E) AN ORDER TO FREEZE ASSETS SHALL REMAIN IN EFFECT UNTIL THE**
5 **EARLIER OF:**

6 **(1) A DISMISSAL, AN ENTRY OF A NOLLE PROSEQUI, OR AN ENTRY OF**
7 **A NOT GUILTY VERDICT FOR THE CRIMINAL CHARGE FOR THE VIOLATION GIVING**
8 **RISE TO THE ORDER;**

9 **(2) THE MARKING OF THE CHARGE “STET” ON THE DOCKET, THE**
10 **PRONOUNCEMENT OF A SENTENCE, OR THE IMPOSITION OF PROBATION UNDER §**
11 **6-220 OF THIS ARTICLE FOR THE CRIMINAL CHARGE GIVING RISE TO THE ORDER,**
12 **PROVIDED THAT THE DEFENDANT HAS MADE FULL RESTITUTION IF ORDERED BY**
13 **THE COURT; OR**

14 **(3) 1 YEAR AFTER THE FINAL DISPOSITION OF THE CRIMINAL CHARGE**
15 **FOR THE VIOLATION GIVING RISE TO THE ORDER.**

16 **(F) ON MOTION, THE COURT MAY MODIFY AN ORDER TO FREEZE ASSETS TO**
17 **ALLOW THE DEFENDANT TO MAKE RESTITUTION, TO ALLOW THE VICTIM TO**
18 **COLLECT RESTITUTION, OR FOR GOOD CAUSE.**

19 **(G) THIS SECTION DOES NOT PROHIBIT:**

20 **(1) A LIENHOLDER FROM EXERCISING RIGHTS UNDER APPLICABLE**
21 **LAW, INCLUDING THE RIGHT TO SELL PROPERTY THAT HAS BEEN SUBJECT TO AN**
22 **ORDER TO FREEZE ASSETS UNDER THIS SECTION, IF A DEFAULT OCCURS IN THE**
23 **OBLIGATION GIVING RISE TO THE LIEN; OR**

24 **(2) A FINANCIAL INSTITUTION FROM EXERCISING RIGHTS UNDER**
25 **APPLICABLE LAW, INCLUDING THE RIGHT TO SET-OFF MUTUAL DEBTS UNDER**
26 **COMMON LAW.**

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2015.