

ACT 6

H.B. NO. 172

A Bill for an Act Relating to Offenses Against Property Rights.

Be It Enacted by the Legislature of the State of Hawaii:

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

Current statutory provisions have been rendered ineffective by state court rulings that require the State to prove that a defendant operating or occupying a stolen vehicle knew that the vehicle was stolen. In the great majority of cases, this requires a confession from the defendant, which may be difficult to obtain because defendants have the right to remain silent. Thus, law enforcement is often hindered in meeting the burden of proof needed to prosecute these cases.

Accordingly, the purpose of this Act is to establish the offense of unauthorized control of 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 propelled vehicle without the owner's consent or by changing the identity of the propelled vehicle without the owner's consent.

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

“§708- Unauthorized control of a propelled vehicle in the second degree.

(1) A person commits the offense of unauthorized control of a propelled vehicle in the second degree if the person recklessly or negligently exerts unauthorized control over another's propelled vehicle by operating the propelled vehicle without the owner's consent or by changing the identity of the propelled vehicle without the owner's consent.

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

- (a) Received authorization to use the propelled vehicle from an agent of the owner where the agent had actual or apparent authority to authorize use; or
- (b) Is a lien holder or legal owner of the propelled vehicle, or an authorized agent of the lien holder or legal owner, engaged in the lawful repossession of the propelled vehicle.

(3) For the purposes of this section:

“Owner” means the registered owner of the propelled vehicle or the unrecorded owner of the propelled vehicle pending transfer of ownership; provided that if there is no registered owner of the propelled vehicle or unrecorded owner of the propelled vehicle pending transfer of ownership, “owner” means the legal owner.

“Propelled vehicle” shall have the same meaning as in section 708-836.

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

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

“§708-836 Unauthorized control of a propelled vehicle[-] in the first degree. (1) A person commits the offense of unauthorized control of a propelled vehicle in the first degree if the person intentionally or knowingly exerts unauthorized control over another’s propelled vehicle by operating the propelled vehicle without the owner’s consent or by changing the identity of the propelled vehicle without the owner’s consent.

~~[(2) “Propelled vehicle” means an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.~~

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

- (a) Received authorization to use the propelled vehicle from an agent of the owner where the agent had actual or apparent authority to authorize ~~[such]~~ use; or
- (b) Is a lien holder or legal owner of the propelled vehicle, or an authorized agent of the lien holder or legal owner, engaged in the lawful repossession of the propelled vehicle.

~~[(4)]~~ (3) For the purposes of this section~~[-] “owner”~~:

“Owner” means the registered owner of the propelled vehicle or the unrecorded owner of the propelled vehicle pending transfer of ownership; provided that if there is no registered owner of the propelled vehicle or unrecorded owner of the propelled vehicle pending transfer of ownership, “owner” means the legal owner.

“Propelled vehicle” means an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.

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

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

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

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

(Approved April 14, 2021.)

Note

1. Edited pursuant to HRS §23G-16.5.