



Aida S. Montano

Bill Analysis
Legislative Service Commission

H.B. 103

125th General Assembly
(As Introduced)

Reps. Wilson, Young, Redfern, Allen, Hartnett, Seitz, Chandler, Hagan, Boccieri, Widowfield, Carano, S. Patton, Miller, Book, Ujvagi, Skindell

BILL SUMMARY

- Requires a law enforcement officer or agency that seizes a motorcycle or motorcycle 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 motorcycle or motorcycle part cannot be determined, to transport, secure, and store the motorcycle or motorcycle 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 motorcycle or motorcycle part is stolen, the identification, location, and notification of the lawful owner or owner of record, and the return of the motorcycle or motorcycle part to the lawful owner or owner of record.
- Generally provides that the state or a political subdivision associated with that law enforcement officer or agency is liable to the lawful owner or owner of record of the motorcycle or motorcycle 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.
- Specifies the circumstances in which a private tow truck operator or towing company that transports a seized motorcycle or motorcycle part or a private storage facility operator or company that stores in its storage facility a seized motorcycle or motorcycle part is civilly liable to the lawful owner or owner of record of the motorcycle or motorcycle part for any damage to it or loss of its use.

- In regard to existing law's prohibition against selling any vehicle or vehicle part with knowledge that the vehicle identification number or derivative of that number 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 it, permits a buyer of a motorcycle or motorcycle part, who has no knowledge that its vehicle identification number or derivative of that number has been so removed, defaced, covered, altered, or destroyed, to rescind the sale and to obtain the return of the purchase price from the seller.

CONTENT AND OPERATION

Existing law--authority to seize vehicle or vehicle part

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 "*Definitions*," below) 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**) or any applicable municipal ordinance. (R.C. 4549.63(A) and (B).)

The lawful owner of a vehicle or vehicle part that is seized as described above and that is not needed as evidence and is not subject to forfeiture (see "*Prohibition concerning vehicle identification numbers; remedy*," below) 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--seizure of motorcycle or motorcycle part

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) If a vehicle or vehicle part that is seized is a "motorcycle" (see "*Definitions*," below) or motorcycle part, a law enforcement officer or agency that seizes the motorcycle or motorcycle part must transport, secure, and store the

motorcycle or motorcycle part in a manner that protects the motorcycle or motorcycle part from damage.

(2) Within 30 days of seizing a motorcycle or motorcycle 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 motorcycle or motorcycle part is stolen;

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

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

(d) Return the motorcycle or motorcycle part to the lawful owner or owner of record in accordance with the following paragraph or otherwise make a good faith effort to return it to the lawful owner or owner of record.

Under existing law, as modified by the bill, the lawful owner *or owner of record* of a seized vehicle or vehicle part that is not needed as evidence and is not subject to forfeiture (see "**Prohibition concerning vehicle identification numbers; remedy**," below) 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)).

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 and except as described below in "**Exceptions**," the state or any political subdivision associated with a law enforcement officer or agency that seizes a motorcycle or motorcycle part as described above *is liable* to its lawful owner or owner of record in a civil action for any damage to or loss of the use of the motorcycle or motorcycle 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 motorcycle or motorcycle part in a manner that protects the motorcycle or motorcycle part from damage;

(2) The failure of the law enforcement officer or agency to comply with paragraph (2) as described above in "**Operation of the bill--seizure of motorcycle or motorcycle part.**"

Exceptions

The bill provides that, if a private tow truck operator or towing company transports a motorcycle or motorcycle part that a law enforcement officer or agency seizes under the provisions described above in "**Existing law--authority to seize vehicle or vehicle part.**" that tow truck operator or towing company is liable to the lawful owner or owner of record of the motorcycle or motorcycle part in a civil action for any damage to or loss of the use of the motorcycle or motorcycle part that is proximately caused by the failure of the tow truck operator or towing company or an employee of that operator or company to transport the motorcycle or motorcycle part in a manner that protects it from damage or loss of use.

If a private storage facility operator or company stores in its storage facility a motorcycle or motorcycle part that a law enforcement officer or agency seizes under the provisions described above in "**Existing law--authority to seize vehicle or vehicle part.**" that storage facility operator or company is liable to the lawful owner or owner of record of the motorcycle or motorcycle part in a civil action for any damage to or loss of the use of the motorcycle or motorcycle part that is proximately caused by the failure of the storage facility operator or company or an employee of that operator or company to store the motorcycle or motorcycle part in a manner that protects it from damage or loss of use. (R.C. 4549.63(C)(3) and (4).)

Prohibition concerning vehicle identification numbers; remedy

Existing law

Existing law contains certain prohibitions and exceptions to the prohibitions concerning vehicle identification numbers. One of these prohibitions is against any person 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 derivative of the number 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. Generally, a vehicle or vehicle part from which the vehicle identification number or derivative of the number has been so removed, defaced, covered, altered, or destroyed must be seized and forfeited under R.C. 2933.41 (see **COMMENT**). 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. (R.C. 4549.62(D)(1) and (D)(2)(a).)

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

(1) 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;

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

(3) That no vehicle identification number or derivative of the 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;

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

Operation of the bill

The bill provides that if any person sells a motorcycle or motorcycle part in violation of existing law's prohibition as described above, a buyer of the motorcycle or motorcycle part, who has no knowledge that the motorcycle's vehicle identification number or derivative of the vehicle identification number has been removed, defaced, covered, altered, or destroyed in a manner that the identity of the motorcycle or motorcycle part cannot be determined by a visual examination of the number at the site where the manufacturer placed the number, may rescind the sale of the motorcycle or motorcycle part and is entitled to the return of the purchase price of the motorcycle or motorcycle part from the seller (R.C. 4549.62(E) and R.C. 4549.62(G)--effective January 1, 2004).

Definitions

"Vehicle identification number or derivative thereof," changed by the bill to "vehicle identification number or derivative of the vehicle identification number" 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(A).)

"Motorcycle" means every motor vehicle, other than a tractor, that has a saddle for the use of the operator and is designed to travel on not more than three wheels in contact with the ground, including, but not limited to, motor vehicles known as "motor-driven cycle," "motor scooter," or "motorcycle" without regard to weight or brake horsepower (R.C. 4549.61(B) and R.C. 4511.01(C)--not in the bill).

COMMENT

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 or forfeited 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.

Other than certain specified types of contraband, forfeited property, and seized 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).)

HISTORY

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