



Aida S. Montano

Bill Analysis
Legislative Service Commission

H.B. 348

124th General Assembly
(As Introduced)

Reps. Wilson, Rhine, Seitz, Coates, S. Smith, Krupinski, Fedor, Seaver, Allen, Willamowski, Carano, Lendrum, Latell, D. Miller

BILL SUMMARY

- Requires a law enforcement officer or agency that seizes a vehicle or vehicle part upon probable cause to believe that the vehicle identification number has been removed, defaced, covered, altered, or destroyed in such a manner that the identity of the vehicle or vehicle part cannot be determined, to transport, secure, and store the vehicle or vehicle part in a manner that protects it from damage.
- Specifies the duties of that law enforcement officer or agency with respect to the restoration or location of the vehicle identification number, the determination of whether the vehicle or vehicle part is stolen, the identification, location, and notification of the lawful owner, and the return of the vehicle or vehicle part to the lawful owner.
- Provides that the state or a political subdivision associated with that law enforcement officer or agency is liable to the lawful owner of the vehicle or vehicle part in a civil action for damage to it or loss of its use that is proximately caused by the failure of the law enforcement officer or agency to comply with its duties.

CONTENT AND OPERATION

Authority to seize vehicle or vehicle part

Existing law

Current law authorizes a law enforcement officer to seize and take possession of a vehicle or vehicle part if the officer has probable cause to believe that any "vehicle identification number or derivative thereof" (see **COMMENT 1**) on the vehicle or part has been removed, defaced, covered, altered, or destroyed in

such a manner that the identity of the vehicle or part cannot be determined by visual examination of the number at the site where the manufacturer placed the number. The seizure must be pursuant to a warrant, unless the circumstances are within one of the exceptions to the warrant requirement that have been established by the Supreme Court of the United States or the Supreme Court of Ohio. A seized vehicle or vehicle part must be held in custody pursuant to R.C. 2933.41 (see **COMMENT 2**) or any applicable municipal ordinance. (R.C. 4549.63(A) and (B).)

The lawful owner of a vehicle or vehicle part seized as described above, that is not needed as evidence and is not subject to forfeiture under R.C. 4549.62(D)(2) (see **COMMENT 3**) may reclaim the property by submitting satisfactory proof of ownership to the law enforcement agency or court holding the property (R.C. 4549.63(D)).

Operation of the bill

The bill specifies the following exceptions to the requirement that a vehicle or vehicle part that is seized as described above be held in custody pursuant to R.C. 2933.41 or any applicable municipal ordinance (R.C. 4549.63(B)(2) and (3)):

(1) A law enforcement officer or agency that seizes a vehicle or vehicle part must transport, secure, and store the vehicle or vehicle part in a manner that protects the vehicle or vehicle part from damage.

(2) Within 30 days of seizing a vehicle or vehicle part, the law enforcement officer or agency must do all of the following:

(a) Restore or locate the vehicle identification number if possible and determine whether the vehicle or vehicle part is stolen;

(b) Make a reasonable effort to identify and locate the lawful owner of the vehicle or vehicle part;

(c) Notify the lawful owner of when and where the vehicle or vehicle part may be reclaimed;

(d) Return the vehicle or vehicle part to the lawful owner in accordance with the second paragraph above in "**Existing law.**"

Civil liability of state or political subdivision

Under current law, a law enforcement officer who acts in good faith in the belief that the seizure of a vehicle or vehicle part is justified under the law as

described above is immune from any civil or criminal liability for such seizure (R.C. 4549.63(C)).

The bill modifies current law by providing that notwithstanding the above immunity provision, the state or any political subdivision associated with a law enforcement officer or agency that seizes a vehicle or vehicle part as described above *is liable* to its lawful owner in a civil action for any damage to or loss of the use of the vehicle or vehicle part that is proximately caused by either of the following (R.C. 4549.63(C)(2)):

(1) The failure of the law enforcement officer or agency to transport, secure, and store the vehicle or vehicle part in a manner that protects the vehicle or vehicle part from damage;

(2) The failure of the law enforcement officer or agency to comply with paragraph (3) as described above in "Operation of the bill" under "Authority to seize vehicle or vehicle part."

COMMENT

1. "Vehicle identification number or derivative thereof" means any number or derivative of such a number that is embossed, engraved, etched, or otherwise marked on any vehicle or vehicle part by the manufacturer. "Vehicle identification number" also includes a duplicate vehicle identification number replaced upon a vehicle under the authority of the Registrar of Motor Vehicles. (R.C. 4549.61--not in the bill.)

2. R.C. 2933.41, not in the bill, provides that, generally, any property that has been lost, abandoned, stolen, seized pursuant to a search warrant, or otherwise lawfully seized or forfeited, and that is in the custody of a law enforcement agency must be kept safely pending the time it no longer is needed as evidence and must be disposed of pursuant to that section. Each law enforcement agency that has custody of the property must adopt a written internal control policy that (a) addresses the keeping of detailed records as to the amount of property taken in by the agency, (b) addresses the agency's disposition of the property, (c) provides for the keeping of detailed records of the disposition of the property, and (d) provides for the keeping of detailed financial records of the amount and disposition of any proceeds of a sale of certain unclaimed property and of the general types of expenditures made out of the proceeds retained by the agency and the specific amount expended on each general type of expenditure.

Every law enforcement agency that has any lost, abandoned, stolen, seized, or forfeited property in its custody must comply with its written internal control policy relative to the property. Each agency that has any such property in its

custody, with certain exceptions, must maintain an accurate record, in accordance with its written internal control policy, of each item of the property. The record must include the date on which each item of property came into the agency's custody, the manner in which it was disposed of, the date of its disposition, the name of the person who received the property if it was not destroyed, and all other information required by the agency's written internal control policy. However, the record must not identify or enable the identification of the individual officer who seized any item of property.

Each law enforcement agency that, during any calendar year, has any seized or forfeited property in its custody must prepare a report covering the calendar year that cumulates all of the information contained in all of the records kept by the agency for that calendar year and must send a copy of the cumulative report, no later than the first day of March in the calendar year following the calendar year covered by the report, to the Attorney General. Not later than the 15th day of April in the calendar year in which reports are sent to the Attorney General, the Attorney General must send to the President of the Senate and the Speaker of the House of Representatives a written notification providing information about the reports.

A law enforcement agency that has property in its possession that is required to be disposed of must make a reasonable effort to locate the persons entitled to possession of the property in its custody, to notify them of when and where it may be claimed, and to return the property to them at the earliest possible time. In the absence of evidence identifying persons entitled to possession, it is sufficient notice to advertise in a newspaper of general circulation in the county, briefly describing the nature of the property in custody and inviting persons to view and establish their right to it.

A person loses any right that the person may have to the possession, or the possession and ownership, of property if any of the following applies: (1) the property was the subject, or was used in a conspiracy or attempt to commit, or in the commission, of an offense other than a traffic offense, and the person is a conspirator, accomplice, or offender with respect to the offense or (2) a court determines that the property should be forfeited because, in light of the nature of the property or the circumstances of the person, it is unlawful for the person to acquire or possess the property.

Unclaimed or forfeited property in the custody of a law enforcement agency must be disposed of on application to and order of any court of record that has territorial jurisdiction over the political subdivision in which the law enforcement agency has jurisdiction to engage in law enforcement activities. Vehicles and vehicle parts forfeited under R.C. 4549.61 to 4549.63 (subject of the bill) may be given to a law enforcement agency for use in the performance of its duties. Those

parts may be incorporated into any other official vehicle. Parts that do not bear vehicle identification numbers or derivatives of them may be sold or disposed of as provided by rules of the Director of Public Safety. Parts from which a vehicle identification number or derivative of it has been removed, defaced, covered, altered, or destroyed and that are not suitable for police work or incorporation into an official vehicle must be destroyed and sold as junk or scrap. (R.C. 2933.41(A)(1) and (2)(a) and (c), (B), (C), and (D)(6).)

3. R.C. 4549.62, not in the bill, contains certain prohibitions and exceptions to the prohibitions concerning vehicle identification numbers. R.C. 4549.62(D)(1) prohibits any person from buying, offering to buy, selling, offering to sell, receiving, disposing of, concealing, or, with a certain exception, possessing any vehicle or vehicle part with knowledge that the vehicle identification number or a derivative thereof has been removed, defaced, covered, altered, or destroyed in such a manner that the identity of the vehicle or part cannot be determined by a visual examination of the number at the site where the manufacturer placed the number. Under R.C. 4549.62(D)(2)(a), generally, a vehicle or vehicle part from which the vehicle identification number or a derivative thereof has been so removed, defaced, covered, altered, or destroyed must be seized and forfeited under R.C. 2933.41. If a derivative of the vehicle identification number has been removed, defaced, covered, altered, or destroyed in such a manner that the identity of the part cannot be determined, the entire vehicle is subject to seizure pending a determination of the original identity and ownership of the vehicle and parts of the vehicle, and the rights of innocent owners to reclaim the remainder or any part of the vehicle.

The lawful owners of *parts upon a vehicle* that has been seized and that is subject to forfeiture under R.C. 2933.41 (see **COMMENT 2**) are entitled to reclaim their respective parts upon satisfactory proof of *all* of the following (R.C. 4549.62(D)(2)(b)):

(a) That the part is not needed for evidence in pending proceedings involving the vehicle or part and is not subject to forfeiture under R.C. 2933.41;

(b) That the original identity and ownership of the part can be determined and that the claimant is the lawful owner of the part;

(c) That no vehicle identification number or derivative of a vehicle identification number on the part has been destroyed or concealed in such a manner that the identity of the part cannot be determined from that number;

(d) Payment of all costs of removing the part.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	08-28-01	p. 822

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