

SENATE BILL 513

Unofficial Copy
E1

2004 Regular Session
4r1898
CF 4r1897

By: **Chairman, Judicial Proceedings Committee (By Request - Maryland
Judicial Conference)**

Introduced and read first time: February 6, 2004

Assigned to: Judicial Proceedings

A BILL ENTITLED

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.

17 BY repealing and reenacting, with amendments,
18 Article - Courts and Judicial Proceedings
19 Section 4-302(d)
20 Annotated Code of Maryland
21 (2002 Replacement Volume and 2003 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article - Criminal Law
24 Section 7-103, 7-104(g) and (i), 7-108, 7-110(b), 8-105, 8-106, 8-206, 8-207,
25 and 8-209
26 Annotated Code of Maryland
27 (2002 Volume and 2003 Supplement)

28 BY repealing and reenacting, without amendments,
29 Article - Criminal Law
30 Section 8-103

1 Annotated Code of Maryland
2 (2002 Volume and 2003 Supplement)

3 BY adding to
4 Article - Criminal Law
5 Section 8-211
6 Annotated Code of Maryland
7 (2002 Volume and 2003 Supplement)

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

10 **Article - Courts and Judicial Proceedings**

11 4-302.

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

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

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

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

21 1. § 5-601 or § 5-620 of the Criminal Law Article; OR

22 2. § 7-104, § 8-103, § 8-206, § 8-207, OR § 8-209 OF THE
23 CRIMINAL LAW ARTICLE INVOLVING A VALUE OF LESS THAN \$100.

24 (ii) A circuit court does have jurisdiction to try a case charging a
25 violation of § 5-601 or § 5-620 of the Criminal Law Article OR A VIOLATION OF §
26 7-104, § 8-103, § 8-206, § 8-207, OR § 8-209 OF THE CRIMINAL LAW ARTICLE INVOLVING
27 A VALUE OF LESS THAN \$100 if the defendant:

28 1. Properly demands a jury trial;

29 2. Appeals as provided by law from a final judgment entered
30 in the District Court; or

31 3. Is charged with another offense arising out of the same
32 circumstances that is within a circuit court's jurisdiction.

Article - Criminal Law

1 7-103.

2 (a) In this section, "value" means:

3 (1) the market value of the property or service at the time and place of
4 the crime; or

5 (2) if the market value cannot satisfactorily be ascertained, the cost of
6 the replacement of the property or service within a reasonable time after the crime.

7 (b) The value of property or service under this part shall be determined in
8 accordance with this section.

9 (c) (1) Except as provided in paragraph (2) of this subsection, this
10 subsection applies to a written instrument whether or not the instrument has been
11 issued or delivered.

12 (2) This subsection does not apply to a written instrument that has a
13 readily ascertainable market value.

14 (3) (i) For purposes of this part, a written instrument is valued as
15 provided by this paragraph.

16 (ii) The value of an instrument constituting evidence of debt,
17 including a check, draft, or promissory note, is the amount due or collectible on the
18 instrument. That value is ordinarily the face amount of the instrument, less any
19 portion that has been satisfied.

20 (iii) The value of any other instrument that creates, releases,
21 discharges, or otherwise affects a valuable legal right, privilege, or obligation is the
22 amount of economic loss the owner of the instrument might reasonably suffer because
23 of the loss of the instrument.

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

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

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

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

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

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

6 7-104.

7 (g) (1) A person convicted of theft of property or services with a value of
8 \$500 or more is guilty of a felony and:

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

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

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

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

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

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

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

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

26 [(3)] (4) Subject to paragraph [(4)] (5) of this subsection, a person who
27 has two or more prior convictions under this subtitle and who is convicted of theft of
28 property or services with a value of less than \$500 UNDER PARAGRAPH (2) OF THIS
29 SUBSECTION is guilty of a misdemeanor and:

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

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

34 [(4)] (5) The court may not impose the penalties under paragraph [(3)]
35 (4) of this subsection unless the State's Attorney serves notice on the defendant or the

1 defendant's counsel before the acceptance of a plea of guilty or nolo contendere or at
2 least 15 days before trial that:

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

5 (ii) lists the alleged prior convictions.

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

9 7-108.

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

13 "(name of defendant) on (date) in (county) stole (property or services stolen) of
14 (name of victim), having a value of (less than \$500, or \$500 or more) in violation of §
15 7-104 of the Criminal Law Article, against the peace, government, and dignity of the
16 State."

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

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

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

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

31 7-110.

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

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

1 8-103.

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

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

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

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

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

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

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

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

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

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

17 (ii) an independent contractor hired by the drawer or
18 representative drawer;

19 (2) the drawer or representative drawer:

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

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

25 (3) the employee of the drawer or representative drawer or an
26 independent contractor hired by the drawer or representative drawer passes the
27 check to a third person; and

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

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

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

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

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

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

5 (1) the person knows that:

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

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

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

10 8-105.

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

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

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

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

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

24 (i) is the drawer; and

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

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

32 8-106.

33 (a) A person who obtains property or services with a value of \$500 or more by
34 issuing or passing a check in violation of § 8-103 of this subtitle is guilty of a felony

1 and on conviction is subject to imprisonment not exceeding 15 years or a fine not
2 exceeding \$1,000 or both.

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

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

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

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

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

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

23 8-206.

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

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

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

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

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

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

35 (c) (1) If the value of all money, goods, services, and other things of value
36 obtained in violation of this section exceeds \$500, a person who violates this section is

1 guilty of a felony and on conviction is subject to imprisonment not exceeding 15 years
2 or a fine not exceeding \$1,000 or both.

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

8 (3) IF THE VALUE OF ALL MONEY, GOODS, SERVICES, AND OTHER
9 THINGS OF VALUE OBTAINED IN VIOLATION OF THIS SECTION DOES NOT EXCEED
10 \$100, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND
11 ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE
12 NOT EXCEEDING \$500 OR BOTH.

13 8-207.

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

18 (1) furnish money, goods, services, or anything of value on presentation
19 of:

20 (i) a credit card obtained or retained in violation of § 8-204 or §
21 8-205 of this subtitle; or

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

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

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

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

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

1 8-209.

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

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

9 (2) [If] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION,
10 IF the value of all money, goods, services, and other things of value obtained in
11 violation of this section does not exceed \$500, a person who violates this section is
12 guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding
13 18 months or a fine not exceeding \$500 or both.

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

19 8-211.

20 (A) IT IS NOT A DEFENSE TO A CRIME UNDER § 8-206, § 8-207, OR § 8-209 OF
21 THIS SUBTITLE INVOLVING MONEY, GOODS, SERVICES, AND OTHER THINGS OF
22 VALUE WITH A VALUE OF LESS THAN \$100 THAT THE VALUE OF THE MONEY, GOODS,
23 SERVICES, AND OTHER THINGS OF VALUE AT ISSUE IS \$100 OR MORE.

24 (B) UNLESS SPECIFICALLY CHARGED BY THE STATE, A VIOLATION OF § 8-206,
25 § 8-207, OR § 8-209 OF THIS SUBTITLE INVOLVING MONEY, GOODS, SERVICES, AND
26 OTHER THINGS OF VALUE WITH A VALUE OF LESS THAN \$100, MAY NOT BE
27 CONSIDERED A LESSER INCLUDED CRIME OF ANY OTHER CRIME.

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