

SENATE BILL 513

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2004 Regular Session
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By: **Chairman, Judicial Proceedings Committee (By Request - Maryland
Judicial Conference)**

Introduced and read first time: February 6, 2004
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 17, 2004

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.

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,

1 and 8-209
 2 Annotated Code of Maryland
 3 (2002 Volume and 2003 Supplement)

4 BY repealing and reenacting, without amendments,
 5 Article - Criminal Law
 6 Section 8-103
 7 Annotated Code of Maryland
 8 (2002 Volume and 2003 Supplement)

9 BY adding to
 10 Article - Criminal Law
 11 Section 8-211
 12 Annotated Code of Maryland
 13 (2002 Volume and 2003 Supplement)

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

16 ~~Article—Courts and Judicial Proceedings~~

17 ~~4-302.~~

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

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

23 (ii) That is a felony, as provided in § 4-301(b)(2), (6), (7), (8), (9),
 24 (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), and (20) of this subtitle.

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

27 1. § 5-601 or § 5-620 of the Criminal Law Article; OR

28 2. § 7-104, § 8-103, § 8-206, § 8-207, OR § 8-209 OF THE
 29 CRIMINAL LAW ARTICLE INVOLVING A VALUE OF LESS THAN \$100.

30 (ii) A circuit court does have jurisdiction to try a case charging a
 31 violation of § 5-601 or § 5-620 of the Criminal Law Article OR A VIOLATION OF §
 32 7-104, § 8-103, § 8-206, § 8-207, OR § 8-209 OF THE CRIMINAL LAW ARTICLE INVOLVING
 33 A VALUE OF LESS THAN \$100 if the defendant:

34 1. Properly demands a jury trial;

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

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

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

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

11 7-104.

12 (g) (1) A person convicted of theft of property or services with a value of
13 \$500 or more is guilty of a felony and:

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

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

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

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

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

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

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

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

31 [(3)] (4) Subject to paragraph [(4)] (5) of this subsection, a person who
32 has two or more prior convictions under this subtitle and who is convicted of theft of
33 property or services with a value of less than \$500 UNDER PARAGRAPH (2) OF THIS
34 SUBSECTION is guilty of a misdemeanor and:

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

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

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

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

9 (ii) lists the alleged prior convictions.

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

13 7-108.

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

17 "(name of defendant) on (date) in (county) stole (property or services stolen) of
18 (name of victim), having a value of (less than \$500, or \$500 or more) in violation of §
19 7-104 of the Criminal Law Article, against the peace, government, and dignity of the
20 State."

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

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

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

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

35 7-110.

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

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

5 8-103.

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

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

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

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

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

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

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

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

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

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

21 (ii) an independent contractor hired by the drawer or
22 representative drawer;

23 (2) the drawer or representative drawer:

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

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

29 (3) the employee of the drawer or representative drawer or an
30 independent contractor hired by the drawer or representative drawer passes the
31 check to a third person; and

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

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

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

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

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

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

7 (1) the person knows that:

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

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

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

12 8-105.

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

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

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

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

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

26 (i) is the drawer; and

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

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

1 8-106.

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

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

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

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

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

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

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

26 8-206.

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

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

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

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

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

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

3 (c) (1) If the value of all money, goods, services, and other things of value
4 obtained in violation of this section exceeds \$500, a person who violates this section is
5 guilty of a felony and on conviction is subject to imprisonment not exceeding 15 years
6 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 obtained in
9 violation of this section does not exceed \$500, a person who violates this section is
10 guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding
11 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 OBTAINED IN VIOLATION OF THIS SECTION DOES NOT EXCEED
14 \$100, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND
15 ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE
16 NOT EXCEEDING \$500 OR BOTH.

17 8-207.

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

22 (1) furnish money, goods, services, or anything of value on presentation
23 of:

24 (i) a credit card obtained or retained in violation of § 8-204 or §
25 8-205 of this subtitle; or

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

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

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

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

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

6 8-209.

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

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

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

19 (3) IF THE VALUE OF ALL MONEY, GOODS, SERVICES, AND OTHER
20 THINGS OF VALUE OBTAINED IN VIOLATION OF THIS SECTION DOES NOT EXCEED
21 \$100, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND
22 ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE
23 NOT EXCEEDING \$500 OR BOTH.

24 8-211.

25 (A) IT IS NOT A DEFENSE TO A CRIME UNDER § 8-206, § 8-207, OR § 8-209 OF
26 THIS SUBTITLE INVOLVING MONEY, GOODS, SERVICES, AND OTHER THINGS OF
27 VALUE WITH A VALUE ~~OF LESS THAN~~ NOT EXCEEDING \$100 THAT THE VALUE OF THE
28 MONEY, GOODS, SERVICES, AND OTHER THINGS OF VALUE AT ISSUE IS MORE THAN
29 \$100 ~~OR MORE~~.

30 (B) UNLESS SPECIFICALLY CHARGED BY THE STATE, A VIOLATION OF § 8-206,
31 § 8-207, OR § 8-209 OF THIS SUBTITLE INVOLVING MONEY, GOODS, SERVICES, AND
32 OTHER THINGS OF VALUE WITH A VALUE ~~OF LESS THAN~~ NOT EXCEEDING \$100, MAY
33 NOT BE CONSIDERED A LESSER INCLUDED CRIME OF ANY OTHER CRIME.

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

