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By: **Chairman, Judiciary Committee (By Request - Departmental - State Police)**

Introduced and read first time: February 9, 2005

Assigned to: Judiciary

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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, unlawful 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 unlawful taking, or unauthorized use of a motor vehicle.

19 BY repealing and reenacting, without amendments,  
20 Article - Criminal Law  
21 Section 7-104 and 7-105  
22 Annotated Code of Maryland  
23 (2002 Replacement Volume and 2004 Supplement)

24 BY adding to  
25 Article - Criminal Law  
26 Section 7-111  
27 Annotated Code of Maryland  
28 (2002 Replacement Volume and 2004 Supplement)

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

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**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 paragraphs (3) and (4) of this subsection, a  
2 person convicted of theft of property or services with a value of less than \$500, is  
3 guilty of a 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) A person convicted of theft of property or services with a value of less  
9 than \$100 is guilty of a misdemeanor and:

10 (i) is subject to imprisonment not exceeding 90 days or a fine not  
11 exceeding \$500 or both; and

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

14 (4) Subject to paragraph (5) of this subsection, a person who has two or  
15 more prior convictions under this subtitle and who is convicted of theft of property or  
16 services with a value of less than \$500 under paragraph (2) of this subsection is guilty  
17 of a misdemeanor and:

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

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

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

26 (i) the State will seek the penalties under paragraph (4) of this  
27 subsection; and

28 (ii) lists the alleged prior convictions.

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

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

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

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

1 (i) An action or prosecution for a violation of paragraph (2) or (3) of this  
2 subsection shall be commenced within 2 years after the commission of the crime.

3 (j) A person who violates this section by use of an interactive computer service  
4 may be prosecuted, indicted, tried, and convicted in any county in which the victim  
5 resides or the electronic communication originated or terminated.

6 7-105.

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

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

11 (c) A person who violates this section:

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

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

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

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

22 7-111.

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

26 (B) SUBJECT TO SUBSECTIONS (C) AND (D) OF THIS SECTION, IN A CRIMINAL  
27 TRIAL IN WHICH A DEFENDANT IS BEING PROSECUTED FOR A VIOLATION OF § 7-104,  
28 § 7-105, OR § 7-203 OF THIS TITLE INVOLVING THE ALLEGED THEFT, TAKING, OR  
29 UNAUTHORIZED USE OF A MOTOR VEHICLE, AN AFFIDAVIT BY THE OWNER OF THE  
30 MOTOR VEHICLE WHO IS NOT PRESENT AT THE TRIAL IS ADMISSIBLE AT THE TRIAL  
31 AS EVIDENCE THAT:

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

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

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

4 (I) A COPY OF THE AFFIDAVIT; AND

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

7 (2) IF THE STATE HAS PROVIDED THE DEFENDANT WITH THE AFFIDAVIT  
8 AND NOTICE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION AND THE  
9 DISTRICT COURT IS SUBSEQUENTLY DEPRIVED OF JURISDICTION OVER THE TRIAL  
10 BASED ON THE DEFENDANT'S DEMAND FOR A JURY TRIAL OR AN APPEAL TO THE  
11 CIRCUIT COURT, SUBSEQUENT NOTICE TO THE DEFENDANT IS NOT REQUIRED FOR  
12 THE AFFIDAVIT TO BE ADMISSIBLE AT TRIAL UNDER SUBSECTION (B) OF THIS  
13 SECTION.

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

17 (2) IF THE DEFENDANT ELECTS TO REQUIRE THE ATTENDANCE AND  
18 TESTIMONY OF THE OWNER UNDER PARAGRAPH (1) OF THIS SUBSECTION, AT LEAST  
19 20 DAYS BEFORE THE TRIAL, THE DEFENDANT SHALL NOTIFY THE COURT AND THE  
20 STATE THAT THE DEFENDANT ELECTS TO REQUIRE THE STATE TO COMPEL THE  
21 ATTENDANCE AND TESTIMONY OF THE OWNER WHO FILED AN AFFIDAVIT UNDER  
22 SUBSECTION (B) OF THIS SECTION.

23 (3) (I) IF THE DEFENDANT PROVIDES THE COURT AND THE STATE  
24 TIMELY NOTICE UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE AFFIDAVIT OF  
25 THE OWNER IS INADMISSIBLE AT TRIAL WITHOUT THE ATTENDANCE AND  
26 TESTIMONY OF THE OWNER.

27 (II) THE FAILURE OF THE DEFENDANT TO PROVIDE TIMELY  
28 NOTICE TO THE COURT AND TO THE STATE UNDER THIS SUBSECTION CONSTITUTES  
29 A WAIVER OF THE DEFENDANT'S RIGHT TO CONFRONT THE OWNER AND COMPEL  
30 THE OWNER'S ATTENDANCE AND TESTIMONY AT TRIAL.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
32 October 1, 2005.