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Bill Analysis

Legislative Service Commission

Sub. S.B. 64*

123rd General Assembly

(As Reported by S. Economic Development, Technology, & Aerospace)

Sens. Wachtmann, Drake

BILL SUMMARY

- Requires any person who offers certain kinds of new and unused personal property for sale to the general public at a flea market or at any other location to maintain for two years records of ownership of that property.
- Provides that failure to maintain the required records is a minor misdemeanor.
- Makes it a criminal offense (receiving stolen property) for any person to obtain or exert control over property in the custody of a law enforcement agency that is represented to that person as being stolen property.

CONTENT AND OPERATION

Persons offering new and unused personal property for sale must maintain certain records

(sec. 1349.06(B)-(D))

The bill establishes a record-keeping requirement for persons who offer new and unused personal property for sale to the general public, presumably to aid in the investigation of theft of merchandise offered for resale. By implication, the bill does not appear to apply to the sale of any used property. The bill requires any person who offers new and unused property for sale at a flea market or at any *other*

*This analysis was prepared before the report of the Senate Economic Development, Technology, and Aerospace Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

location to maintain for two years records regarding that person's purchase and ownership of the property offered for sale.¹ The following records are required:

- (1) Date of purchase;
- (2) Name and address of person or entity from whom the property was purchased;
- (3) Description of the property including any identifying marks; and
- (4) Price paid for the property.

If the property is valued at \$500 or more, a bill of sale containing the above required items is a sufficient record. Records are not required for property purchased before the bill's effective date.

Persons subject to the bill's requirements are also prohibited from knowingly falsifying, obliterating, or destroying any required records. In addition, subject to reasonable notice and a reasonable time to comply, persons offering new and unused personal property for sale must make the required records available to a law enforcement officer for inspection. Should the records required be lost, stolen, or inadvertently destroyed, a person subject to the bill's provisions will not be considered to be in failure to comply with those provisions if the person within 30 days of the loss, theft, or destruction notifies the sheriff of the county where the person's Ohio residence is located or where the person's principal place of business in the state is located and immediately resumes maintaining the required records. Although the bill does not directly address compliance by nonresidents, presumably it applies equally to residents and nonresidents who offer new and unused personal property for sale at flea markets and other locations in the state.

Exemptions

(sec. 1349.06(F))

The bill exempts the following sales of personal property from its requirements:

¹ *The bill adopts the following definition of flea market: any location, other than a permanent retail store, at which space is rented or otherwise made available to others for the conduct of business as transient or limited vendors (sec. 3715.52(B)(4), not in the bill). However, since the bill uses the term "other location," it presumably applies also to any person selling new and unused personal property at a permanent retail store.*

(1) Sales of motor vehicles, trailers, or semitrailers for which a certificate of title is required;

(2) Sales of food, agricultural, or forestry products;

(3) Sales at any industry or association trade show; and

(4) Sales of any handmade or handcrafted items by the persons who produced them.

Penalty

(sec. 1349.06(E))

Failure to comply with the provisions of the bill is a minor misdemeanor.²

Prohibition against obtaining or exerting control over property that is in the custody of a law enforcement agency and that is represented as being stolen property

(sec. 2913.51)

The bill also amends the law on receiving stolen property. Under current law, unchanged by the bill, it is a criminal offense for a person to receive, retain, or dispose of any property that is owned by another person if the person receiving, retaining, or disposing of that property knows or has "reasonable cause to believe" that the property has been stolen from its rightful owner. Violation is a first degree misdemeanor if the value of the property is less than \$500; a fifth degree felony if the value of the property is between \$500 and \$5,000 or if the property is such items as credit cards or checks; a fourth degree felony if the value of the property is between \$5,000 and \$100,000 or if the property is a dangerous drug, a motor vehicle, or a firearm or dangerous ordnance; or a third degree felony if the value of the property is over \$100,000.

The bill provides that the criminal offense of receiving stolen property also includes obtaining or exerting control over property that is in the custody of a law enforcement agency and that either a law enforcement officer or an individual acting on behalf of a law enforcement agency has explicitly represented to the person obtaining or exerting control over the property as stolen property (sec. 2913.51(A)(2)). The provision in effect permits law enforcement officers to

² A minor misdemeanor is punishable by a fine of no more than \$100 (see sec. 2929.21(D), not in the bill).

conduct "reverse sting" operations against persons who receive stolen goods by using property that has been loaned to the officers by retail establishments. Although the property is not in fact stolen, it is represented as stolen, and the offender willing receives that property believing that it is stolen. Under the bill, such an offense is punishable in the same manner as if the property was in fact stolen property.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-19-99	p. 128
Reported, S. Economic Development, Technology, & Aerospace	---	---

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