

HOUSE BILL 501

E1
SB 504/08 – JPR

9lr2150
CF SB 192

By: **Delegates Kelly, Dwyer, Kramer, McComas, and Smigiel**
Introduced and read first time: February 4, 2009
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 23, 2009

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law - ~~Theft~~ Fraudulent Conversion of Rental Property**

3 FOR the purpose of ~~prohibiting a person from hiring or leasing personal property or~~
4 ~~equipment from another person who is in lawful possession of the personal~~
5 ~~property or equipment with intent to defraud that person of the rental due~~
6 ~~under the rental agreement; prohibiting a person from abandoning or willfully~~
7 ~~refusing to redeliver personal property as required under a rental agreement~~
8 ~~without the consent of the lessor or the lessor's agent with intent to defraud the~~
9 ~~lessor or the lessor's agent; establishing penalties for a violation of this Act;~~
10 ~~making technical corrections; clarifying that the prohibition against fraudulent~~
11 conversion of rental property applies to a written contract or written lease for a
12 leased or rented good or thing of value whether or not the contract or lease
13 contains an option to purchase the good or thing of value if the contract or lease
14 meets certain requirements; providing that a prosecution under the prohibition
15 against fraudulent conversion of rental property does not preclude prosecution
16 for theft; requiring a conviction for fraudulent conversion of rental property to
17 merge for sentencing purposes into a conviction for theft under certain
18 circumstances; and generally relating to the ~~theft~~ fraudulent conversion of
19 rental property.

20 BY repealing and reenacting, with amendments,
21 Article – Criminal Law
22 Section ~~7-104~~ 8-407
23 Annotated Code of Maryland
24 (2002 Volume and 2008 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

3 **Article – Criminal Law**

4 ~~7-104.~~

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

14 (1) ~~intends to deprive the owner of the property;~~

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

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

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

21 (i) ~~intends to deprive the owner of the property;~~

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

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

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

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

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

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

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

6 ~~(i) the person who stole the property has not been convicted,~~
7 ~~apprehended, or identified;~~

8 ~~(ii) the defendant stole or participated in the stealing of the~~
9 ~~property;~~

10 ~~(iii) the property was provided by law enforcement as part of an~~
11 ~~investigation, if the property was described to the defendant as being obtained~~
12 ~~through the commission of theft; or~~

13 ~~(iv) the stealing of the property did not occur in the State.~~

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

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

21 ~~(1) knows or learns the identity of the owner or knows, is aware of, or~~
22 ~~learns of a reasonable method of identifying the owner;~~

23 ~~(2) fails to take reasonable measures to restore the property to the~~
24 ~~owner; and~~

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

27 ~~(e) A person may not obtain the services of another that are available only~~
28 ~~for compensation:~~

29 ~~(1) by deception; or~~

30 ~~(2) with knowledge that the services are provided without the consent~~
31 ~~of the person providing them.~~

32 ~~(F) A PERSON MAY NOT:~~

1 ~~(1) HIRE OR LEASE PERSONAL PROPERTY OR EQUIPMENT FROM~~
2 ~~ANOTHER PERSON WHO IS IN LAWFUL POSSESSION OF THE PERSONAL~~
3 ~~PROPERTY OR EQUIPMENT WITH INTENT TO DEFRAUD THAT PERSON OF THE~~
4 ~~RENTAL DUE UNDER THE RENTAL AGREEMENT; OR~~

5 ~~(2) ABANDON OR WILLFULLY REFUSE TO REDELIVER PERSONAL~~
6 ~~PROPERTY AS REQUIRED UNDER A RENTAL AGREEMENT WITHOUT THE~~
7 ~~CONSENT OF THE LESSOR OR THE LESSOR'S AGENT WITH INTENT TO DEFRAUD~~
8 ~~THE LESSOR OR THE LESSOR'S AGENT.~~

9 ~~[(f)] (G) Under this section, an offender's intention or knowledge that a~~
10 ~~promise would not be performed may not be established by or inferred solely from the~~
11 ~~fact that the promise was not performed.~~

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

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

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

18 ~~(2) Except as provided in paragraphs (3) and (4) of this subsection, a~~
19 ~~person convicted of theft of property or services with a value of less than \$500, is~~
20 ~~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~~
24 ~~owner the value of the property or services.~~

25 ~~(3) A person convicted of theft of property or services with a value of~~
26 ~~less than \$100 is guilty of a misdemeanor and:~~

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

29 ~~(ii) shall restore the property taken to the owner or pay the~~
30 ~~owner the value of the property or services.~~

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

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

3 ~~(ii) shall restore the property taken to the owner or pay the~~
4 ~~owner the value of the property or services.~~

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

9 ~~(i) the State will seek the penalties under paragraph (4) of this~~
10 ~~subsection; and~~

11 ~~(ii) lists the alleged prior convictions.~~

12 ~~[(h)] (I) (1) If a person is convicted of a violation under this section for~~
13 ~~failure to pay for motor fuel after the motor fuel was dispensed into a vehicle, the court~~
14 ~~shall:~~

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

17 ~~(ii) notify the Motor Vehicle Administration of the violation.~~

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

21 ~~[(i)] (J) An action or prosecution for a violation of subsection [(g)(2) or (3)]~~
22 ~~[(H)(2) OR (3)] of this section shall be commenced within 2 years after the commission~~
23 ~~of the crime.~~

24 ~~[(j)] (K) A person who violates this section by use of an interactive~~
25 ~~computer service may be prosecuted, indicted, tried, and convicted in any county in~~
26 ~~which the victim resides or the electronic communication originated or terminated.~~

27 8-407.

28 (a) This section applies to a WRITTEN CONTRACT OR written lease
29 [notwithstanding that] FOR A LEASED OR RENTED GOOD OR THING OF VALUE
30 WHETHER OR NOT the CONTRACT OR lease contains an option to purchase the good
31 or thing of value if the lease:

32 (1) does not exceed a period of 6 months; and

1 (2) is not for nominal consideration.

2 (b) A person may not fraudulently convert to the person's own use a good or
3 thing of value received under a written contract or written lease entered into for the
4 purpose of renting or leasing things for valuable consideration.

5 (c) The failure to return the good or thing of value to the possession of, or
6 account for the good or thing of value with, the person who delivered the good or thing
7 of value at the time or in the manner described in the written contract or written lease
8 is prima facie evidence of intent to fraudulently convert the good or thing of value.

9 (d) (1) A person may not be prosecuted under this section if within 10
10 days after a written demand for the return of the good or thing of value is mailed by
11 certified United States mail, return receipt requested, to the person who received the
12 good or thing of value at the last address known to the person who delivered the good
13 or thing of value, the person returns the good or thing of value to the possession of, or
14 accounts for the good or thing of value with, the person who delivered the good or
15 thing of value.

16 (2) A prosecution may not be started until 10 days after a written
17 demand described in paragraph (1) of this subsection is mailed.

18 (e) A person who violates this section is guilty of a misdemeanor and on
19 conviction is subject to imprisonment not exceeding 60 days or a fine not exceeding
20 \$1,000 or both.

21 (f) A person who violates this section shall restore the good or thing of value
22 converted to the person's own use or pay the full value to the owner or the person who
23 delivered the good or thing of value.

24 (G) (1) **A PROSECUTION UNDER THIS SECTION DOES NOT PRECLUDE**
25 **PROSECUTION FOR THEFT UNDER § 7-104 OF THIS ARTICLE.**

26 (2) **IF A PERSON IS CONVICTED UNDER § 7-104 OF THIS ARTICLE**
27 **AND THIS SECTION FOR THE SAME ACT OR TRANSACTION, THE CONVICTION**
28 **UNDER THIS SECTION SHALL MERGE FOR SENTENCING PURPOSES INTO THE**
29 **CONVICTION UNDER § 7-104 OF THIS ARTICLE.**

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2009.