

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 972

(Senator Forehand)

Judicial Proceedings

Identity Fraud - Seizure and Forfeiture

This bill expands the laws that authorize seizure and forfeiture of property for violations of controlled dangerous substance laws to violations of the identity fraud law.

The bill has prospective application and may not be applied to any offense committed before October 1, 2008.

Fiscal Summary

State Effect: Potential minimal general fund revenue increase from the proceeds of forfeited property for the State Police and the State Victims of Crime Fund. It is expected that the bill's provisions 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 could handle any increase with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: 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:

- products and equipment used, or intended for use, in manufacturing, processing, delivering, importing, or exporting a payment device number, personal identifying

information, or a government identification document in violation of the identity fraud law;

- 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 fruits of an identity fraud violation are contraband and presumed to be forfeitable. A claimant for the money and weapons has the burden to rebut the presumption.

Real property used as the principal family residence is subject to forfeiture if one of the owners was convicted of a felony under the identity fraud law or a conspiracy to commit the felony. Real property used as the principal family residence by a husband and wife and held as tenants by the entirety may not be forfeited unless the property was used in connection with a felony under the identity fraud law or a conspiracy to commit such a felony and both the husband and wife are convicted of the requisite violation.

A State or local law enforcement agency may seize the property specified in the bill's provisions on process issued by a court of competent jurisdiction and property may be seized without a warrant if the seizure is incident to an arrest, or search under a search warrant, 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, and as otherwise specified.

A motor vehicle used in violation of the identity fraud law must be seized and forfeiture recommended if any quantity or amount of payment device numbers, personal identifying information or government identification documents are found that reasonably shows the violator intended to use the materials and information in violation of the identity fraud law. Circumstances to be considered in deciding whether seizure and forfeiture are justified include the possession of fraudulent payment device numbers, personal identifying information, or government identification documents, or evidence that the motor vehicle was acquired by use of proceeds from a violation of the identity fraud law. A motor vehicle used in violation of the identity fraud law may not be seized if an innocent registered owner lends the vehicle to another person and that person, or another invited into the vehicle by that person, brings fraudulent payment device numbers,

personal identifying information, or government identification documents into the motor vehicle without the registered owner's knowledge.

Generally, a complaint seeking forfeiture for an identity fraud violation must be filed within the earlier of: • 90 days after the seizure; or • 1 year after the final disposition of the criminal charge for the violation giving rise to the forfeiture. A complaint for forfeiture of a motor vehicle must be filed within 45 days after the motor vehicle is seized. A proceeding about money must be filed within 90 days after the final disposition of criminal proceedings that arise out of the controlled dangerous substances law. If the State or a political subdivision does not file proceedings about money within the 90-day period, the money seized must be returned to the owner on request by the owner. If the owner fails to ask for the return of the money within one year after the final disposition of criminal proceedings the money reverts to the State or locality, depending on which authority seized the money.

A complaint seeking forfeiture must contain the 10 elements as specified in the bill for controlled dangerous substance seizures. Within 20 days of complaint filing, notice must be delivered by certified mail.

Except as otherwise provided, there is a rebuttable presumption that the seized property is subject to forfeiture if the State establishes by clear and convincing evidence that the person has violated the felony provisions of the identity fraud law. If the court determines that the forfeited property subject to a valid lien was used in violation of the identity fraud law without the lien holder's knowledge, the court must order the property released within five days to the first priority lien holder.

After the proceeds of forfeited property are applied to court costs, the balance due the lienholder, and the payment of expenses related to storage, maintenance or custody, the bill requires that the remaining proceeds must be applied to an identity fraud victim who is an individual for the greater of any court-ordered restitution or \$2,500. After that disposition, remaining proceeds go to other victims of identity fraud for any court-ordered restitution and then into the State Victims of Crime Fund.

Current Law

Seizure and Forfeiture Provisions: The only properties subject to summary forfeiture pursuant to a violation of the controlled dangerous substances law are controlled dangerous substances and plants from which they are derived. A Schedule I substance must be seized and summarily forfeited to the State if the substance is: • possessed, transferred, sold, or offered for sale in violation of the law; or • possessed by the State and its owner is not known. A plant may be seized and summarily forfeited if it is one

from which a Schedule I or Schedule II substance may be derived and it • has been planted or cultivated in violation of the law; • has an unknown owner or cultivator; or • is a wild growth.

The complaint seeking forfeiture must contain:

- a description of the property seized;
- the date and place of the seizure;
- the name of the owner, if known;
- the name of the person in possession, if known;
- the name of each lienholder, if known or reasonably subject to discovery;
- an allegation that the property is subject to forfeiture;
- if seeking forfeiture of a lien holder's interest in property, an allegation that the lien was created with actual knowledge that the property was being or was to be used in violation of the controlled dangerous substances law;
- a statement of the facts and circumstances surrounding the seizure;
- a statement setting forth the specific grounds for forfeiture; and
- an oath or affirmation that the contents of the complaint are true to the best of the affiant's knowledge, information, and belief.

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

Notice of the proceedings must be given by posting at the courthouse, on the land if the property is real property, and in a newspaper for three consecutive weeks. If the owner does not timely file an answer to the complaint, the court may order forfeiture of the property without a hearing. Otherwise, a hearing must be held. Subsequent to a full hearing, a court may order that the property be • released; • forfeited to the appropriate governing body; or • released within five days to the first priority lienholder if the property is subject to a valid lien and the lienholder did not have actual knowledge of the property's unlawful use.

A "seizing authority" means a law enforcement unit in the State that is authorized to investigate violations of the controlled dangerous substances law and that has seized property pursuant to State law.

Identity Fraud Provisions: The term “personal identifying information” means: a name, address, telephone number, driver’s license number, Social Security number, place of employment, employee identification number, mother’s maiden name, bank or other financial institution account number, date of birth, personal identification number, credit card number, or other payment device number.

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. A person may not knowingly and willfully claim to represent another person without the knowledge and consent of that person, with the intent to solicit, request, or take any action to otherwise induce another person to provide personal identifying information or a payment device number.

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 up to \$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.

State Victims of Crime Fund: The State Victims of Crime Fund is a special fund that is used for carrying out statutory guidelines for treatment and assistance to victims of crime and delinquent acts. The State Board of Victims Services is responsible for administering the fund. The fund and the Criminal Injuries Compensation Board share the first \$500,000 attained from the \$22.50 fee assessed in circuit court, the \$12.50 fee assessed in District Court for cases other than motor vehicle cases and \$3 assessed in the District Court for motor vehicle cases. After the \$500,000 threshold is reached and the board and the fund have each acquired \$250,000, the board receives the remainder of funding from these fees. The fund is invested and reinvested as any other State fund and retains any investment earnings. Otherwise, the fund is authorized to receive other funding from any source.

Background: Although the Task Force to Study Identity Theft did not have adequate time to come to agreement on the details of specific legislation, the task force was in agreement that legislation should be enacted to authorize a court to order forfeiture of all property obtained by an identity fraud criminal. The task force unanimously recommended that forfeiture legislation allow for due process and fully protect lien holders while allowing for at least part of the proceeds from forfeited property to be distributed to victims of identity fraud.

The task force found that since identity fraud offenders are not required to forfeit the proceeds of their crimes, they are able to keep the cash obtained from their crimes or retain the valuables and convert them to cash. After convicted offenders have completed their sentences, they are able to return to society with an advanced financial position. This, not only can those offenders who are not apprehended benefit from committing this crime, even those who are convicted can benefit financially. In contrast, victims are left to repair what is left of their finances, often spending additional time and money to do so.

According to the National Conference of State Legislatures, Iowa, Kentucky, Rhode Island and Tennessee authorize the seizure and forfeiture of property illegally obtained due to identity theft.

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 *Identity Theft Victim Complaint Data* for calendar 2006 (the latest information available). In calendar 2006, FTC received 246,035 identity theft complaints. In calendar 2005, the number of identity theft complaints was 255,613. In Maryland, residents reported 4,656 instances of identity theft in 2006, or 82.9 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 25% of all complaints. The second most prevalent type of identity fraud involved the opening of new accounts for wireless devices, utilities, and the telephone, at 16% of all complaints.

In November 2007, FTC released a national survey, *The 2006 Identity Theft Survey Report*. FTC reports that the survey suggests that 8.5 million U.S. adults discovered that they were victimized by some form of identity theft in calendar 2005.

Local Fiscal Effect: Baltimore City advises that any positive fiscal impact from the bill would be negligible, as the city has not processed many identity fraud cases with significant property to seize. Montgomery and Garrett counties advise that the bill would not have a fiscal impact. The cities of Annapolis, Bowie, and Takoma Park advise the bill would not have a fiscal impact.

Additional Information

Prior Introductions: This bill is similar to SB 306/HB 1051 of 2007. SB 306, as amended, passed the Senate and was heard by the House Judiciary Committee, but no further action was taken. HB 1051 was heard by the Judiciary, but no further action was taken. This bill is also similar to SB 517/HB 692 of 2006. SB 517 and HB 692 received unfavorable reports from the Senate Judicial Proceedings and House Judiciary Committees, respectively.

Cross File: HB 1096 (Delegate Lee, *et al.*) – Judiciary.

Information Source(s): City of Annapolis, City of Bowie, City of Takoma Park, Baltimore City, Town of Elkton, Town of Thurmont, Anne Arundel County, Baltimore County, Dorchester County, Garrett County, Montgomery County, Prince Georges County, State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Attorney General (Consumer Protection),

Department of Public Safety and Correctional Services, Department of Legislative Services

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