

HOUSE BILL 926

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2004 Regular Session
(4lr1897)

ENROLLED BILL
-- Judiciary/Judicial Proceeding --

Introduced by **Chairman, Judiciary Committee (By Request - Maryland
Judicial Conference)**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law - Theft, Bad Checks, and Credit Card Crimes - District Court**
3 **Offenses**

4 FOR the purpose of ~~modifying the jurisdiction of the District Court and the circuit~~
5 ~~courts involving certain crimes under certain circumstances~~; establishing
6 certain determinations as to the value of certain property or services involving
7 certain theft crimes; establishing certain penalties for theft of certain property
8 or services of a certain value; establishing a certain time period within which an
9 action or prosecution for certain crimes are authorized to be commenced;
10 establishing certain penalties for obtaining certain property or services of a
11 certain value by issuing or passing a certain check; establishing certain
12 penalties for obtaining, furnishing, or receiving money, goods, services, and
13 other things of a certain value under certain circumstances; providing that
14 certain crimes may not be considered a lesser included crime of any other crime
15 under certain circumstances; prohibiting certain defenses; and generally
16 relating to crimes involving theft, checks, and credit cards.

1 ~~BY repealing and reenacting, with amendments,~~
2 ~~Article—Courts and Judicial Proceedings~~
3 ~~Section 4-302(d)~~
4 ~~Annotated Code of Maryland~~
5 ~~(2002 Replacement Volume and 2003 Supplement)~~

6 BY repealing and reenacting, with amendments,
7 Article - Criminal Law
8 Section 7-103, 7-104(g) and (i), 7-108, 7-110(b), 8-105, 8-106, 8-206, 8-207,
9 and 8-209
10 Annotated Code of Maryland
11 (2002 Volume and 2003 Supplement)

12 BY repealing and reenacting, without amendments,
13 Article - Criminal Law
14 Section 8-103
15 Annotated Code of Maryland
16 (2002 Volume and 2003 Supplement)

17 BY adding to
18 Article - Criminal Law
19 Section 8-211
20 Annotated Code of Maryland
21 (2002 Volume and 2003 Supplement)

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

24 ~~Article—Courts and Judicial Proceedings~~

25 ~~4-302.~~

26 ~~(d) (1) Except as provided in paragraph (2) of this subsection, the~~
27 ~~jurisdiction of the District Court is concurrent with that of the circuit court in a~~
28 ~~criminal case:~~

29 ~~(i) In which the penalty may be confinement for 3 years or more or~~
30 ~~a fine of \$2,500 or more; or~~

31 ~~(ii) That is a felony, as provided in § 4-301(b)(2), (6), (7), (8), (9),~~
32 ~~(10), (11), (12), (13), (14), (15), (16), (17), (18), (19), and (20) of this subtitle.~~

33 ~~(2) (i) Except as provided in subparagraph (ii) of this paragraph, a~~
34 ~~circuit court does not have jurisdiction to try a case charging a violation of:~~

35 ~~1. § 5-601 or § 5-620 of the Criminal Law Article; OR~~

1 (d) The value of a trade secret lacking a readily ascertainable market value is
2 a reasonable value that represents the damage the owner suffered by the loss of an
3 advantage over those who do not know or use the trade secret.

4 (e) (1) [When] FOR THE PURPOSES OF DETERMINING WHETHER A THEFT
5 VIOLATION SUBJECT TO EITHER § 7-104(G)(1) OR (2) OF THIS SUBTITLE HAS BEEN
6 COMMITTED, WHEN it cannot be determined whether the value of the property or
7 service is more or less than \$500 under the standards of this section, the value is
8 deemed to be less than \$500.

9 (2) FOR THE PURPOSES OF DETERMINING WHETHER A THEFT
10 VIOLATION SUBJECT TO EITHER § 7-104(G)(2) OR (3) OF THIS SUBTITLE HAS BEEN
11 COMMITTED, WHEN IT CANNOT BE DETERMINED WHETHER THE VALUE OF THE
12 PROPERTY OR SERVICE IS MORE OR LESS THAN \$100 UNDER THE STANDARDS OF
13 THIS SECTION, THE VALUE IS DEEMED TO BE LESS THAN \$100.

14 (f) When theft is committed in violation of this part under one scheme or
15 continuing course of conduct, whether from the same or several sources:

16 (1) the conduct may be considered as one crime; and

17 (2) the value of the property or services may be aggregated in
18 determining whether the theft is a felony or a misdemeanor.

19 7-104.

20 (g) (1) A person convicted of theft of property or services with a value of
21 \$500 or more is guilty of a felony and:

22 (i) is subject to imprisonment not exceeding 15 years or a fine not
23 exceeding \$25,000 or both; and

24 (ii) shall restore the property taken to the owner or pay the owner
25 the value of the property or services.

26 (2) Except as provided in [paragraph (3)] PARAGRAPHS (3) AND (4) of
27 this subsection, a person convicted of theft of property or services with a value of less
28 than \$500, is guilty of a misdemeanor and:

29 (i) is subject to imprisonment not exceeding 18 months or a fine
30 not exceeding \$500 or both; and

31 (ii) shall restore the property taken to the owner or pay the owner
32 the value of the property or services.

33 (3) A PERSON CONVICTED OF THEFT OF PROPERTY OR SERVICES WITH A
34 VALUE OF LESS THAN \$100, IS GUILTY OF A MISDEMEANOR AND:

35 (I) IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A
36 FINE NOT EXCEEDING \$500 OR BOTH; AND

1 (II) SHALL RESTORE THE PROPERTY TAKEN TO THE OWNER OR PAY
2 THE OWNER THE VALUE OF THE PROPERTY OR SERVICES.

3 [(3)] (4) Subject to paragraph [(4)] (5) of this subsection, a person who
4 has two or more prior convictions under this subtitle and who is convicted of theft of
5 property or services with a value of less than \$500 UNDER PARAGRAPH (2) OF THIS
6 SUBSECTION is guilty of a misdemeanor and:

7 (i) is subject to imprisonment not exceeding 5 years or a fine not
8 exceeding \$5,000 or both; and

9 (ii) shall restore the property taken to the owner or pay the owner
10 the value of the property or services.

11 [(4)] (5) The court may not impose the penalties under paragraph [(3)]
12 (4) of this subsection unless the State's Attorney serves notice on the defendant or the
13 defendant's counsel before the acceptance of a plea of guilty or nolo contendere or at
14 least 15 days before trial that:

15 (i) the State will seek the penalties under paragraph [(3)] (4) of
16 this subsection; and

17 (ii) lists the alleged prior convictions.

18 (i) An action or prosecution for [theft of property or services with a value of
19 less than \$500] A VIOLATION OF PARAGRAPH (2) OR (3) OF THIS SUBSECTION shall be
20 commenced within 2 years after the commission of the crime.

21 7-108.

22 (a) An indictment, information, warrant, or other charging document for theft
23 under this part, other than for taking a motor vehicle under § 7-105 of this part, is
24 sufficient if it substantially states:

25 "(name of defendant) on (date) in (county) stole (property or services stolen) of
26 (name of victim), having a value of (less than \$500, or \$500 or more) in violation of §
27 7-104 of the Criminal Law Article, against the peace, government, and dignity of the
28 State."

29 (b) An indictment, information, warrant, or other charging document for theft
30 under this part for taking a motor vehicle under § 7-105 of this part is sufficient if it
31 substantially states:

32 "(name of defendant) on (date) in (county) knowingly and willfully took a motor
33 vehicle out of (name of victim)'s lawful custody, control, or use, without the consent of
34 (name of victim), in violation of § 7-105 of the Criminal Law Article, against the
35 peace, government, and dignity of the State."

1 (c) In a case in the circuit court in which the general form of indictment or
2 information is used to charge a defendant with a crime under this part, the defendant,
3 on timely demand, is entitled to a bill of particulars.

4 (D) UNLESS SPECIFICALLY CHARGED BY THE STATE, THEFT OF PROPERTY OR
5 SERVICES WITH A VALUE OF LESS THAN \$100 AS PROVIDED UNDER § 7-104(G)(3) OF
6 THIS SUBTITLE MAY NOT BE CONSIDERED A LESSER INCLUDED CRIME OF ANY
7 OTHER CRIME.

8 7-110.

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

11 (2) IT IS NOT A DEFENSE TO THE CRIME OF THEFT OF PROPERTY OR
12 SERVICES WITH A VALUE OF LESS THAN \$100 AS PROVIDED UNDER § 7-104(G)(3) OF
13 THIS SUBTITLE THAT THE VALUE OF THE PROPERTY OR SERVICES AT ISSUE IS \$100
14 OR MORE.

15 8-103.

16 (a) A person may not obtain property or services by issuing a check if:

17 (1) the person knows that there are insufficient funds with the drawee to
18 cover the check and other outstanding checks;

19 (2) the person intends or believes when issuing the check that payment
20 will be refused by the drawee on presentment; and

21 (3) payment of the check is refused by the drawee on presentment.

22 (b) A person may not obtain property or services by issuing a check if:

23 (1) when issuing the check, the person knows that the person or, in the
24 case of a representative drawer, the person's principal intends, without the consent of
25 the payee, to stop or countermand the payment of the check, or otherwise to cause the
26 drawee to disregard, dishonor, or refuse to recognize the check; and

27 (2) payment is refused by the drawee on presentment.

28 (c) A person may not issue a check if:

29 (1) the check is in payment for services provided or to be provided by:

30 (i) an employee of the drawer or representative drawer; or

31 (ii) an independent contractor hired by the drawer or
32 representative drawer;

33 (2) the drawer or representative drawer:

1 (i) intends or believes when issuing the check that payment will be
2 refused by the drawee on presentment; or

3 (ii) knows that the drawer or, in the case of a representative
4 drawer, the principal of the representative drawer has insufficient funds with the
5 drawee to cover the check and other outstanding checks;

6 (3) the employee of the drawer or representative drawer or an
7 independent contractor hired by the drawer or representative drawer passes the
8 check to a third person; and

9 (4) payment is refused by the drawee on presentment.

10 (d) A person may not obtain property or services by passing a check if:

11 (1) the person knows that the drawer of the check has insufficient funds
12 with the drawee to cover the check and other outstanding checks;

13 (2) the person intends or believes when passing the check that payment
14 will be refused by the drawee on presentment; and

15 (3) payment of the check is refused by the drawee on presentment.

16 (e) A person may not obtain property or services by passing a check if:

17 (1) the person knows that:

18 (i) payment of the check has been stopped or countermanded; or

19 (ii) the drawee of the check will disregard, dishonor, or refuse to
20 recognize the check; and

21 (2) payment is refused by the drawee on presentment.

22 8-105.

23 (a) A person who obtains property or services by issuing or passing a check in
24 violation of § 8-103 of this subtitle may not be prosecuted under this article, if:

25 (1) other than falsely representing that there are sufficient funds with
26 the drawee to cover the check, the issuing or passing of the check is not accompanied
27 by a false representation; and

28 (2) the person who obtains the property or services makes the check good
29 within 10 days after the drawee dishonors the check.

30 (b) (1) A prosecution may not be commenced against a person described in
31 subsection (a) of this section earlier than 10 days after the drawee dishonors the
32 check.

1 (2) A person who obtains property or services by issuing a check in
2 violation of § 8-103 of this subtitle may be prosecuted immediately under this article,
3 if the person issuing the check:

4 (i) is the drawer; and

5 (ii) did not have an account with the drawee when the check was
6 issued.

7 (C) UNLESS SPECIFICALLY CHARGED BY THE STATE, OBTAINING PROPERTY
8 OR SERVICES WITH A VALUE OF LESS THAN \$100 BY ISSUING OR PASSING A CHECK IN
9 VIOLATION OF § 8-103 OF THIS SUBTITLE, AS PROVIDED IN § 8-106(D) OF THIS
10 SUBTITLE, MAY NOT BE CONSIDERED A LESSER INCLUDED CRIME OF ANY OTHER
11 CRIME.

12 8-106.

13 (a) A person who obtains property or services with a value of \$500 or more by
14 issuing or passing a check in violation of § 8-103 of this subtitle is guilty of a felony
15 and on conviction is subject to imprisonment not exceeding 15 years or a fine not
16 exceeding \$1,000 or both.

17 (b) A person who obtains property or services by issuing or passing more than
18 one check in violation of § 8-103 of this subtitle is guilty of a felony and on conviction
19 is subject to imprisonment not exceeding 15 years or a fine not exceeding \$1,000 or
20 both if:

21 (1) each check that is issued is for less than \$500 and is issued to the
22 same person within a 30-day period; and

23 (2) the cumulative value of the property or services is \$500 or more.

24 (c) [A] EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (D) OF THIS SECTION,
25 A person who obtains property or services with a value of less than \$500 by issuing or
26 passing a check in violation of § 8-103 of this subtitle is guilty of a misdemeanor and
27 on conviction is subject to imprisonment not exceeding 18 months or a fine not
28 exceeding \$100 or both.

29 (D) (1) A PERSON WHO OBTAINS PROPERTY OR SERVICES WITH A VALUE OF
30 LESS THAN \$100 BY ISSUING OR PASSING A CHECK IN VIOLATION OF § 8-103 OF THIS
31 SUBTITLE IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO
32 IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING \$500 OR BOTH.

33 (2) IT IS NOT A DEFENSE TO THE CRIME OF OBTAINING PROPERTY OR
34 SERVICES WITH A VALUE OF LESS THAN \$100 BY ISSUING OR PASSING A CHECK IN
35 VIOLATION OF § 8-103 OF THIS SUBTITLE THAT THE VALUE OF THE PROPERTY OR
36 SERVICES AT ISSUE IS \$100 OR MORE.

1 8-206.

2 (a) A person may not for the purpose of obtaining money, goods, services, or
3 anything of value, and with the intent to defraud another, use:

4 (1) a credit card obtained or retained in violation of § 8-204 or § 8-205 of
5 this subtitle; or

6 (2) a credit card that the person knows is counterfeit.

7 (b) A person may not, with the intent to defraud another, obtain money, goods,
8 services, or anything of value by representing:

9 (1) without the consent of the cardholder, that the person is the holder of
10 a specified credit card; or

11 (2) that the person is the holder of a credit card when the credit card had
12 not been issued.

13 (c) (1) If the value of all money, goods, services, and other things of value
14 obtained in violation of this section exceeds \$500, a person who violates this section is
15 guilty of a felony and on conviction is subject to imprisonment not exceeding 15 years
16 or a fine not exceeding \$1,000 or both.

17 (2) [If] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION,
18 IF the value of all money, goods, services, and other things of value obtained in
19 violation of this section does not exceed \$500, a person who violates this section is
20 guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding
21 18 months or a fine not exceeding \$500 or both.

22 (3) IF THE VALUE OF ALL MONEY, GOODS, SERVICES, AND OTHER
23 THINGS OF VALUE OBTAINED IN VIOLATION OF THIS SECTION DOES NOT EXCEED
24 \$100, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND
25 ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE
26 NOT EXCEEDING \$500 OR BOTH.

27 8-207.

28 (a) If a person is authorized by an issuer to furnish money, goods, services, or
29 anything of value on presentation of a credit card by the cardholder, the person or an
30 agent or employee of the person may not, with the intent to defraud the issuer or
31 cardholder:

32 (1) furnish money, goods, services, or anything of value on presentation
33 of:

34 (i) a credit card obtained or retained in violation of § 8-204 or §
35 8-205 of this subtitle; or

36 (ii) a credit card that the person knows is counterfeit; or

1 (2) fail to furnish money, goods, services, or anything of value that the
2 person represents in writing to the issuer that the person has furnished.

3 (b) (1) If the value of all money, goods, services, and other things of value
4 furnished or not furnished in violation of this section exceeds \$500, a person who
5 violates this section is guilty of a felony and on conviction is subject to imprisonment
6 not exceeding 15 years or a fine not exceeding \$1,000 or both.

7 (2) [If] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION,
8 IF the value of all money, goods, services, and other things of value furnished or not
9 furnished in violation of this section does not exceed \$500, a person who violates this
10 section is guilty of a misdemeanor and on conviction is subject to imprisonment not
11 exceeding 18 months or a fine not exceeding \$500 or both.

12 (3) IF THE VALUE OF ALL MONEY, GOODS, SERVICES, AND OTHER
13 THINGS OF VALUE FURNISHED OR NOT FURNISHED IN VIOLATION OF THIS SECTION
14 DOES NOT EXCEED \$100, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
15 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT
16 EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING \$500 OR BOTH.

17 8-209.

18 (a) A person may not receive money, goods, services, or anything of value if the
19 person knows or believes that the money, goods, services, or other thing of value was
20 obtained in violation of § 8-206 of this subtitle.

21 (b) (1) If the value of all money, goods, services, and other things of value
22 obtained in violation of this section exceeds \$500, a person who violates this section is
23 guilty of a felony and on conviction is subject to imprisonment not exceeding 15 years
24 or a fine not exceeding \$1,000 or both.

25 (2) [If] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION,
26 IF the value of all money, goods, services, and other things of value obtained in
27 violation of this section does not exceed \$500, a person who violates this section is
28 guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding
29 18 months or a fine not exceeding \$500 or both.

30 (3) IF THE VALUE OF ALL MONEY, GOODS, SERVICES, AND OTHER
31 THINGS OF VALUE OBTAINED IN VIOLATION OF THIS SECTION DOES NOT EXCEED
32 \$100, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND
33 ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE
34 NOT EXCEEDING \$500 OR BOTH.

35 8-211.

36 (A) IT IS NOT A DEFENSE TO A CRIME UNDER § 8-206, § 8-207, OR § 8-209 OF
37 THIS SUBTITLE INVOLVING MONEY, GOODS, SERVICES, AND OTHER THINGS OF
38 VALUE WITH A VALUE ~~OF LESS THAN~~ NOT EXCEEDING \$100 THAT THE VALUE OF THE
39 MONEY, GOODS, SERVICES, AND OTHER THINGS OF VALUE AT ISSUE IS MORE THAN
40 \$100 ~~OR MORE~~.

1 (B) UNLESS SPECIFICALLY CHARGED BY THE STATE, A VIOLATION OF § 8-206,
2 § 8-207, OR § 8-209 OF THIS SUBTITLE INVOLVING MONEY, GOODS, SERVICES, AND
3 OTHER THINGS OF VALUE WITH A VALUE ~~OF LESS THAN~~ NOT EXCEEDING \$100, MAY
4 NOT BE CONSIDERED A LESSER INCLUDED CRIME OF ANY OTHER CRIME.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2004.