
By: **Senator Green**

Introduced and read first time: February 19, 2004

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

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

4 FOR the purpose of authorizing the introduction of a certain affidavit as evidence of
5 certain facts in a criminal case involving the theft, unlawful taking, or
6 unauthorized use of a motor vehicle; requiring the State to provide written
7 notice to the defendant within a certain period of time that the State intends to
8 rely on the affidavit and introduce the affidavit at the proceeding; allowing the
9 defendant to require the State to compel the appearance of the affiant within a
10 certain period of time; and generally relating to the introduction of evidence of
11 theft of motor vehicles.

12 BY repealing and reenacting, without amendments,
13 Article - Criminal Law
14 Section 7-104 and 7-105
15 Annotated Code of Maryland
16 (2002 Volume and 2003 Supplement)

17 BY adding to
18 Article - Criminal Law
19 Section 7-105.1
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 - Criminal Law**

25 7-104.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (ii) the defendant stole or participated in the stealing of the
33 property; or

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

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

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

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

10 (2) fails to take reasonable measures to restore the property to the
11 owner; and

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

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

16 (1) by deception; or

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

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

22 (g) (1) A person convicted of theft of property or services with a value of
23 \$500 or more is guilty of a felony and:

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

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

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

31 (i) is subject to imprisonment not exceeding 18 months or a fine
32 not exceeding \$500 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 (3) Subject to paragraph (4) of this subsection, a person who has two or
2 more prior convictions under this subtitle and who is convicted of theft of property or
3 services with a value of less than \$500 is guilty of a misdemeanor and:

4 (i) is subject to imprisonment not exceeding 5 years or a fine not
5 exceeding \$5,000 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 (4) The court may not impose the penalties under paragraph (3) of this
9 subsection unless the State's Attorney serves notice on the defendant or the
10 defendant's counsel before the acceptance of a plea of guilty or nolo contendere or at
11 least 15 days before trial that:

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

14 (ii) lists the alleged prior convictions.

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

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

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

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

23 (i) An action or prosecution for theft of property or services with a value of
24 less than \$500 shall be commenced within 2 years after the commission of the crime.
25 7-105.

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

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

30 (c) A person who violates this section:

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

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

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

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

6 7-105.1.

7 (A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, IN A CRIMINAL CASE
8 INVOLVING THE THEFT, UNLAWFUL TAKING, OR UNAUTHORIZED USE OF A MOTOR
9 VEHICLE, AN AFFIDAVIT BY THE LAWFUL OWNER OF THE MOTOR VEHICLE MAY BE
10 INTRODUCED IN THE CRIMINAL PROCEEDING AS EVIDENCE THAT:

11 (1) THE MOTOR VEHICLE WAS TAKEN UNLAWFULLY FROM THE LAWFUL
12 OWNER WITHOUT THE AUTHORIZATION OF THE LAWFUL OWNER; AND

13 (2) THE DEFENDANT IN THE CRIMINAL CASE DID NOT HAVE
14 PERMISSION TO OPERATE, USE, OR POSSESS THE MOTOR VEHICLE.

15 (B) (1) IN A PROCEEDING IN WHICH THE STATE INTENDS TO INTRODUCE
16 INTO EVIDENCE AN AFFIDAVIT AS PROVIDED UNDER SUBSECTION (A) OF THIS
17 SECTION, THE STATE SHALL PROVIDE AT LEAST 15 DAYS WRITTEN NOTICE TO THE
18 DEFENDANT THAT THE STATE INTENDS TO:

19 (I) RELY ON THE AFFIDAVIT; AND

20 (II) INTRODUCE THE AFFIDAVIT INTO EVIDENCE AT THE
21 PROCEEDING.

22 (2) THE DEFENDANT MAY:

23 (I) AT LEAST 10 DAYS BEFORE THE PROCEEDING DESCRIBED IN
24 PARAGRAPH (1) OF THIS SUBSECTION, REQUIRE THE STATE TO COMPEL THE
25 ATTENDANCE OF THE AFFIANT; AND

26 (II) EXAMINE THE AFFIANT AT TRIAL.

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