
By: **Senator Mooney**
Introduced and read first time: February 3, 2004
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law - Theft or Unauthorized Use of Motor Vehicle - Admissibility**
3 **of Owner Affidavit**

4 FOR the purpose of authorizing the admissibility of a certain affidavit by a certain
5 owner of a motor vehicle into evidence at a trial for certain crimes involving the
6 theft, taking, or unauthorized use of the motor vehicle under certain
7 circumstances; requiring the State, within a certain period of time, to provide
8 the defendant with a copy of the affidavit and certain notice that the State
9 intends to rely on and introduce the affidavit into evidence; providing that
10 certain subsequent notice to the defendant is not required under certain
11 circumstances; authorizing the defendant to require the State to compel the
12 attendance and testimony of the owner; requiring the defendant, within a
13 certain period of time, to provide notice to the court and to the State that the
14 defendant elects to require the State to compel the attendance and testimony of
15 the owner; providing for inadmissibility of certain evidence under certain
16 circumstances; providing for the waiver of certain rights of the defendant under
17 certain circumstances; defining a certain term; and generally relating to theft,
18 taking, or unauthorized use of a motor vehicle.

19 BY repealing and reenacting, without amendments,
20 Article - Criminal Law
21 Section 7-104, 7-105, and 7-203
22 Annotated Code of Maryland
23 (2002 Volume and 2003 Supplement)

24 BY adding to
25 Article - Criminal Law
26 Section 7-111
27 Annotated Code of Maryland
28 (2002 Volume and 2003 Supplement)

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

1

Article - Criminal Law

2 7-104.

3 (a) A person may not willfully or knowingly obtain or exert unauthorized
4 control over property, if the person:

5 (1) intends to deprive the owner of the property;

6 (2) willfully or knowingly uses, conceals, or abandons the property in a
7 manner that deprives the owner of the property; or

8 (3) uses, conceals, or abandons the property knowing the use,
9 concealment, or abandonment probably will deprive the owner of the property.

10 (b) A person may not obtain control over property by willfully or knowingly
11 using deception, if the person:

12 (1) intends to deprive the owner of the property;

13 (2) willfully or knowingly uses, conceals, or abandons the property in a
14 manner that deprives the owner of the property; or

15 (3) uses, conceals, or abandons the property knowing the use,
16 concealment, or abandonment probably will deprive the owner of the property.

17 (c) (1) A person may not possess stolen personal property knowing that it
18 has been stolen, or believing that it probably has been stolen, if the person:

19 (i) intends to deprive the owner of the property;

20 (ii) willfully or knowingly uses, conceals, or abandons the property
21 in a manner that deprives the owner of the property; or

22 (iii) uses, conceals, or abandons the property knowing that the use,
23 concealment, or abandonment probably will deprive the owner of the property.

24 (2) In the case of a person in the business of buying or selling goods, the
25 knowledge required under this subsection may be inferred if:

26 (i) the person possesses or exerts control over property stolen from
27 more than one person on separate occasions;

28 (ii) during the year preceding the criminal possession charged, the
29 person has acquired stolen property in a separate transaction; or

30 (iii) being in the business of buying or selling property of the sort
31 possessed, the person acquired it for a consideration that the person knew was far
32 below a reasonable value.

1 (3) In a prosecution for theft by possession of stolen property under this
2 subsection, it is not a defense that:

3 (i) the person who stole the property has not been convicted,
4 apprehended, or identified;

5 (ii) the defendant stole or participated in the stealing of the
6 property; or

7 (iii) the stealing of the property did not occur in the State.

8 (4) Unless the person who criminally possesses stolen property
9 participated in the stealing, the person who criminally possesses stolen property and
10 a person who has stolen the property are not accomplices in theft for the purpose of
11 any rule of evidence requiring corroboration of the testimony of an accomplice.

12 (d) A person may not obtain control over property knowing that the property
13 was lost, mislaid, or was delivered under a mistake as to the identity of the recipient
14 or nature or amount of the property, if the person:

15 (1) knows or learns the identity of the owner or knows, is aware of, or
16 learns of a reasonable method of identifying the owner;

17 (2) fails to take reasonable measures to restore the property to the
18 owner; and

19 (3) intends to deprive the owner permanently of the use or benefit of the
20 property when the person obtains the property or at a later time.

21 (e) A person may not obtain the services of another that are available only for
22 compensation:

23 (1) by deception; or

24 (2) with knowledge that the services are provided without the consent of
25 the person providing them.

26 (f) Under this section, an offender's intention or knowledge that a promise
27 would not be performed may not be established by or inferred solely from the fact that
28 the promise was not performed.

29 (g) (1) A person convicted of theft of property or services with a value of
30 \$500 or more is guilty of a felony and:

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

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

1 (2) Except as provided in paragraph (3) of this subsection, a person
2 convicted of theft of property or services with a value of less than \$500, is guilty of a
3 misdemeanor and:

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

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

8 (3) Subject to paragraph (4) of this subsection, a person who has two or
9 more prior convictions under this subtitle and who is convicted of theft of property or
10 services with a value of less than \$500 is guilty of a misdemeanor and:

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

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

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

19 (i) the State will seek the penalties under paragraph (3) of this
20 subsection; and

21 (ii) lists the alleged prior convictions.

22 (h) (1) If a person is convicted of a violation under this section for failure to
23 pay for motor fuel after the motor fuel was dispensed into a vehicle, the court shall:

24 (i) notify the person that the person's driver's license may be
25 suspended under § 16-206.1 of the Transportation Article; and

26 (ii) notify the Motor Vehicle Administration of the violation.

27 (2) The Chief Judge of the District Court and the Administrative Office
28 of the Courts, in conjunction with the Motor Vehicle Administration, shall establish
29 uniform procedures for reporting a violation under this subsection.

30 (i) An action or prosecution for theft of property or services with a value of
31 less than \$500 shall be commenced within 2 years after the commission of the crime.
32 7-105.

33 (a) In this section, "owner" means a person who has a lawful interest in or is in
34 lawful possession of a motor vehicle by consent or chain of consent of the title owner.

1 (b) A person may not knowingly and willfully take a motor vehicle out of the
2 owner's lawful custody, control, or use without the owner's consent.

3 (c) A person who violates this section:

4 (1) is guilty of the felony of taking a motor vehicle and on conviction is
5 subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both;
6 and

7 (2) shall restore the motor vehicle or, if unable to restore the motor
8 vehicle, pay to the owner the full value of the motor vehicle.

9 (d) (1) This section does not preclude prosecution for theft of a motor vehicle
10 under § 7-104 of this part.

11 (2) If a person is convicted under § 7-104 of this part and this section for
12 the same act or transaction, the conviction under this section shall merge for
13 sentencing purposes into the conviction under § 7-104 of this part.

14 7-111.

15 (A) IN THIS SECTION, "OWNER" MEANS A PERSON WHO HAS A LAWFUL
16 INTEREST IN OR IS IN LAWFUL POSSESSION OF A MOTOR VEHICLE BY CONSENT OR
17 CHAIN OF CONSENT OF THE TITLE OWNER.

18 (B) SUBJECT TO SUBSECTIONS (C) AND (D) OF THIS SECTION, IN A CRIMINAL
19 TRIAL IN WHICH A CHARGE FOR A VIOLATION OF § 7-104, § 7-105, OR § 7-203 OF THIS
20 TITLE INVOLVING THE ALLEGED THEFT, TAKING, OR UNAUTHORIZED USE OF A
21 MOTOR VEHICLE FROM THE LAWFUL POSSESSION OF THE OWNER IS BEING
22 PROSECUTED, AN AFFIDAVIT BY THE OWNER OF THE MOTOR VEHICLE WHO IS NOT
23 PRESENT AT THE TRIAL IS ADMISSIBLE INTO EVIDENCE AT THE TRIAL THAT:

24 (1) THE MOTOR VEHICLE WAS TAKEN UNLAWFULLY FROM THE OWNER
25 WITHOUT THE AUTHORIZATION OF THE OWNER; AND

26 (2) THE DEFENDANT DID NOT HAVE PERMISSION OF THE OWNER TO
27 OPERATE, USE, OR POSSESS THE MOTOR VEHICLE.

28 (C) (1) IN A TRIAL IN WHICH THE STATE INTENDS TO INTRODUCE INTO
29 EVIDENCE AN AFFIDAVIT UNDER SUBSECTION (B) OF THIS SECTION, THE STATE
30 SHALL, AT LEAST 30 DAYS PRIOR TO THE TRIAL, PROVIDE THE DEFENDANT WITH:

31 (I) A COPY OF THE AFFIDAVIT; AND

32 (II) WRITTEN NOTICE THAT THE STATE INTENDS TO RELY ON THE
33 AFFIDAVIT AND TO INTRODUCE THE AFFIDAVIT INTO EVIDENCE AT THE TRIAL.

34 (2) IF THE STATE HAS PROVIDED THE DEFENDANT WITH THE AFFIDAVIT
35 AND NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION AND THE
36 DISTRICT COURT IS SUBSEQUENTLY DEPRIVED OF JURISDICTION OVER THE TRIAL

1 BASED ON THE DEFENDANT'S DEMAND FOR A JURY TRIAL OR AN APPEAL TO THE
2 CIRCUIT COURT, SUBSEQUENT NOTICE TO THE DEFENDANT IS NOT REQUIRED FOR
3 THE AFFIDAVIT TO BE ADMISSIBLE AT TRIAL UNDER SUBSECTION (B) OF THIS
4 SECTION.

5 (D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE DEFENDANT
6 MAY REQUIRE THE STATE TO COMPEL THE ATTENDANCE AND TESTIMONY OF THE
7 OWNER WHO FILED AN AFFIDAVIT UNDER SUBSECTION (B) OF THIS SECTION.

8 (2) IF THE DEFENDANT ELECTS TO REQUIRE THE ATTENDANCE AND
9 TESTIMONY OF THE OWNER UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE
10 DEFENDANT SHALL, AT LEAST 20 DAYS PRIOR TO TRIAL, NOTIFY THE COURT AND
11 THE STATE THAT THE DEFENDANT ELECTS TO REQUIRE THE STATE TO COMPEL THE
12 ATTENDANCE AND TESTIMONY OF THE OWNER WHO FILED AN AFFIDAVIT UNDER
13 SUBSECTION (B) OF THIS SECTION.

14 (3) (I) IF THE DEFENDANT PROVIDES THE COURT AND THE STATE
15 TIMELY NOTICE UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE AFFIDAVIT OF
16 THE OWNER IS INADMISSIBLE AT TRIAL WITHOUT THE ATTENDANCE AND
17 TESTIMONY OF THE OWNER.

18 (II) THE FAILURE OF THE DEFENDANT TO PROVIDE TIMELY
19 NOTICE TO THE COURT AND TO THE STATE UNDER THIS SUBSECTION CONSTITUTES
20 A WAIVER OF THE DEFENDANT'S RIGHT TO CONFRONT THE OWNER AND COMPEL
21 THE OWNER'S ATTENDANCE AND TESTIMONY AT TRIAL.

22 7-203.

23 (a) Without the permission of the owner, a person may not enter or be on the
24 premises of another, and take and carry away from the premises or out of the custody
25 or use of the other, or the other's agent, or a governmental unit any property,
26 including:

27 (1) a vehicle;

28 (2) a motor vehicle;

29 (3) a vessel; or

30 (4) livestock.

31 (b) A person who violates this section is guilty of a misdemeanor and on
32 conviction:

33 (1) is subject to imprisonment for not less than 6 months and not
34 exceeding 4 years or a fine not less than \$50 and not exceeding \$100 or both; and

35 (2) shall restore the property taken and carried away in violation of this
36 section or, if unable to restore the property, shall pay to the owner the full value of the
37 property.

1 (c) It is not a defense to this section that the person intends to hold or keep the
2 property for the person's present use and not with the intent of appropriating or
3 converting the property.

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