



Joseph G. Aninao

*Bill Analysis*  
*Legislative Service Commission*

## **H.B. 146**

126th General Assembly  
(As Introduced)

**Reps. Harwood, Kearns, Carano, Seitz, Chandler, Hood, Brown, Williams,  
S. Patton**

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### **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 locating the motorcycle's or motorcycle part's vehicle identification number, determining whether the motorcycle or motorcycle part is stolen, and returning the motorcycle or motorcycle part to the lawful owner or owner of record if it is not determined to be stolen.
- If more than one person claims to be the lawful owner, requires the law enforcement agency to return the motorcycle or motorcycle part to the person who is determined by a court to be its lawful owner upon the person's submitting satisfactory proof of financial responsibility with respect to the motorcycle or motorcycle part.
- Provides that the state or a political subdivision associated with that law enforcement officer or agency, or a private tow truck operator, towing company, or private storage facility, as applicable, is liable to the lawful owner or owner of record in a civil action for any damage that is proximately caused by the negligent failure to transport, secure, and store the motorcycle or motorcycle part in a manner that protects it from damage or to comply with its duties.

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## CONTENT AND OPERATION

### Seizure of 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 of it 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 it. 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 United States Supreme Court or the Ohio Supreme Court. A seized vehicle or vehicle part must be held in custody, but the lawful owner of the vehicle or vehicle part may, if it is not needed as evidence and is not subject to forfeiture, reclaim the property by submitting satisfactory proof of ownership to the law enforcement agency or court holding the property (R.C. 4549.63(A), (B), and (D)).

#### Operation of the bill

Seizure of motorcycle or motorcycle part. The bill enacts the following exceptions to the requirement that the vehicle or vehicle part be held in custody:

(1) If the vehicle or vehicle part is a "motorcycle" (which is defined to include a "motor-driven cycle," "motor scooter," or similar vehicle) or motorcycle part, a law enforcement officer or the agency that seizes it must transport, secure, and store the motorcycle or motorcycle part in a manner that protects it from damage.

(2) Within 30 days of seizing a motorcycle or motorcycle part, the law enforcement officer or agency must do the following: (a) locate the vehicle identification number if possible and determine whether the motorcycle or motorcycle part is stolen, and (b) if the motorcycle or motorcycle part is not determined to be stolen, return or make a good faith effort to return it to the lawful owner or owner of record.

Reclaiming property. Under 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 may reclaim the property by submitting satisfactory proof of ownership of the vehicle or vehicle part and satisfactory proof of financial responsibility with respect to the vehicle or vehicle part to the law enforcement agency or court holding the property (R.C. 4549.63(D)).

**Multiple claimants.** The bill provides that, if more than one person claims to be the lawful owner of the motorcycle or motorcycle part, the law enforcement officer or agency that seized it is not required to return it to any of the persons claiming to be its lawful owner until a court orders its return pursuant to an action that any of the claimants may bring to determine its lawful ownership. The law enforcement agency must return the motorcycle or motorcycle part to the person who is determined by the court to be its lawful owner upon the person's submitting satisfactory proof of financial responsibility with respect to the motorcycle or motorcycle part to the law enforcement agency. (R.C. 4549.63(B)(4).)

### **Civil liability**

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 is immune from any civil or criminal liability for such seizure. The bill provides instead that the state or 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 the motorcycle or motorcycle part that is proximately caused by either of the following (R.C. 4549.63(C)):

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

(2) The negligent failure of the officer or agency to determine if the motorcycle or motorcycle part was stolen and, if it is determined not to have been stolen, to return it or make a good faith effort to return it to the lawful owner or owner of record.

The bill also provides that if a private tow truck operator or towing company transports the motorcycle or motorcycle part, the tow truck operator or towing company is liable to the lawful owner or owner of record in a civil action for any damage that is proximately caused by the negligent failure of the private 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. Similarly, if a private storage facility operator or company stores the motorcycle or motorcycle part in its storage facility, the storage facility operator or company is liable. (R.C. 4549.63(C)(3) and (4).)

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## HISTORY

| ACTION     | DATE     | JOURNAL ENTRY |
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| Introduced | 03-22-05 | p. 353        |

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