

Chapter 336

(Senate Bill 288)

AN ACT concerning

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

FOR the purpose of authorizing a State’s Attorney to file a petition to freeze assets of a defendant charged with a certain financial crime involving a vulnerable or elder adult under certain circumstances; requiring that a petition to freeze assets be served in accordance with the Maryland Rules and include certain information; requiring that a petition to freeze assets be mailed to certain ~~lienholders and certain~~ financial institutions; authorizing a court to grant a petition to freeze assets and issue an order to freeze assets under certain circumstances; requiring that an order to freeze assets be served on certain financial institutions in accordance with the Maryland Rules and include certain information; providing that a financial institution is not obligated to restrict access to money described in a petition to freeze assets until the occurrence of certain events; requiring that an order to freeze assets remain in effect for a certain period of time; authorizing the court to modify an order to freeze assets under certain circumstances; ~~specifying that a certain lienholder is not prohibited from exercising certain rights if a default occurs in the obligation giving rise to the lien;~~ specifying that a certain financial institution is not prohibited from exercising certain rights; defining certain terms; and generally relating to petitions to freeze assets.

BY adding to

Article – Criminal Procedure
Section 4–206
Annotated Code of Maryland
(2008 Replacement Volume and 2014 Supplement)

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

Article – Criminal Procedure**4–206.**

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

(2) “FINAL DISPOSITION” MEANS A DISMISSAL, AN ENTRY OF A NOLLE PROSEQUI, THE MARKING OF A CRIMINAL CHARGE “STET” ON THE DOCKET, AN

ENTRY OF A NOT GUILTY VERDICT, THE PRONOUNCEMENT OF A SENTENCE, OR THE IMPOSITION OF PROBATION UNDER § 6-220 OF THIS ARTICLE.

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

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

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

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

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

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

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

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

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

~~(II) FINANCIAL INSTITUTION IN POSSESSION OF PROPERTY MONEY SUBJECT TO THE PETITION.~~

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

(I) THE NAME OF THE DEFENDANT;

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

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

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

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

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

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

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

~~(II)~~ FINANCIAL INSTITUTION IN POSSESSION OF ~~PROPERTY~~ MONEY SUBJECT TO THE PETITION.

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

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

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

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

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

(E) (1) THE ORDER TO FREEZE ASSETS SHALL BE SERVED ON EACH FINANCIAL INSTITUTION IN POSSESSION OF MONEY SUBJECT TO THE ORDER.

(2) THE ORDER SHALL BE SERVED IN ACCORDANCE WITH THE MARYLAND RULES AND INCLUDE:

(I) THE NAME OF THE ACCOUNT HOLDER;

(II) THE CASE NUMBER OF THE PROCEEDING IN WHICH THE COURT ISSUED THE ORDER TO FREEZE ASSETS; AND

(III) A DESCRIPTION OF THE MONEY THAT IS SUBJECT TO THE ORDER TO FREEZE ASSETS.

(F) A FINANCIAL INSTITUTION IS NOT OBLIGATED TO RESTRICT ACCESS TO MONEY DESCRIBED IN A PETITION UNTIL:

(1) AN ORDER TO FREEZE ASSETS HAS BEEN SERVED ON THE FINANCIAL INSTITUTION; AND

(2) THE FINANCIAL INSTITUTION HAS HAD A REASONABLE OPPORTUNITY TO FREEZE THE ASSETS.

~~(E)~~ (G) AN ORDER TO FREEZE ASSETS SHALL REMAIN IN EFFECT UNTIL THE EARLIER OF:

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

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

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

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

~~(c)~~ (1) THIS SECTION DOES NOT PROHIBIT:

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

~~(2) A FINANCIAL INSTITUTION FROM EXERCISING RIGHTS UNDER APPLICABLE LAW, INCLUDING THE RIGHT TO ~~SET OFF~~ SET OFF MUTUAL DEBTS UNDER COMMON LAW.~~

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

Approved by the Governor, May 12, 2015.