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By: **Delegate Shank**

Introduced and read first time: February 7, 2005

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law - Possessing Stolen Property**

3 FOR the purpose of providing that in a prosecution for theft by possessing stolen  
4 property, it is not a defense that the property was obtained by certain means  
5 under certain circumstances; and generally relating to theft by possessing stolen  
6 property.

7 BY repealing and reenacting, with amendments,  
8 Article - Criminal Law  
9 Section 7-110  
10 Annotated Code of Maryland  
11 (2002 Volume and 2004 Supplement)

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

14 **Article - Criminal Law**

15 7-110.

16 (a) (1) It is not a defense to the crime of theft that the defendant has an  
17 interest in the property that was the subject of the theft if another also has an  
18 interest in or right to possess the property that the defendant is not entitled to  
19 infringe.

20 (2) In determining the right of possession:

21 (i) a joint or common owner of the property does not have a right of  
22 possession of the property that is superior to the right of any other joint or common  
23 owner of the property; and

24 (ii) in the absence of a contrary agreement, a person in lawful  
25 possession of the property has a right of possession superior to the right of possession  
26 of a person who has only a security interest in the property, even if legal title to the  
27 property lies with the holder of the security interest under a conditional sale contract  
28 or other security agreement.

1 (b) (1) It is not a defense to the crime of theft that the property was taken,  
2 obtained, or withheld from a person who had obtained the property by illegal means.

3 (2) It is not a defense to the crime of theft of property or services with a  
4 value of less than \$100 as provided under § 7-104(g)(3) of this subtitle that the value  
5 of the property or services at issue is \$100 or more.

6 (C) IN A PROSECUTION FOR THEFT BY POSSESSING STOLEN PROPERTY, IT IS  
7 NOT A DEFENSE THAT THE PROPERTY WAS OBTAINED BY MEANS OTHER THAN THE  
8 COMMISSION OF THEFT, IF THE PROPERTY WAS EXPLICITLY DESCRIBED TO THE  
9 DEFENDANT AS BEING OBTAINED THROUGH THE COMMISSION OF THEFT.

10 [(c)] (D) It is a defense to the crime of theft that:

11 (1) the defendant acted under a good faith claim of right to the property  
12 involved;

13 (2) the defendant acted in the honest belief that the defendant had the  
14 right to obtain or exert control over the property as the defendant did;

15 (3) the property involved was that of the defendant's spouse, unless the  
16 defendant and the defendant's spouse were not living together as husband and wife  
17 and were living in separate residences at the time of the alleged theft; or

18 (4) in a case of theft of a trade secret, the defendant rightfully knew the  
19 trade secret, or the trade secret was available to the defendant from a source other  
20 than the owner.

21 [(d)] (E) Any common law and evidentiary presumption applicable on July 1,  
22 1979 to the crimes consolidated under this part also apply to the crime of theft, unless  
23 the presumption:

24 (1) is repealed or modified under this part; or

25 (2) is modified by a court decision rendered after July 1, 1979.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
27 October 1, 2005.