

SENATE BILL 97

E2
SB 211/10 – JPR

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CF 11r1617

By: **Senators Kelley, Astle, Benson, Colburn, Conway, Forehand, Garagiola, Kittleman, Klausmeier, Mathias, Middleton, Muse, Pugh, and Stone**
Introduced and read first time: January 21, 2011
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Identity Fraud Crimes – Restitution**

3 FOR the purpose of expanding the circumstances under which a court is authorized to
4 enter a judgment of restitution that orders a defendant or child respondent to
5 make restitution to situations where the victim suffered certain losses or
6 incurred certain expenses as a direct result of identity fraud; establishing that
7 circumstances eligible for restitution include alteration of a victim's consumer
8 report or the imposition of financial damage or loss on an identity fraud victim;
9 authorizing a court to accept a certain affidavit as evidence of financial damage
10 or loss that is eligible for restitution; expanding the circumstances under which
11 certain State's Attorneys are required to help certain victims prepare a certain
12 request for restitution and to advise certain victims regarding collection of
13 restitution; establishing that if certain victims suffer identity fraud, certain
14 State's Attorneys are required to consult with the Office of the Attorney General
15 under certain circumstances for certain advice and assistance; authorizing the
16 Office of the Attorney General to provide to identity fraud victims certain
17 information and assistance on recovery from financial damage or loss and how
18 to make a restitution claim; requiring that certain assistance to identity fraud
19 victims include establishing a certain monetary value for financial damage or
20 loss; requiring the Office of the Attorney General to develop a certain affidavit
21 form for victims of identity fraud; authorizing the Office of the Attorney General
22 to adopt regulations; making conforming changes; defining certain terms; and
23 generally relating to restitution.

24 BY repealing and reenacting, without amendments,
25 Article – Commercial Law
26 Section 14–1201(d)
27 Annotated Code of Maryland
28 (2005 Replacement Volume and 2010 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Criminal Law
3 Section 8–301(i)
4 Annotated Code of Maryland
5 (2002 Volume and 2010 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article – Criminal Procedure
8 Section 11–601, 11–603, 11–614, and 11–615
9 Annotated Code of Maryland
10 (2008 Replacement Volume and 2010 Supplement)

11 BY adding to
12 Article – Criminal Procedure
13 Section 11–614.1
14 Annotated Code of Maryland
15 (2008 Replacement Volume and 2010 Supplement)

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

18 **Article – Commercial Law**

19 14–1201.

20 (d) (1) “Consumer report” means any written, oral, or other
21 communication of any information by a consumer reporting agency bearing on a
22 consumer’s credit worthiness, credit standing, credit capacity, character, general
23 reputation, personal characteristics, or mode of living which is used or expected to be
24 used or collected in whole or in part for the purpose of serving as a factor in
25 establishing the consumer’s eligibility for:

26 (i) Credit or insurance to be used primarily for personal, family,
27 or household purposes;

28 (ii) Employment purposes; or

29 (iii) Other purposes authorized under § 14–1202 of this subtitle.

30 (2) The term does not include:

31 (i) Any report containing information solely as to transactions
32 or experiences between the consumer and the person making the report;

33 (ii) Any authorization or approval of a specific extension of
34 credit directly or indirectly by the issuer of a credit card or similar device; or

1 (iii) Any report in which a person who has been requested by a
 2 third party to make a specific extension of credit directly or indirectly to a consumer
 3 conveys his decision with respect to the request, if the third party advises the
 4 consumer of the name and address of the person to whom the request was made and
 5 the person makes the disclosures to the consumer required under § 14–1212 of this
 6 subtitle.

7 **Article – Criminal Law**

8 8–301.

9 (i) [In addition to restitution under Title 11, Subtitle 6 of the Criminal
 10 Procedure Article, a] A court may order a person who pleads guilty or nolo contendere
 11 or who is found guilty under this section to make restitution to the victim for
 12 reasonable costs[, including reasonable attorney’s fees, incurred:

13 (1) for clearing the victim’s credit history or credit rating; and

14 (2) in connection with a civil or administrative proceeding to satisfy a
 15 debt, lien, judgment, or other obligation of the victim that arose because of the
 16 violation] **IN ACCORDANCE WITH TITLE 11, SUBTITLE 6 OF THE CRIMINAL**
 17 **PROCEDURE ARTICLE.**

18 **Article – Criminal Procedure**

19 11–601.

20 (a) In Part I of this subtitle the following words have the meanings indicated.

21 (b) “Central Collection Unit” means the Central Collection Unit in the
 22 Department of Budget and Management.

23 (c) “Child” means a person under the age of 18 years.

24 **(D) “CONSUMER REPORT” HAS THE MEANING STATED IN § 14–1201(D)**
 25 **OF THE COMMERCIAL LAW ARTICLE.**

26 **[(d) (E)** (1) “Crime” means an act committed by a person in the State
 27 that is a crime under:

28 (i) common law;

29 (ii) § 109 of the Code of Public Local Laws of Caroline County;

30 (iii) § 4–103 of the Code of Public Local Laws of Carroll County;

31 (iv) § 8A–1 of the Code of Public Local Laws of Talbot County; or

1 (v) except as provided in paragraph (2) of this subsection, the
2 Annotated Code.

3 (2) "Crime" does not include a violation of the Transportation Article
4 that is not punishable by a term of confinement.

5 [(e)] (F) "Defendant" means a person:

6 (1) who has received probation before judgment;

7 (2) who has been found guilty of a crime, even if the defendant has
8 been found not criminally responsible; or

9 (3) whose plea of nolo contendere to a crime has been accepted by the
10 court.

11 [(f)] (G) "Division" means the Division of Parole and Probation.

12 (H) "FINANCIAL DAMAGE OR LOSS" MEANS:

13 (1) COSTS INCURRED BY A VICTIM OF IDENTITY FRAUD TO
14 REMEDIATE THE VICTIM'S CONSUMER REPORT, INCLUDING THE VICTIM'S
15 CONSUMER CREDIT HISTORY OR RATING;

16 (2) COSTS INCURRED BY A VICTIM OF IDENTITY FRAUD DUE TO
17 ANY CIVIL OR ADMINISTRATIVE PROCEEDING TO SATISFY ANY DEBT, LIEN, OR
18 OTHER OBLIGATION;

19 (3) LOST WAGES DUE TO EFFORTS BY THE VICTIM OF IDENTITY
20 FRAUD TO RESTORE FINANCIAL ACCOUNTS AND TO REMEDIATE THE VICTIM'S
21 CONSUMER REPORT;

22 (4) THE MONETARY VALUE OF TIME REASONABLY SPENT BY THE
23 VICTIM OF IDENTITY FRAUD TO REMEDIATE THE VICTIM'S CONSUMER REPORT,
24 TO RESTORE FINANCIAL ACCOUNTS, OR TO SATISFY ANY OTHER FINANCIAL
25 OBLIGATION RESULTING FROM AN IDENTITY FRAUD OFFENSE; OR

26 (5) ANY OTHER EXPENSES, INCLUDING REASONABLE ATTORNEY'S
27 FEES, THAT REASONABLY MAY BE SHOWN TO HAVE BEEN INCURRED BY THE
28 VICTIM DUE TO THE COMMISSION OF IDENTITY FRAUD AGAINST THE VICTIM.

29 (I) "IDENTITY FRAUD" MEANS A VIOLATION OF § 8-301 OF THE
30 CRIMINAL LAW ARTICLE.

1 **(J) “IDENTITY FRAUD RESTITUTION AFFIDAVIT” MEANS A FORM**
2 **DEVELOPED BY THE OFFICE OF THE ATTORNEY GENERAL THAT DOCUMENTS**
3 **THE FINANCIAL DAMAGE OR LOSS INCURRED BY A VICTIM OF IDENTITY FRAUD.**

4 **[(g)] (K)** “Judgment of restitution” means a direct order for payment of
5 restitution or an order for payment of restitution that is a condition of probation in an
6 order of probation.

7 **[(h)] (L)** “Liable parent” means a parent:

8 (1) whose child has committed a crime or delinquent act; and

9 (2) who has been ordered to pay restitution under § 11–604 of this
10 subtitle.

11 **[(i)] (M)** “Restitution obligor” means a defendant, child respondent, or liable
12 parent against whom a judgment of restitution has been entered.

13 **[(j)] (N)** “Victim” means:

14 (1) a person who suffers death, personal injury, **[or]** property damage,
15 or loss as a direct result of a crime or delinquent act; **[or]**

16 **(2) A PERSON WHO SUFFERS FINANCIAL DAMAGE OR LOSS AS A**
17 **DIRECT RESULT OF IDENTITY FRAUD; OR**

18 **[(2)] (3)** if the person is deceased, the personal representative of the
19 estate of the person.

20 11–603.

21 (a) A court may enter a judgment of restitution that orders a defendant or
22 child respondent to make restitution in addition to any other penalty for the
23 commission of a crime or delinquent act, if:

24 (1) as a direct result of the crime or delinquent act, property of the
25 victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value
26 substantially decreased;

27 **(2) AS A DIRECT RESULT OF IDENTITY FRAUD, THE VICTIM’S**
28 **CONSUMER REPORT IS ALTERED TO THE DETRIMENT OF THE VICTIM;**

29 **(3) AS A DIRECT RESULT OF IDENTITY FRAUD, THE VICTIM**
30 **INCURS FINANCIAL DAMAGE OR LOSS THAT INCLUDES:**

1 (I) COSTS INCURRED TO REMEDIATE THE VICTIM'S
2 CONSUMER REPORT, INCLUDING THE VICTIM'S CONSUMER CREDIT HISTORY OR
3 RATING;

4 (II) COSTS INCURRED DUE TO ANY CIVIL OR
5 ADMINISTRATIVE PROCEEDING TO SATISFY ANY DEBT, LIEN, OR OTHER
6 OBLIGATION;

7 (III) LOST WAGES DUE TO EFFORTS BY THE VICTIM TO
8 RESTORE FINANCIAL ACCOUNTS AND TO REMEDIATE THE VICTIM'S CONSUMER
9 REPORT;

10 (IV) THE MONETARY VALUE OF TIME REASONABLY SPENT BY
11 THE VICTIM TO REMEDIATE THE VICTIM'S CONSUMER REPORT, TO RESTORE
12 FINANCIAL ACCOUNTS, OR TO SATISFY ANY OTHER FINANCIAL OBLIGATION
13 RESULTING FROM THE IDENTITY FRAUD OFFENSE; OR

14 (V) ANY OTHER EXPENSES, INCLUDING REASONABLE
15 ATTORNEY'S FEES, THAT REASONABLY MAY BE SHOWN TO HAVE BEEN
16 INCURRED BY THE VICTIM DUE TO THE COMMISSION OF IDENTITY FRAUD
17 AGAINST THE VICTIM;

18 [(2)] (4) as a direct result of the crime or delinquent act, the victim
19 suffered:

20 (i) actual medical, dental, hospital, counseling, funeral, or
21 burial expenses or losses;

22 (ii) direct out-of-pocket loss;

23 (iii) loss of earnings; or

24 (iv) expenses incurred with rehabilitation;

25 [(3)] (5) the victim incurred medical expenses that were paid by the
26 Department of Health and Mental Hygiene or any other governmental unit;

27 [(4)] (6) a governmental unit incurred expenses in removing, towing,
28 transporting, preserving, storing, selling, or destroying an abandoned vehicle as
29 defined in § 25-201 of the Transportation Article;

30 [(5)] (7) the Criminal Injuries Compensation Board paid benefits to a
31 victim; or

1 **[(6)] (8)** the Department of Health and Mental Hygiene or other
2 governmental unit paid expenses incurred under Subtitle 1, Part II of this title.

3 (b) A victim is presumed to have a right to restitution under subsection (a) of
4 this section if:

5 (1) the victim or the State requests restitution; and

6 (2) the court is presented with competent evidence of any item listed
7 in subsection (a) of this section.

8 **(C) A COURT MAY ACCEPT AN IDENTITY FRAUD RESTITUTION**
9 **AFFIDAVIT AS COMPETENT EVIDENCE OF FINANCIAL DAMAGE OR LOSS THAT IS**
10 **ELIGIBLE FOR RESTITUTION.**

11 **[(c)] (D)** (1) A judgment of restitution does not preclude the property
12 owner or the victim who suffered personal physical or mental injury, out-of-pocket
13 loss of earnings, or support from bringing a civil action to recover damages from the
14 restitution obligor.

15 (2) A civil verdict shall be reduced by the amount paid under the
16 criminal judgment of restitution.

17 **[(d)] (E)** In making a disposition on a finding that a child at least 13 years
18 old has committed an act of graffiti under § 6-301(d) of the Criminal Law Article, the
19 court shall order the child to perform community service or pay restitution or both.

20 11-614.

21 (a) **[(If practicable, the)] EACH State's Attorney [(should)] SHALL:**

22 (1) notify an eligible victim of the victim's right to request restitution;
23 **[(and)]**

24 (2) help the victim to prepare the request and advise the victim as to
25 the steps for collecting restitution that is awarded; **AND**

26 **(3) IF THE VICTIM SUFFERED IDENTITY FRAUD, CONSULT WITH**
27 **THE OFFICE OF THE ATTORNEY GENERAL TO PROVIDE:**

28 **(I) ADVICE ABOUT MAKING A RESTITUTION CLAIM;**

29 **(II) ASSISTANCE WITH PREPARATION OF THE RESTITUTION**
30 **CLAIM; AND**

31 **(III) ADVICE ABOUT ENFORCING A RESTITUTION CLAIM.**

1 (b) If a victim cannot be located, all money collected from a judgment of
2 restitution shall be treated as abandoned property under Title 17 of the Commercial
3 Law Article.

4 **11-614.1.**

5 (A) IN CONJUNCTION WITH THE ADMINISTRATION OF IDENTITY THEFT
6 PASSPORTS AS ESTABLISHED UNDER § 8-305 OF THE CRIMINAL LAW ARTICLE,
7 THE OFFICE OF THE ATTORNEY GENERAL MAY PROVIDE TO VICTIMS OF
8 IDENTITY FRAUD INFORMATION AND ASSISTANCE ON:

9 (1) RECOVERY FROM FINANCIAL DAMAGE OR LOSS; AND

10 (2) HOW TO MAKE A VALID CLAIM FOR RESTITUTION.

11 (B) ASSISTANCE PROVIDED UNDER THIS SECTION SHALL INCLUDE
12 ESTABLISHING A MONETARY VALUE OF THE FINANCIAL DAMAGE OR LOSS
13 INCURRED BY A VICTIM OF IDENTITY FRAUD.

14 (C) THE OFFICE OF THE ATTORNEY GENERAL SHALL DEVELOP AN
15 IDENTITY FRAUD RESTITUTION AFFIDAVIT FORM FOR VICTIMS OF IDENTITY
16 FRAUD THAT DOCUMENTS HOW THE VICTIM'S REQUESTED AMOUNT FOR
17 RESTITUTION WAS ESTABLISHED.

18 (D) THE OFFICE OF THE ATTORNEY GENERAL MAY ADOPT
19 REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION.

20 **11-615.**

21 (a) In a restitution hearing held under § 11-603 of this subtitle, AN
22 IDENTITY FRAUD RESTITUTION AFFIDAVIT OR a written statement or bill for
23 medical, dental, hospital, counseling, funeral, or burial expenses is legally sufficient
24 evidence of the amount, fairness, and reasonableness of the charges and the necessity
25 of the services or materials provided.

26 (b) A person who challenges the fairness and reasonableness or the necessity
27 of the amount on the AFFIDAVIT OR A statement or bill has the burden of proving
28 that the amount is not fair and reasonable.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2011.