

SENATE BILL 685

R5

9lr1236
CF HB 701

By: **Senator Robey**

Introduced and read first time: February 6, 2009

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws – Fleeing or Eluding Police – Penalties and Forfeiture**

3 FOR the purpose of altering a requirement that a vehicle used by a law enforcement
4 officer to signal a person to stop under certain circumstances must be marked as
5 an official police vehicle to require that the vehicle be an emergency vehicle
6 used for law enforcement purposes; altering certain penalties for certain
7 offenses relating to causing bodily injury or death while fleeing or eluding
8 police; authorizing a law enforcement officer to seize a vehicle that is used by an
9 individual in the commission of certain offenses relating to fleeing or eluding
10 police; establishing a rebuttable presumption, for certain purposes, that a
11 registered owner of the vehicle was the driver of the vehicle at the time that a
12 certain offense relating to fleeing and eluding police was committed or that a
13 registered owner had knowledge that the vehicle would be used to commit a
14 certain offense; allowing the presumption to be rebutted if a registered owner of
15 the vehicle provides certain clear and convincing evidence; prohibiting a vehicle
16 from being forfeited if the vehicle was not being operated by a registered owner
17 at the time of the offense and if it was used to commit the offense without the
18 knowledge of any registered owner of the vehicle; authorizing a certain law
19 enforcement officer to recommend forfeiture to a certain forfeiting authority
20 only after the officer takes certain actions; providing that a sworn affidavit from
21 a certain law enforcement officer is admissible into evidence in a certain
22 proceeding for a certain purpose; prohibiting the chief law enforcement officer
23 from being subpoenaed under certain circumstances; requiring a certain
24 forfeiting authority to file a certain complaint with the District Court under
25 certain circumstances; requiring the District Court to schedule a certain
26 hearing; requiring that the registered owner of a certain vehicle be sent a
27 certain notice; requiring the District Court to take certain actions after making
28 certain determinations; requiring a lienholder to sell a vehicle in a certain
29 manner under certain circumstances; providing for the distribution of the
30 proceeds of a certain sale; authorizing the State or a political subdivision to sell
31 a certain vehicle if no claim is lodged by a lienholder and directing the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 distribution of the proceeds of the sale; defining certain terms; and generally
2 relating to the offense of fleeing or eluding police.

3 BY repealing and reenacting, with amendments,
4 Article – Transportation
5 Section 21–904 and 27–101(p)
6 Annotated Code of Maryland
7 (2006 Replacement Volume and 2008 Supplement)

8 BY adding to
9 Article – Transportation
10 Section 27–115
11 Annotated Code of Maryland
12 (2006 Replacement Volume and 2008 Supplement)

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

15 **Article – Transportation**

16 21–904.

17 (a) In this section, “visual or audible signal” includes a signal by hand, voice,
18 emergency light or siren.

19 (b) If a police officer gives a visual or audible signal to stop and the police
20 officer is in uniform, prominently displaying the police officer’s badge or other insignia
21 of office, a driver of a vehicle may not attempt to elude the police officer by:

22 (1) Willfully failing to stop the driver’s vehicle;

23 (2) Fleeing on foot; or

24 (3) Any other means.

25 (c) If a police officer gives a visual or audible signal to stop and the police
26 officer, whether or not in uniform, is in [a vehicle appropriately marked as an official
27 police vehicle] **AN EMERGENCY VEHICLE USED FOR LAW ENFORCEMENT**
28 **PURPOSES**, a driver of a vehicle may not attempt to elude the police officer by:

29 (1) Willfully failing to stop the driver’s vehicle;

30 (2) Fleeing on foot; or

31 (3) Any other means.

1 (d) (1) A driver may not commit a violation of subsection (b)(1) or (c)(1) of
2 this section that results in bodily injury to another person.

3 (2) A driver may not commit a violation of subsection (b)(1) or (c)(1) of
4 this section that results in death of another person.

5 (e) (1) In this subsection, “crime of violence” has the meaning stated in §
6 14–101 of the Criminal Law Article.

7 (2) A driver may not commit a violation of subsection (b)(1) or (c)(1) of
8 this section while the driver is attempting to elude a police officer who is signaling for
9 the driver to stop for the purpose of apprehending the driver for the commission of a
10 crime of violence for which the driver is subsequently convicted.

11 27–101.

12 (p) (1) Except as otherwise provided in this subsection, any person who is
13 convicted of a violation of any of the provisions of § 21–904 of this article (“Fleeing or
14 eluding police”) is subject to:

15 (i) For a first offense, a fine of not more than \$1,000, or
16 imprisonment for not more than 1 year, or both; and

17 (ii) For any subsequent offense, a fine of not more than \$1,000,
18 or imprisonment for not more than 2 years, or both.

19 (2) Any person who is convicted of a violation of §
20 21–904(d)(1) of this article is subject to a fine of not more than \$5,000, or
21 imprisonment for not more than [3] **15** years, or both.

22 (3) Any person who is convicted of a violation of §
23 21–904(d)(2) of this article is subject to a fine of not more than \$5,000, or
24 imprisonment for not more than [10] **20** years, or both.

25 (4) Any person who is convicted of a violation of §
26 21–904(e) of this article is subject to a fine of not more than \$5,000, or imprisonment
27 for not more than 3 years, or both.

28 **27–115.**

29 (A) (1) **IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
30 **MEANINGS INDICATED.**

31 (2) **“CHIEF LAW ENFORCEMENT OFFICER” MEANS THE CHIEF**
32 **LAW ENFORCEMENT OFFICER OF THE SEIZING UNIT OR THE CHIEF LAW**
33 **ENFORCEMENT OFFICER’S DESIGNEE.**

1 **(3) “FORFEITING AUTHORITY” MEANS:**

2 **(I) THE UNIT OR PERSON DESIGNATED BY AGREEMENT**
3 **BETWEEN THE STATE’S ATTORNEY FOR A COUNTY AND THE CHIEF EXECUTIVE**
4 **OFFICER OF THE POLITICAL SUBDIVISION WHERE THE VEHICLE WAS SEIZED TO**
5 **ACT ON BEHALF OF THE GOVERNING BODY OF THE POLITICAL SUBDIVISION**
6 **REGARDING ASSETS SUBJECT TO FORFEITURE BY THE POLITICAL SUBDIVISION;**
7 **OR**

8 **(II) IF THE SEIZING AUTHORITY IS A UNIT OF THE STATE, A**
9 **UNIT OR PERSON THAT THE ATTORNEY GENERAL OR THE ATTORNEY**
10 **GENERAL’S DESIGNEE DESIGNATES BY AGREEMENT WITH A STATE’S**
11 **ATTORNEY, COUNTY ATTORNEY, OR MUNICIPAL ATTORNEY, IN THE POLITICAL**
12 **SUBDIVISION WHERE THE VEHICLE WAS SEIZED, TO ACT ON BEHALF OF THE**
13 **STATE REGARDING ASSETS SUBJECT TO FORFEITURE BY THE STATE.**

14 **(4) “SEIZING UNIT” MEANS THE LAW ENFORCEMENT UNIT THAT**
15 **SEIZES A VEHICLE.**

16 **(B) THIS SECTION APPLIES ONLY TO A VEHICLE THAT IS USED BY AN**
17 **INDIVIDUAL IN THE COMMISSION OF A VIOLATION OF § 21-904(D) OF THIS**
18 **ARTICLE.**

19 **(C) AN AUTHORIZED LAW ENFORCEMENT OFFICER MAY SEIZE AND**
20 **RECOMMEND FORFEITURE OF A VEHICLE WHEN MAKING AN ARREST OR ISSUING**
21 **A CITATION FOR A VIOLATION OF § 21-904(D) OF THIS ARTICLE.**

22 **(D) (1) FOR PURPOSES OF THIS SECTION, THERE IS A REBUTTABLE**
23 **PRESUMPTION THAT A REGISTERED OWNER OF THE VEHICLE:**

24 **(I) COMMITTED THE VIOLATION OF § 21-904(D) OF THIS**
25 **ARTICLE; OR**

26 **(II) HAD KNOWLEDGE THAT THE VEHICLE WOULD BE USED**
27 **TO COMMIT THE VIOLATION OF § 21-904(D) OF THIS ARTICLE.**

28 **(2) THE PRESUMPTION UNDER PARAGRAPH (1) OF THIS**
29 **SUBSECTION MAY BE REBUTTED IF A REGISTERED OWNER OF THE VEHICLE**
30 **ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE THAT:**

31 **(I) THE VEHICLE WAS NOT BEING OPERATED BY A**
32 **REGISTERED OWNER OF THE VEHICLE AT THE TIME OF THE VIOLATION OF §**
33 **21-904(D) OF THIS ARTICLE; AND**

1 (II) THE VEHICLE WAS USED TO COMMIT A VIOLATION OF §
2 **21-904(D)** OF THIS ARTICLE WITHOUT THE KNOWLEDGE OF ANY REGISTERED
3 OWNER OF THE VEHICLE.

4 (3) A VEHICLE MAY NOT BE FORFEITED IF:

5 (I) THE VEHICLE WAS NOT BEING OPERATED BY A
6 REGISTERED OWNER OF THE VEHICLE AT THE TIME OF THE VIOLATION OF §
7 **21-904(D)** OF THIS ARTICLE; AND

8 (II) WITHOUT THE KNOWLEDGE OF ANY REGISTERED
9 OWNER OF THE VEHICLE, AN INDIVIDUAL WHO IS NOT A REGISTERED OWNER
10 USED THE VEHICLE TO COMMIT A VIOLATION OF § **21-904(D)** OF THIS ARTICLE.

11 (E) (1) THE CHIEF LAW ENFORCEMENT OFFICER MAY RECOMMEND
12 FORFEITURE OF A VEHICLE TO THE FORFEITING AUTHORITY ONLY AFTER THE
13 CHIEF LAW ENFORCEMENT OFFICER:

14 (I) DETERMINES FROM THE RECORDS OF THE
15 ADMINISTRATION THE NAMES AND ADDRESSES OF ALL REGISTERED OWNERS
16 AND SECURED PARTIES;

17 (II) PERSONALLY REVIEWS THE FACTS AND
18 CIRCUMSTANCES OF THE SEIZURE; AND

19 (III) WRITES TO THE FORFEITING AUTHORITY THAT
20 FORFEITURE IS WARRANTED.

21 (2) IN A PROCEEDING FOR FORFEITURE OF A VEHICLE, A SWORN
22 AFFIDAVIT BY THE CHIEF LAW ENFORCEMENT OFFICER THAT THE
23 REQUIREMENTS OF THIS SUBSECTION HAVE BEEN FOLLOWED IS ADMISSIBLE
24 INTO EVIDENCE.

25 (3) THE CHIEF LAW ENFORCEMENT OFFICER MAY NOT BE
26 SUBPOENAED OR COMPELLED TO TESTIFY IF ANOTHER LAW ENFORCEMENT
27 OFFICER WITH PERSONAL KNOWLEDGE OF THE FACTS AND CIRCUMSTANCES
28 SURROUNDING THE SEIZURE AND THE RECOMMENDATION OF FORFEITURE
29 TESTIFIES AT THE PROCEEDING.

30 (4) IF THE FORFEITING AUTHORITY DETERMINES
31 INDEPENDENTLY OF THE DECISION OF THE SEIZING UNIT THAT THE VEHICLE
32 FALLS WITHIN THE SCOPE OF SUBSECTION (D)(3) OF THIS SECTION, THE
33 FORFEITING AUTHORITY SHALL SURRENDER THE VEHICLE TO AN OWNER.

1 (F) (1) IF THE FORFEITING AUTHORITY DETERMINES THAT
2 FORFEITURE IS APPROPRIATE, THE FORFEITING AUTHORITY SHALL FILE A
3 COMPLAINT WITH THE DISTRICT COURT FOR THE COUNTY IN WHICH THE
4 VEHICLE WAS SEIZED.

5 (2) THE DISTRICT COURT SHALL SCHEDULE A HEARING ON THE
6 FORFEITURE AT WHICH ALL REGISTERED OWNERS OF THE VEHICLE SHALL BE
7 GIVEN THE OPPORTUNITY TO TESTIFY.

8 (3) THE REGISTERED OWNERS OF THE VEHICLE SHALL BE
9 SERVED NOTICE AT LEAST 10 DAYS BEFORE THE FORFEITURE HEARING.

10 (4) IF, AFTER A FULL HEARING, THE DISTRICT COURT
11 DETERMINES:

12 (I) THAT THE VEHICLE SHOULD NOT BE FORFEITED, THE
13 DISTRICT COURT SHALL ORDER THAT THE VEHICLE BE RELEASED TO A
14 REGISTERED OWNER;

15 (II) THAT THE VEHICLE SHOULD BE FORFEITED, THE
16 DISTRICT COURT SHALL ORDER THAT THE VEHICLE BE FORFEITED TO THE
17 STATE OR APPROPRIATE POLITICAL SUBDIVISION; OR

18 (III) THAT THE VEHICLE IS SUBJECT TO A LIEN CREATED
19 WITHOUT ACTUAL KNOWLEDGE THAT THE VEHICLE WAS USED IN A VIOLATION
20 OF § 21-904(D) OF THIS ARTICLE, THE DISTRICT COURT SHALL ORDER THAT
21 THE VEHICLE BE RELEASED WITHIN 5 DAYS TO THE FIRST PRIORITY
22 LIENHOLDER.

23 (G) (1) IF THE VEHICLE IS RELEASED TO THE LIENHOLDER UNDER
24 SUBSECTION (F)(4)(III) OF THIS SECTION, THE LIENHOLDER SHALL SELL THE
25 VEHICLE IN A COMMERCIALY REASONABLE MANNER.

26 (2) THE PROCEEDS OF THE SALE OF THE VEHICLE SHALL BE
27 APPLIED IN THE FOLLOWING ORDER:

28 (I) TO THE COURT COSTS OF THE FORFEITURE
29 PROCEEDING;

30 (II) TO THE BALANCE DUE THE LIENHOLDER, INCLUDING
31 ALL REASONABLE COSTS INCIDENT TO THE SALE;

1 (III) TO PAYMENT OF ALL OTHER EXPENSES OF THE
2 PROCEEDINGS FOR FORFEITURE, INCLUDING EXPENSES OF SEIZURE OR
3 MAINTENANCE OF CUSTODY; AND

4 (IV) TO THE GENERAL FUND OF THE STATE OR THE
5 POLITICAL SUBDIVISION THAT SEIZED THE VEHICLE.

6 (H) IF A CLAIM IS NOT LODGED BY A LIENHOLDER:

7 (1) THE POLITICAL SUBDIVISION IN WHICH THE VEHICLE WAS
8 SEIZED OR THE STATE MAY SELL THE FORFEITED VEHICLE; AND

9 (2) THE PROCEEDS OF THE SALE OF THE VEHICLE SHALL BE
10 APPLIED IN THE FOLLOWING ORDER:

11 (I) TO THE COURT COSTS OF THE FORFEITURE
12 PROCEEDING; AND

13 (II) TO THE GENERAL FUND OF THE STATE OR THE
14 POLITICAL SUBDIVISION THAT SEIZED THE VEHICLE.

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