



SWAZILAND GOVERNMENT GAZETTE EXTRAORDINARY

VOL. XXIX]

MBABANE, Monday, August, 26th., 1991

[No. 817

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SUPPLEMENT TO
THE
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THE THEFT OF MOTOR VEHICLES BILL, 1991

(Bill No. 6 of 1991)

(To be presented by the Minister for Justice)

MEMORANDUM OF OBJECTS AND REASONS

The objects of this Bill are as follows:—

- (a) to provide for the offence of theft of motor vehicles;
- (b) to enhance the penalty for the theft of motor vehicles and related offences;
- (c) to provide for the presumption of theft of motor vehicles in certain circumstances;
- (d) to make it an offence to buy or receive or drive a motor vehicle in certain circumstances;
- (e) to provide for compensation to victims of a motor vehicle theft;
- (f) to provide for the seizure and detention of a motor vehicle suspected to be stolen;
- (g) to provide for the search and arrest without warrant of any person suspected to have stolen a motor vehicle;
- (h) to provide for the forfeiture of the assets of persons guilty of dealing in stolen motor vehicles;
- (i) to provide for the disposal of stolen or abandoned motor vehicles;
- (j) provide for bail in certain cases;
- (k) to provide for other related matters.

A.F.M. THWALA
Attorney—General

A BILL
entitled

An Act to provide for the offence of theft of motor vehicles and for other matters related thereto.

ENACTED by the King and the Parliament of Swaziland.

ARRANGEMENT OF SECTIONS

Section.

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Short title.

1. This Act may be cited as the Theft of Motor Vehicles Act, 1991, and shall come into force on the date of its publication in the Gazette.

Interpretation.

2. In this Act, unless the context otherwise requires—

“court” means a magistrate’s court or the High Court;

“motor vehicle” means any vehicle self-propelled by mechanical or electrical power adapted or intended to be used for roads for the purpose of conveying persons or goods and shall include any part of such vehicle;

“motor vehicle dealer” has the meaning assigned to it in the Road Traffic Act, 1965;

“public officer” has the same meaning assigned to it under the Civil Service Order, 1973 and includes a police officer;

Theft of motor vehicle.

3. (1) Any person who steals a motor vehicle or receives a motor vehicle knowing it to be stolen is guilty of an offence and liable on conviction to imprisonment for not less than—

(a) two years, in respect of first offender; or

(b) five years, in respect of a subsequent offender, without the option of a fine.

(2) A person charged under subsection (1) with stealing or receiving a motor vehicle belonging to a person alleged in the charge may be found guilty as charged notwithstanding that such motor vehicle does not actually belong to that alleged person.

(3) A motor vehicle dealer or person who carries on the business of repairing or servicing motor vehicles who is convicted of offence under sections 3, 5, 6, 8 or 9 shall also lose his trading licence.

Presumption of theft of motor vehicle.

4. (1) Unless the contrary is proved by him, a person shall be presumed to have committed an offence under section 3 and, on conviction, punished accordingly if:-

- (a) he is found in possession of a motor vehicle which is reasonably suspected to be stolen;
- (b) the engine or chassis number or registration marks or numbers of the motor vehicle or other identification marks of the motor vehicle have been altered, disfigured, obliterated or tampered with in any manner;
- (c) he possesses forged registration book, papers or other document of registration or ownership in relation to that motor vehicle;
- (d) he has imported the motor vehicle into Swaziland in contravention of any law for the time being in force relating to the importation of motor vehicles.

(2) In any proceeding in which the accused is charged with receiving a motor vehicle knowing it to be stolen, the onus shall be on the accused to prove that at the time he received the motor vehicle he had no reasonable grounds to believe that the vehicle was stolen.

Competent verdicts.

5. (1) Where a person is charged with contravening sections 3, 8 or 11, the court may convict him or any of the following offences notwithstanding that he was not originally charged with that offence-

- (a) attempting to steal a motor vehicle;
- (b) attempting to receive a motor vehicle knowing it to be stolen;
- (c) conspiring with any other person to commit an offence under section 3, 8 or 11;
- (d) selling, disposing of or assisting in the sale or disposal of a motor vehicle knowing it to have been stolen.

(2) A person convicted of an offence under subsection (1) shall be liable to a fine not exceeding ten thousand Emalangeni or imprisonment not exceeding five years.

Motor vehicle dealers or garage operators to report suspected stolen motor vehicle.

6. (1) Any motor vehicle dealer, or manager of a garage or person who carries on the business of repairing or servicing motor vehicles, who discovers or has reasonable grounds to suspect that the registration number, engine or chassis number of, or other identification marks on, the motor vehicle delivered to him for sale, repair or service have been altered, disfigured, defaced, obliterated or tampered with in any manner, shall forthwith report the matter to the nearest police station, and the police shall unless a satisfactory explanation is obtained, without warrant, seize that motor vehicle.

(2) Any motor vehicle dealer or manager of a garage or person who carries on the business of repairing or servicing motor vehicles who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding five thousand Emalangeni or to imprisonment not exceeding two years or to both.

Document of disposal or purchase of motor vehicle.

7. (1) Any person who sells, transfers or otherwise disposes of a motor vehicle commits an offence if at the time of the sale, disposal or transfer of the motor vehicle he does not furnish the purchaser or transferee with a document effecting the sale or disposal or transfer of the motor vehicle.

(2) Any person who purchases or receives a motor vehicle commits an offence if at the time of purchasing or receiving the motor vehicle he does not demand from the seller or transferor a document effecting the purchasing or receiving of the motor vehicle.

(3) Any person who contravenes subsection (1) or (2) shall be liable on conviction to a fine not exceeding five thousand Emalangeni or imprisonment not exceeding two years.

(4) Notwithstanding the provisions of subsections (1) and (2) where a motor vehicle is sold by or purchased from a motor vehicle dealer a declaration (or certificate) by that dealer specifying the dealer's name and address of place of business and stating that the vehicle has been lawfully sold to the purchaser shall be sufficient if:—

- (a) in the case of a motor vehicle purchased outside Swaziland, the declaration or certificate is produced to and stamped by a customs officer at the point of entry into Swaziland and within three days of the importation the purchaser presents the vehicle together with the declaration (or certificate) to a police station for verification by the police; or
- (b) in the case of a motor vehicle purchased in Swaziland, the purchaser presents the vehicle together with the declaration (or certificate) to a police station within three days of the purchase for verification by the police.

(5) A dealer who does not issue a declaration or who issues a false declaration or a person who does not submit a declaration under this section to a customs officer or a police station as prescribed commits an offence and is liable on conviction to a fine not exceeding five thousand Emalangeni or imprisonment not exceeding two years.

(6) Notwithstanding the sentence prescribed under subsection (3) or (4), if the motor vehicle sold or purchased is proved to be a stolen vehicle, the accused person or dealer shall be liable to a sentence prescribed under section 3.

Dealing in stolen motor vehicles.

8. Any person who engages in stealing and selling of, or other fraudulent dealings in, motor vehicles is guilty of an offence and liable on conviction to a fine not exceeding thirty thousand Emalangeni or imprisonment not exceeding fifteen years and the forfeiture to the Crown of all assets traceable to the dealing.

Alteration, tampering with etc. a motor vehicle.

9. Any person who alters, tampers with or repairs any part of a motor vehicle or assists in the alteration, tampering with or repair of any part of a motor vehicle so as to conceal or disguise the identification of a motor vehicle used in the commission of another offence commits an offence and is liable on conviction to a fine not exceeding five thousand Emalangeni or imprisonment not exceeding two years.

False registration marks.

10. Any person who, on any road, drives or is in control of a motor vehicle which bears false or no registration marks commits an offence and is liable on conviction to a fine not exceeding five thousand Emalangeni or imprisonment not exceeding two years.

Manufacture of false keys, books, stamps, etc.

11. Any person who unlawfully possesses or manufactures or causes to be manufactured a key, stamp, book or other document or gadget used or likely to be used in the commission of an offence under this Act, commits an offence and is liable on conviction to a fine not exceeding ten thousand Emalangeni or imprisonment not exceeding five years.

Breaking into a motor vehicle.

12. (1) Any person who breaks into a motor vehicle with intent to steal commits an offence and is liable on conviction to a fine not exceeding five thousand Emalangeni or imprisonment not exceeding two years or both.

(2) Unless the contrary is proved by him, a person is presumed to have broken into a motor vehicle with intent to steal if that person breaks into the motor vehicle without the consent of the owner or person in lawful possession of the motor vehicle.

(3) A sentence imposed in terms of subsection (1) shall be served independently of any other sentence that may be imposed for a theft from the vehicle or a theft of the vehicle itself.

Dereliction of duty by public officers.

13. (1) Any public officer who fails or neglects to carry out his duty under this Act or any law regulating the registration or importation of motor vehicles commits an offence and is liable on conviction to a fine not exceeding five thousand Emalangeni or imprisonment not exceeding two years.

(2) Where a motor vehicle, the subject of a contravention of subsection (1), is proved to be a stolen vehicle, the person, guilty of contravening that subsection, shall be liable to be sentenced as an accomplice to the theft or any other offence involving that motor vehicle.

(3) Where a public officer who is convicted under subsection (1) is shown to have intentionally failed or neglected his duty, he shall in addition to any sentence imposed under this Act be summarily dismissed from the public service with loss of benefits.

Provision as to sentences for theft of motor vehicle.

14. (1) Where any person is convicted for the contravention of section 3 or 5 and sentenced for more than one offence, such sentences shall run consecutively until full term is served.

(2) No sentence or part of a sentence under this Act may be suspended.

Sentence for procuring another to steal.

15. Any person who procures, incites, hires, commands or instigates another to contravene section 3 commits an offence and is liable on conviction to a sentence twice that prescribed under section 3.

Search, seizure and arrest.

16. (1) Any police officer may without warrant search and arrest any person found in possession of a motor vehicle if he has reasonable grounds to suspect that that person has stolen that motor vehicle or has received that motor vehicle knowing it to be stolen or has assisted in the stealing of that motor vehicle and shall seize from that person the motor vehicle and any document in relation to that motor vehicle.

(2) Any police officer who seizes a motor vehicle or arrests any person under this section shall as soon as possible take that motor vehicle or that person and any registration book or document seized from that vehicle or person to the nearest police station to be dealt with according to law.

(3) A person arrested or a motor vehicle seized under this Act shall within a reasonable time not exceeding seventy-two hours be brought before a court by any officer of a rank of sergeant or above for the purpose of obtaining a warrant for the further detention of that motor vehicle.

(4) Any person who has evidence of the ownership or lawful possession of a motor vehicle seized or detained under this Act may apply to court at any time within six months of the seizure with a view to securing the release of that motor vehicle.

(5) Where, in any application under subsection (4), neither the police nor a third party objects to the release, the application, supported by the evidence, may be made orally and without prior notice.

(6) A court shall issue a warrant for the further detention of a motor vehicle under this Act where there is a discrepancy in the ownership or lawful possession of that motor vehicle.

(7) No court shall order the release of a motor vehicle seized under this section to the person from whom it was seized only because the Director of Public Prosecutions has declined to prosecute that person or that person having been prosecuted has been acquitted of the offence in connection with that motor vehicle, unless the release is supported by documentary proof of ownership or lawful possession.

Endorsement and suspension of driver's licence.

17. (1) The court sentencing a person for an offence under section 3 or 5 shall endorse the driving licence of that person and suspend his licence for a period twice the term of imprisonment imposed on that person whether or not a fine is paid.

(2) Where the driver's licence of a person has under this section been endorsed three times, that person shall be disqualified from driving for life.

(3) Any person who obtains another driving licence while suspended or disqualified from driving under this Act commits an offence and is liable on conviction to imprisonment for a term of not less than six months in the case of a first conviction or one year in the case of a subsequent conviction without the option of a fine.

(4) Any public officer who issues a driving licence to a person whom he knows to be suspended or disqualified from driving commits an offence and is liable on conviction to a sentence under section 13(1) and (3).

Provision as to bail.

18. (1) Where a person is charged with an offence under section 3 or 5 the amount of bail to be fixed by a court shall not be less than half the value of the motor vehicle stolen.

(2) Where a person is charged with any other offence under this Act the amount of bail to be fixed by a court shall not be less than half the amount of the maximum or minimum fine fixed for that offence.

(3) No person charged with an offence under this Act may be released on his own recognisance.

Compensation for loss under this Act.

19. (1) Where, on a conviction for an offence under this Act, it is proved that loss or damage was caused by that offence, the convicted person shall be liable to an order to pay compensation to the person who has sustained the loss or damage.

(2) The order for compensation under this section is competent irrespective of the criminal sentence imposed on the convicted person, and may include both the actual loss sustained as well as the loss of use arising from the offence.

(3) An order for compensation may be made against one or all the accused jointly and severally.

forfeiture of assets derived from theft of motor vehicles etc.

20. (1) Upon an application made to the Court by the police, the court may order an investigation by the police into the assets of any person reasonably suspected to be engaged in the business of stealing and selling or other fraudulent dealings in motor vehicles.

(2) If upon the investigation it is found that identifiable assets of such person have been derived from the business of stealing and selling or other fraudulent dealing in motor vehicles the court shall order the forfeiture of those assets to the Crown.

(3) For the purpose of subsection (1) or (2) the court shall make an order—

- (a) authorising the police to search, seize and hold any assets of the person in respect of whom an order has been made until the assets are vested in the Crown or pending the investigation;
- (b) requiring any person to make available to the police any document relevant to the identification or location of such assets;
- (c) prohibiting any dealings with such assets without an order of the court;
- (d) requiring any bank or other financial institution to furnish the police with any information concerning such assets.

(4) Any person with an interest in assets which are subject to a forfeiture or restraining order or investigation may apply to the court to have that interest excluded from the terms of the order.

(5) Any person who deals with the assets of a person in respect of whom the court has made an order under subsection (1) or (2) in breach of the terms of the order or fails to comply with the terms of the order shall be guilty of an offence and liable on conviction to a fine not exceeding ten thousand Emalangeni or to imprisonment not exceeding five years or both.

Unclaimed motor vehicles.

21. (1) Any police officer shall seize and detain on warrant any motor vehicle found abandoned on any road or place or premises.

(2) Unless the motor vehicle detained under subsection (1) is sooner claimed by a person entitled to it, that motor vehicle shall be disposed of in terms of section 22.

Disposal of unclaimed motor vehicles.

22. (1) Where the owner or person entitled to the lawful possession of a motor vehicle detained under this Act, is unknown or has not claimed the motor vehicle, the officer in charge of a police station or place for the custody of motor vehicles shall cause to be published three monthly notices in the Government Gazette, a newspaper circulating in Swaziland and at a place outside Swaziland where the motor vehicle is suspected to be registered, giving the particulars or where no particulars are available, a fair description of the motor vehicle and a notice that unless the vehicle is claimed within six months it shall be forfeited to the Crown.

(2) If at the expiration of six months from date of first publication in the Gazette the motor vehicle has not been claimed, that motor vehicle shall be forfeited to the Crown.

(3) No forfeiture to the Crown or release to the person from whom the motor vehicle was seized or to any other person shall take place unless a court order has been obtained authorising the forfeiture or release.

(4) No release of the motor vehicle under subsection (3) shall be made unless the claim for ownership or lawful possession is supported by relevant documents.

(5) The officer in charge of a police station or place for the custody of motor vehicles shall cause to be obtained the court order under subsection (3) within fourteen days of the expiration of the period of six months unless the vehicle has been earlier released.

(6) The contravention of any provision of this section is an offence punishable by a fine or imprisonment as provided under section 13(1).

(7) All expenses incurred in connection with the publication of notices under this section shall be made good by the successful claimant or the Ministry responsible for Government transport.

(8) Any motor vehicle forfeited to the Crown under this Act shall be dealt with in any manner deemed suitable by the Ministry responsible for Government transport.

Transitional provision.

23. Any motor vehicle suspected to have been stolen which before the commencement of this Act has been seized and detained by the police for a period of not less than six months because the person lawfully entitled to it cannot be traced or is unknown shall within six months from the date of detention or thirty days after the commencement of this Act, whichever is the longer period, be forfeited to the Crown to be disposed of in terms of section 22.

THE CRIMINAL PROCEDURE AND EVIDENCE (AMENDMENT)
BILL, 1991

(Bill No. 7 of 1991)

(To be presented by the Minister for Justice)

MEMORANDUM OF OBJECTS AND REASONS.

The object of this Bill is to amend the Criminal Procedure and Evidence Act, 1938 as follows:—

- (a) to provide for the abolition of the requirement for the endorsement of warrants by Magistrates;
- (b) to provide for the removal of the restriction on the use of force in effecting arrest in the case of theft;
- (c) to provide for search without warrant by any police officer;
- (d) to provide for the production of account books and other documents or records by Court Order to the police for purposes of criminal investigation;
- (e) to provide for the restitution of stolen property on proof of lawful ownership or possession;
- (f) to provide for bail in respect of theft and kindred offences;
- (g) to make provision enabling the Courts convict an accused person for an offence, other than the offence with which he is originally if supported by the evidence;
- (h) to provide for the taking of hand writing specimen by the police in connection with criminal investigation;
- (i) to provide for the admissibility in Court for evidence of handwriting specimen.

A.F.M. THWALA
Attorney—General

A BILL
entitled

An Act to amend the Criminal Procedure and Evidence Act, 1938.

ENACTED by the King and the Parliament of Swaziland.

Short Title.

1. This Act may be cited as the Criminal Procedure and Evidence (Amendment) Act, 1991 and shall be read as one with the Criminal Procedure and Evidence Act, 1938 in this Act referred to as the "principal Act."

Repeal of Section 32.

2. Section 32 of the principal Act is repealed.

Amendment of Section 41.

3. Section 41(2) of the principal Act is amended by the deletion of all the words appearing after the word "Schedule".

Amendment of Section 47.

4. Section 47(1) of the principal Act is amended by replacing the words "policeman of the rank of sub-inspector or above" with the words "police officer".

Addition of Section 49 bis.

5. There is hereby added after section 49 the following new section:

"Production of account books, documents etc. to the police for purposes of criminal investigation.

49 bis (1) If upon an application to the Court by a police officer the Court is satisfied that any books of account, document, records or thing which is in the possession of any person including a company, bank or other financial institution is necessarily required in connection with any criminal investigation by the police, the Court shall make an order requiring that person, company, bank, or financial institution to produce such book, document, records or thing to the police subject to such conditions as the Court may impose.

(2) Any person who without reasonable excuse, proof of which shall be on him, refuses or fails to comply with an order of the Court under subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding ten thousand Emalangeni or to imprisonment not exceeding five years or to both."

Amendment of Section 52.

6. Section 52 of the principal Act is amended by replacing subsection (5) with the following—

"(5)(a) At the conclusion of a summary trial or if the Director of Public Prosecutions declines to prosecute, the Magistrate shall, in respect of the property or thing seized make one of the following orders:—

- (1) that the property or thing be restored to the person from whom it was seized if that person satisfies the Magistrate that he is lawful owner of the property or thing or that he is lawfully in possession of the property or thing;
- (ii) if that person fails to prove that he is the lawful owner or has lawful possession of the property or thing, that the property or thing be restored to any other person who is lawfully intitled to it upon proof to the Court;
- (iii) if no person claims ownership or possession of the property or thing or if the person lawfully entitled to it cannot be traced or is unknown, that the property or thing be forfeited to the Crown;
- (b) the Court shall for the purposes of an order under paragraph (a) hear such further evidence (whether by affidavit or orally) as it may consider necessary."

Replacement of title to Subpart B.

7. The title of subpart B of Part VIII of the principal Act is replaced with the following;

“B(1) – IN CASES TRIED BY MAGISTRATE’S COURT.”

Addition of Subpart B(2).

8. There is hereby added after subpart B(1) of Part VIII of the principal Act the following new subpart;

“B (2) BAIL IN RESPECT OF THEFT AND KINDRED OFFENCES.

Conditions of bail for theft and kindred offences.

102A (1) Notwithstanding the provisions of subparts A and B(1) of this Part the amount of bail to be given by a magistrate in respect of theft or any kindred Offence shall be—

- (a) E500 if the value of the property in respect of which the offence is committed is E2,000; or
 - (b) one half of the value of the property in respect of which the offence is committed if the value of the property exceeds E2,000.
- (2) Notwithstanding the provisions of subparts A and B(1) of this Part a magistrate shall not admit to bail on recognisance any person charged with theft or any kindred offence, if the value of the property in respect of which the offence is committed is E2,000 or more.
- (3) For the purposes of this section theft and kindred offences include the following offences—
- (a) theft either at common law or under any statute;
 - (b) robbery;
 - (c) arson;
 - (d) breaking or entering any premises with intent to commit an offence either at common law or under any statute;
 - (e) receiving of any stolen goods or property knowing the same to have been stolen;
 - (f) fraud; or
 - (g) forgery or uttering of forged document knowing it to be forged.”

Replacement section 103.

9. Section 103 of the principal Act is replaced by the following:

“Excessive bail not required.

103. Subject to section 102A, the amount of bail to be taken in any case shall be in the discretion of the Court or judicial officer to whom the application to be admitted to bail is made:

Provided that no person shall be required to give excessive bail.”

Amendment of Section 174.

10. Section 174 of the principal Act is amended by replacing subsection (4) with the following:

“(4) If at the close of the case for the prosecution the Court considers that there is no evidence that the accused committed the offence charged or any other offence of which he might be convicted thereon, it may acquit and discharge him.”

Amendment of Section 342.

11. Section 342 of the principal Act is amended as follows:

- (a) in subsection (1) by the insertion between the words “taken” and “the fingerprints”, of the words “the handwriting specimens or”;
- (b) in subsection (2) by the insertion between the words “the” and “fingerprints” of the words “handwriting specimens or the”;
- (c) by replacing subsection (5) with the following:

“(5) Any handwriting specimens, fingerprints, palmprints or footprints and the records of any steps taken under this section shall be destroyed if the person concerned is found not guilty at his trial or his conviction is set aside or the Director of Public Prosecutions declines to prosecute him under section 86(1)(a):

Provided that any handwriting specimen or print made or taken under this section previous to the occurrence which is the subject of criminal proceedings may, if no order exists for the destruction of such handwriting specimen, print or record, be used as evidence in a criminal trial.”

Amendment of section 343.

12. Section 343 of the principal Act is replaced by the following:

“Evidence of handwriting, fingerprints etc. of an accused

343(1) If it is relevant or if it may, in the opinion of the Court, become relevant to ascertain whether a handwriting, fingerprint, palmprint or footprint of an accused person corresponds to any other handwriting, fingerprint, palmprint or footprint, or whether the body of the accused bears or bore any mark, characteristic or distinguishing feature; or shows or showed any condition or appearance, evidence of such accused's handwriting, fingerprints, palmprints or footprints or of the fact that his body bears or bore any mark, characteristic or distinguishing feature, or shows or showed any condition or appearance (including the result of any blood test) that may be so relevant, shall be admissible in evidence.

(2) Such evidence shall not be rendered inadmissible by the fact that the handwriting specimen, fingerprint, palmprint or footprint was taken, or the marks, characteristic feature or condition or appearance was ascertained, otherwise than in terms of Section 342 or against the wish of the accused.

(3) Any record from a handwriting or fingerprint bureau, whether within or outside Swaziland, produced by the person appointed to the charge of such bureau which purports to be the record of a handwriting, fingerprint, palmprint or footprint of the accused shall be admissible and accepted as *prima facie* evidence of the facts stated in such record.”