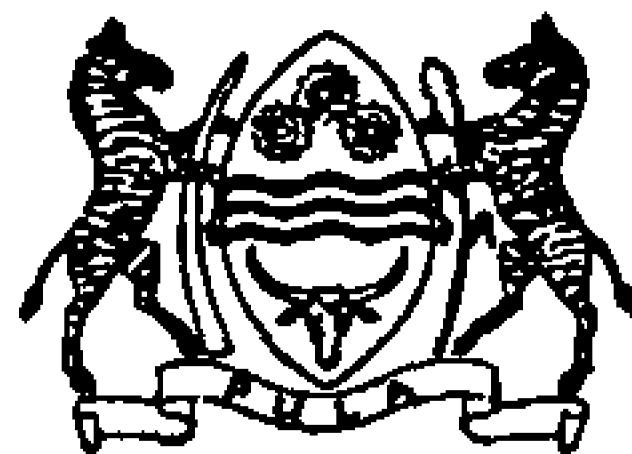


MOTOR VEHICLE THEFT ACT, 1995

No. 17



of 1995

ARRANGEMENT OF SECTIONS

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An Act to make provision in respect of the theft of motor vehicles, and for matters relating thereto.

Date of Assent: 29th August, 1995.

Date of Commencement: 15th September, 1995.

ENACTED by the Parliament of Botswana

1. This Act may be cited as the Motor Vehicle Theft Act, 1995.
2. In this Act, unless the context otherwise requires —
 - “motor vehicle” means any vehicle designed or adapted for propulsion or haulage on a road by means of mechanical or electrical power without the aid of rails, and includes any trailer;
 - “motor dealer” means any person who deals by way of business in motor vehicles or trailers, including a manufacturer and a repairer or panel-beater of such vehicles, and in relation to a scrapyard for motor vehicles or parts thereof, or where any such vehicles or parts are found, means the owner or person in charge of such scrapyard;

Short title

Interpretation

“offensive weapon” means any article made or adapted for use for causing injury to the person, or intended by any person having it with him for such use by him, and includes, but is not limited to, a firearm, a spear, an axe, a hatchet, a club and a knife ;

“police officer” includes a special constable and a member of the Reserve Force;

“receive” shall have the meaning assigned to that expression in section 317 of the Penal Code;

“steal” shall have the meaning assigned to that expression in section 264 of the Penal Code.

**Theft of
motor
vehicles**

3. (1) Any person who steals a motor vehicle, or receives a motor vehicle knowing or having reason to believe it to be a stolen vehicle, shall be guilty of an offence and, notwithstanding the provisions of any other written law, shall be liable for a first offence to imprisonment for not less than five years or more than ten years without the option of a fine, and for a second or subsequent offence to imprisonment for not less than seven years or more than fourteen years without the option of a fine.

(2) Where, for the purpose of stealing a motor vehicle, or in the course of stealing a motor vehicle, violence or the threat of violence is used, the penalty shall be imprisonment for not less than ten years or more than fifteen years without the option of a fine, and if the violence used or threatened involves the use of a firearm or other offensive weapon the penalty shall be imprisonment for not less than twelve years or more than twenty years without the option of a fine.

(3) A person charged under subsection (1) may be convicted of the offence of stealing a motor vehicle or of receiving a motor vehicle notwithstanding that the person stated in the charge to be the owner of the vehicle is wrongly named as the owner of the vehicle.

(4) Any person who procures, incites, hires, directs or instigates another person to contravene the provisions of subsection (1) shall be guilty of an offence and liable to the same penalties as the person who contravenes those provisions.

(5) Any sentence imposed in respect of an offence under this section shall be consecutive to and not concurrent with any other sentence imposed on the same accused person, and no sentence or any part of any sentence imposed in respect of an offence under this section shall be suspended.

Presumptions

4. In any proceedings, where it is proved to the satisfaction of the court that a person —

(a) was found in possession of a motor vehicle reasonably suspected of being stolen;

(b) was found in possession of a motor vehicle of which the engine or chassis numbers, or the registration marks or numbers, or other identification marks have been altered, disfigured, obliterated or tampered with in any manner;

- (c) was found in possession of a motor vehicle and is unable to produce a bill of sale or other satisfactory evidence of ownership, identifying the vehicle and the person from whom it was obtained, and from which such person can be traced;
- (d) was found in possession of any forged registration book, papers, or other documents of registration or ownership in relationship to a motor vehicle;
- (e) has imported into Botswana a motor vehicle in contravention of any law for the time being in force in relation to the importation of motor vehicles,

it shall be presumed that such person is guilty of an offence under section 3 of this Act in relation to the motor vehicle concerned, and liable to the penalties provided thereunder, unless the contrary is proved.

5. (1) Any motor dealer or manager of a motor dealer's business who discovers, or has reasonable grounds to suspect, that the registration number, engine or chassis number of, or any other identification mark on a motor vehicle or motor vehicle engine or motor vehicle part delivered to him or received by him in the course of his business, has been altered, disfigured, defaced, obliterated or tampered with in any manner, shall forthwith report the matter to the nearest police station, and the police may thereafter, in the absence of any satisfactory explanation, seize the vehicle or engine or vehicle part concerned.

Reporting
by motor
dealers

(2) Any motor dealer or manager of a motor dealer's business who fails to comply with the provisions of subsection (1), or who is found in possession of a motor vehicle, a motor vehicle engine, or any part of a motor vehicle the identification mark of which has been altered, disfigured, defaced, obliterated or tampered with in any manner, which he has not reported in accordance with subsection (1), and for which he is unable to provide a satisfactory explanation, shall be guilty of an offence and liable to imprisonment for three years and to a fine of P 5 000.

(3) Any sentence imposed under this section shall not run concurrently with any other sentence imposed on the accused person, and no such sentence or any part of such sentence shall be suspended.

(4) A court convicting a motor dealer under this section shall, in addition to any other sentence imposed, cancel or suspend for such period as may be specified, which shall not be less than two years, any licence or permit to trade held by such dealer.

6. (1) Any person who —

- (a) sells, transfers or otherwise disposes of a motor vehicle, and who, at the time of such sale, transfer or disposal, fails to furnish to the purchaser or to the person to whom such motor vehicle is transferred or delivered, a document effecting such sale, transfer or disposal; or
- (b) purchases, or receives or accepts delivery of a motor vehicle and, at the time of such purchase, or delivery, does not demand and receive from the seller, transferor or deliverer a document effecting such purchase, transfer or delivery,

Disposal,
purchase or
sale of motor
vehicles

shall be guilty of an offence and liable to imprisonment for three years and a fine of P 5 000.

(2) Notwithstanding the provisions of subsection (1), it shall be sufficient defence for the purchaser from a motor dealer if he produces a declaration or certificate from such dealer specifying the dealer's name and his place of business, and stating that the motor vehicle has been lawfully sold to the purchaser, and —

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

(b) in the case of a motor vehicle purchased in Botswana, the purchaser presents the vehicle, together with the declaration or certificate to a police station within three days of the purchase of the vehicle, for verification by the police.

(3) Any dealer who refuses or fails to issue a declaration or certificate as required under subsection (2)(a), or who issues a false declaration or certificate, and any purchaser who fails to present a motor vehicle and a declaration or certificate to a police station as required under subsection (2)(b), shall be guilty of an offence and liable to imprisonment for three years and to a fine of P 5 000.

7. (1) Any person who knowingly tampers with, alters or carries out repairs on, or assists in the tampering with, alteration or repair of a motor vehicle or the engine or any part of a motor vehicle so as to, or be likely to, conceal or disguise the identification of such vehicle, engine or part, shall be guilty of an offence and liable to imprisonment for three years and to a fine of P 5 000.

(2) If in carrying out any repairs or other work on a motor vehicle, the engine or chassis number or any other part of that motor vehicle by which it can be identified are thereby altered, obscured or obliterated, the person carrying out such repairs or other work, the person assisting him in carrying out such repairs or other work or the owner of that vehicle shall, as soon as possible after such repairs or works have been carried out, cause the registration book relating to such vehicle to be amended at the nearest registration office to reflect the alteration, obscuration or obliteration, and any person who fails or neglects to comply with the provisions of this subsection shall be guilty of an offence and shall be liable to the penalties provided in subsection (1).

(3) Any owner or person in charge of a motor vehicle shall, when and if the vehicle in question is painted a different colour to that indicated in the registration book relating to such vehicle, as soon as possible ensure that the registration book concerned is amended to record the change of colour, and that such amendment is verified at the nearest registration office, and any owner or person in charge who fails or neglects to comply with the provisions of this subsection shall be guilty of an offence and liable to the penalties provided in subsection (1).

8. (1) Any person who can give no satisfactory reason for — (a) driving or being in charge or in control of a motor vehicle which bears false identification plates; or (b) driving or being in charge or in control of a motor vehicle which bears no identification plates; shall be guilty of an offence and shall be liable to imprisonment for three years and to a fine of P5 000,00.	False identification plates etc.
(2) Any person who unlawfully possesses, manufactures, cuts or causes to be manufactured or cut any identification plate, key, instrument, stamp, book or other document used or designed or likely to be used in the commission of an offence under this Act, shall be guilty of an offence and liable to imprisonment for three years and to a fine of P 5 000.	
(3) No person shall manufacture, cut or cause to be manufactured or cut, any identification plate or vehicle key without satisfactory proof of, and keeping a record of, the identity of the person requesting such identification plate or key, and production of the registration book of the vehicle concerned, or of a letter from the police confirming the existence and identity of the vehicle concerned, and any person who contravenes or fails to comply with the provisions of this subsection shall be guilty of an offence and liable to the penalties prescribed in subsection (2).	
9. (1) Any person who breaks into a motor vehicle without the consent of the owner thereof, or the person in lawful possession thereof, shall, unless the contrary is proved, be presumed to have broken into it with the intention of stealing, whether of the vehicle or articles in the vehicle, and shall be guilty of an offence and liable to imprisonment for three years and to a fine of P 5 000.	Breaking into motor vehicles
(2) Any conviction and sentence imposed in terms of subsection (1) shall be in addition to any conviction and sentence imposed in respect of the theft of the vehicle concerned or of the theft of anything in the vehicle.	
10. (1) Where any person has been charged with an offence under section 3 or section 8(2) the court trying him may convict him of any of the following offences notwithstanding that he was not originally charged with such offence —	Competent verdicts
(a) attempting to steal a motor vehicle; (b) attempting to receive a motor vehicle knowing or having reason to believe it to be stolen; (c) conspiring with any other person in the commission of the offence; (d) selling disposing of or assisting in the sale or disposal of a motor vehicle knowing or having reason to believe it to be stolen.	
(2) Any person convicted of an offence under subsection (1) shall be liable to imprisonment for five years and to a fine of P 10 000.	
11. (1) Any person who engages in the business of stealing, or the selling of stolen motor vehicles, or of parts thereof, or of any other dealings in stolen motor vehicles, or of parts thereof, shall be guilty of an offence and liable to imprisonment for not less than ten years or more than twenty years, and to a fine of P 50 000, or in default five years imprisonment, and in addition shall forfeit to the Government all assets traceable to such business.	Dealing in stolen motor vehicles

Search,
seizure
and arrest

(2) Any sentence imposed in respect of an offence under subsection (1) shall be consecutive to and not concurrent with any other sentence imposed on the accused person, or any part thereof, and no such sentence or any part thereof shall be suspended.

12. (1) Any police officer may, without a warrant, stop, arrest and search any person found driving, or in possession or charge or control of a motor vehicle if he believes, on reasonable grounds, that the vehicle is a stolen vehicle, whether or not that person has stolen it himself, or received it knowing or having reason to believe it to be stolen, or has assisted in stealing the vehicle, and may seize the vehicle and any documents relating to it.

(2) A police officer who has arrested any person or seized any motor vehicle in accordance with the provisions of subsection (1), shall as soon as possible take that person and that vehicle, and any documents seized relating to the vehicle, to the nearest police station.

(3) Where a motor vehicle seized under this section is taken before a court for the purpose of a prosecution in respect thereof, the court shall not release such vehicle until the conclusion of any such prosecution, and unless, within six months of the date of such conclusion, or the date of seizure of the vehicle, whichever is the later, application is made for such release supported by satisfactory documentary proof of lawful ownership or lawful possession thereof, and if, at the conclusion of such period of six months the vehicle remains unclaimed it shall be handed back to the police to be dealt with as an unclaimed vehicle in accordance with the provisions of section 17.

Bail

13. Any person charged with an offence under this Act shall not be released from custody on his own recognisance, or on bail for an amount less than half of the value of the motor vehicle concerned, as determined by the court.

Drivers'
licences

14. (1) The court sentencing a person for an offence under section 3 of this Act shall withhold and cancel the driving licence of such person and disqualify him from driving for a period twice the term of imprisonment to which he is sentenced, and where such driving licence has been so withheld and cancelled three times the court shall, on the third occasion, disqualify him from driving or from obtaining another driving licence for life.

(2) Any person who obtains or attempts to obtain another driving licence during any period when he is disqualified in accordance with the provisions of this section, and any person who obtains or attempts to obtain a driving licence for him or on his behalf, shall be guilty of an offence and liable to imprisonment for not less than one year or more than three years, without the option of a fine.

15. (1) Where, on a conviction for an offence under this Act, it is proved that any person has suffered loss or damage as a result of such offence, the court may order the accused person to pay compensation for such loss or damage to the person who has suffered it, and where more than one person is convicted jointly for the offence any such order of compensation may be made against any one of the accused persons, or against them all, or against any number of them, jointly and severally.

Orders of
compensation

(2) Any order of compensation made under this section shall be in addition to and irrespective of any other sentence imposed on the accused, and may include the actual loss suffered as well as loss arising as a result of or attributable to the offence.

16. (1) Upon application made by the police to the court of a chief magistrate or above, the court may order an investigation by the police into the dealings and assets of any person reasonably suspected of being engaged in the business of stealing or receiving motor vehicles, or dealing in stolen motor vehicles, or any other fraudulent activities in relation to motor vehicles.

Forfeiture of
assets derived
from theft

(2) If, upon such investigation, it is found that any assets of such person have been derived from or are attributable to any of the activities referred to in subsection (1) the court shall order the forfeiture of such assets to the Government.

(3) For the purposes of subsections (1) and (2), the court may make an order —

- (a)** authorizing the police to search for and seize any assets of the person concerned, pending the investigation;
- (b)** requiring any person to make available to the police any document relevant to the location or identification of any assets of such person;
- (c)** prohibiting any dealing in any assets of such person without an order of the court; or
- (d)** requiring any bank or other financial institution to produce to the police any information relevant to any assets of such person.

(4) Any person who has any interest in any assets seized or forfeited under this section may apply to the court to have such assets released.

(5) Any person who deals with any assets, which are subject to an order of the court under this section, in breach of or contrary to the terms of such order shall be guilty of an offence and liable to imprisonment for five years and to a fine of P 10 000.

17. (1) Any motor vehicle seized by the police in accordance with the provisions of this Act and of which the owner is not known or cannot be found, and any motor vehicle found abandoned on any road or in any public place or premises may be removed to the nearest or most convenient police station, and if not previously claimed by its owner, which claim shall be supported by satisfactory proof and all relevant documents, shall be dealt with in accordance with the provisions of subsection (2).

Unclaimed
motor
vehicles

(2) As and when he considers it necessary the Commissioner of Police shall cause to be published in three editions of the Gazette at monthly intervals, and similarly in at least one newspaper circulating in Botswana, a notice giving particulars of all abandoned or seized motor vehicles, or where no particulars are available a fair description of the vehicles, and a warning that if any of the vehicles remain unclaimed after a reasonable period of time, which shall not be less than two months after the date of the last notice published, they shall be forfeited to the Government and dealt with as the Commissioner of Police may direct, which may include sale by public auction.

(3) Any vehicle seized, or taken into custody, by the police before the commencement of this Act, because it is suspected to have been stolen, or because the person lawfully entitled to it is unknown or cannot be traced, shall, within one month from the commencement of this Bill, or within six months of its being seized or taken into custody, whichever is the longer period, be dealt with in accordance with the provisions of subsection (2).

PASSED by the National Assembly this 15th day of August, 1995.

C.T. MOMPEI,
Clerk of the National Assembly.