

JAN 22 2021

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# A BILL FOR AN ACT

RELATING TO OFFENSES AGAINST PROPERTY RIGHTS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the Hawaii Revised  
2 Statutes contains numerous provisions aimed at addressing the  
3 high number of vehicle thefts that occur on the island of Oahu.  
4 Frequently, a stolen vehicle is recovered during the commission  
5 of a crime or after it has been used to commit other crimes. In  
6 many vehicle theft cases, the vehicle is recovered while being  
7 operated or occupied by individuals who were not authorized to  
8 operate or occupy the vehicle. However, law enforcement  
9 officers may be unable to connect the actual theft of the  
10 vehicle with a specific individual.

11           Current statutory provisions have been rendered ineffective  
12 by state court rulings that require the State to prove that a  
13 defendant operating or occupying a stolen vehicle knew that the  
14 vehicle was stolen. In the great majority of cases, this  
15 requires a confession from the defendant, which may be difficult  
16 to obtain because defendants have the right to remain silent.



1 Thus, law enforcement is often hindered in meeting the burden of  
2 proof needed to prosecute these cases.

3 Accordingly, the purpose of this Act is to establish the  
4 offense of unauthorized control of propelled vehicle in the  
5 second degree, which applies if a person recklessly or  
6 negligently exerts unauthorized control over another's propelled  
7 vehicle by operating the vehicle without the owner's consent or  
8 by changing the identity of the vehicle without the owner's  
9 consent.

10 SECTION 2. Chapter 708, Hawaii Revised Statutes, is  
11 amended by adding a new section to part IV be appropriately  
12 designated and to read as follows:

13 "§708- Unauthorized control of propelled vehicle in the  
14 second degree. (1) A person commits the offense of  
15 unauthorized control of a propelled vehicle in the second degree  
16 if the person recklessly or negligently exerts unauthorized  
17 control over another's propelled vehicle by operating the  
18 vehicle without the owner's consent or by changing the identity  
19 of the vehicle without the owner's consent.

20 (2) It is an affirmative defense to a prosecution under  
21 this section that the defendant:



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1        (a) Received authorization to use the vehicle from an  
 2                    agent of the owner where the agent had actual or  
 3                    apparent authority to authorize such use; or

4        (b) Is a lien holder or legal owner of the propelled  
 5                    vehicle, or an authorized agent of the lien holder or  
 6                    legal owner, engaged in the lawful repossession of the  
 7                    propelled vehicle.

8        (3) For the purposes of this section:

9                    "Owner" means the registered owner of the propelled vehicle  
 10                   or the unrecorded owner of the vehicle pending transfer of  
 11                   ownership; provided that if there is no registered owner of the  
 12                   propelled vehicle or unrecorded owner of the vehicle pending  
 13                   transfer of ownership, "owner" means the legal owner.

14                   "Propelled vehicle" shall have the same meaning as in  
 15                   section 708-836.

16                   (4) Unauthorized control of a propelled vehicle in the  
 17                   second degree is a misdemeanor."

18                   SECTION 3. Section 708-836, Hawaii Revised Statutes, is  
 19                   amended to read as follows:

20                   **"§708-836 Unauthorized control of propelled vehicle[+] in**  
 21                   **the first degree.** (1) A person commits the offense of



1 unauthorized control of a propelled vehicle in the first  
 2 degree if the person intentionally or knowingly exerts  
 3 unauthorized control over another's propelled vehicle by  
 4 operating the vehicle without the owner's consent or by changing  
 5 the identity of the vehicle without the owner's consent.

6 [~~(2)~~] "~~Propelled vehicle~~" means an automobile, airplane,  
 7 motorcycle, motorboat, or other motor propelled vehicle.

8 ~~(3)~~] (2) It is an affirmative defense to a prosecution  
 9 under this section that the defendant:

10 (a) Received authorization to use the vehicle from an  
 11 agent of the owner where the agent had actual or  
 12 apparent authority to authorize such use; or

13 (b) Is a lien holder or legal owner of the propelled  
 14 vehicle, or an authorized agent of the lien holder or  
 15 legal owner, engaged in the lawful repossession of the  
 16 propelled vehicle.

17 [~~(4)~~] (3) For the purposes of this section[, "~~owner~~"]:

18 "Owner" means the registered owner of the propelled vehicle  
 19 or the unrecorded owner of the vehicle pending transfer of  
 20 ownership; provided that if there is no registered owner of the



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1 propelled vehicle or unrecorded owner of the vehicle pending  
2 transfer of ownership, "owner" means the legal owner.

3 "Propelled vehicle" means an automobile, airplane,  
4 motorcycle, motorboat, or other motor-propelled vehicle.

5 [~~5~~] (4) Unauthorized control of a propelled vehicle in  
6 the first degree is a class C felony."

7 SECTION 4. This Act does not affect rights and duties that  
8 matured, penalties that were incurred, and proceedings that were  
9 begun before its effective date.

10 SECTION 5. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

  
By Request



# S.B. NO. 398

**Report Title:**

Honolulu Police Department Package; Vehicles; Unauthorized Control

**Description:**

Establishes the offense of unauthorized control of a propelled vehicle in the second degree, which applies if a person recklessly or negligently exerts unauthorized control over another's propelled vehicle by operating the vehicle without the owner's consent or by changing the identity of the vehicle without the owner's consent.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

