

ACT 195

S.B. NO. 2186

A Bill for an Act Relating to Unauthorized Control of Propelled Vehicles.

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

SECTION 1. The number of automobiles stolen in this state has been rising steadily every year. In 1991, 3,050 motor vehicles were stolen on Oahu. In 1992 and 1993, the figures rose to 3,507 and 4,460, respectively. In 1994, 5,727 thefts of automobiles were committed and preliminary estimates are that over 7,500 vehicles were stolen on Oahu in 1995, more than twice the amount stolen in 1992, and a thirty-three per cent increase over the 1994 figures.

Statistically, automobile thefts on Oahu constitute the large majority of the cases in this state. Of the 3,850 known automobile theft cases in the first six months of 1995, 3,468 occurred on Oahu. With an average insurance claim of \$5,000 per stolen vehicle, the dramatic increase in automobile thefts on Oahu in 1995 had a tremendous economic impact on insurance rates in Hawaii. The 7,500 vehicles estimated to have been stolen in 1995, at an average insurance claim of \$5,000 per vehicle, translates to \$37,500,000 in losses to insurers and ultimately, to consumers.

In light of the escalating number of car thefts and the impact of those thefts statewide, the legislature has decided that a careful examination of the state's present unauthorized control of a propelled vehicle statute is in order.

Under the current unauthorized control of a propelled vehicle law, a defendant caught operating a stolen vehicle may escape conviction if he can prove by a preponderance of the evidence that he reasonably believed that the vehicle's owner would have authorized the use had the owner known of it. "Owner" is presently defined by the law as a person having possession of the property involved, even if that possession is unlawful.

Therefore, even if the police arrest someone driving a stolen vehicle, that person may escape conviction by stating that he or she received permission to use the vehicle from another person and that he or she was unaware that the vehicle had been stolen. Experienced car thieves are aware of this loophole and exploit it to their advantage, telling the police that a person known only to them by a first name and whose whereabouts are presently unknown, gave them permission to use the vehicle.

The purpose of this Act is to amend the affirmative defense provided in section 708-836(3), Hawaii Revised Statutes, and to amend the definition of "owner", for the purposes of this section, to mean the registered owner of the vehicle or the unrecorded registered owner of the vehicle pending transfer of ownership.

SECTION 2. Section 708-836, Hawaii Revised Statutes, is amended to read as follows:

"§708-836 Unauthorized control of propelled vehicle. (1) A person commits the offense of unauthorized control of a propelled vehicle if the person intentionally 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.

(2) "Propelled vehicle" means an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.

(3) It is an affirmative defense to a prosecution under this section that the defendant: [reasonably believed that the owner would have authorized the use had the owner known of it.]

- (a) Received authorization to use the 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) For the purposes of this section, "owner" means the registered owner of the propelled vehicle or the unrecorded owner of the vehicle pending transfer of ownership.

[(4)] (5) Unauthorized control of a propelled vehicle is a class C felony.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 17, 1996.)