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Bill Analysis
Legislative Service Commission

H.B. 278

127th General Assembly
(As Introduced)

Reps. Letson, Domenick, Foley, Brady, Yuko, Seitz, Distel, Luckie, Harwood

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, or cause it to be transported, secured, and stored, 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 person from whom it was seized, the lawful owner, or owner of record if it is not determined to be stolen.
- Provides that the state or a political subdivision associated with that law enforcement officer or agency is liable to the person from whom the motorcycle or motorcycle part was seized, its lawful owner, or owner of record in a civil action for any damage to it that is proximately caused by the negligent failure of the law enforcement officer or agency to transport, secure, and store it in a manner that protects it from damage or to comply with its duties.

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 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 United States Supreme Court or the Ohio Supreme Court. A seized vehicle or vehicle part must be held in custody pursuant to R.C. 2981.11 (see **COMMENT 1**) 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 under R.C. 4549.62(D)(2) (see **COMMENT 2**) 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 enacts 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. 2981.11 or any applicable municipal ordinance (R.C. 4549.63(B)(2) and (3)):

(1) If a vehicle or vehicle part that is seized as described above 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, or cause the motorcycle or motorcycle part to be transported, secured, and stored, 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 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, except as otherwise provided in any provision of federal

law (see **COMMENT 3**), return the motorcycle or motorcycle part to the person from whom it was seized, the lawful owner, or owner of record in accordance with the provisions described in the second following paragraph or otherwise make a good faith effort to return it to the person from whom it was seized, the lawful owner, or owner of record in accordance with those provisions.

Liability. A law enforcement agency that holds a motorcycle or motorcycle part that is not determined to be stolen longer than 30 days after the date of its seizure is liable for damages (R.C. 4549.63(B)(4)).

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 under R.C. 4549.62(D)(2) (see **COMMENT 2**) may reclaim the property by submitting satisfactory proof of ownership *of the vehicle or vehicle part* to the law enforcement agency or court holding the property (italicized phrases are added by the bill) (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, 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 the person from whom it was seized, 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)(2)):

(1) The negligent 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 negligent failure of the law enforcement officer or agency to comply with paragraph (2) as described above in "**Seizure of motorcycle or motorcycle part.**"

Definitions

The following definitions are relevant to the bill:

"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).)

The bill changes "vehicle identification number or a derivative thereof" in R.C. 4549.62(D)(4)(a)(i) (nonapplicability of a certain prohibition concerning vehicle identification numbers) and in R.C. 4549.63(A), to "vehicle identification number or derivative of the vehicle identification number."

"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), by reference to existing R.C. 4511.01(C)--not in the bill).

COMMENT

1. R.C. 2981.11(A)(1), 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 by the agency, pending the time that it no longer is needed as evidence or for another lawful purpose and must be disposed of pursuant to R.C. 2981.12 and 2981.13 (disposal of unclaimed or forfeited property). However, R.C. Chapter 2981. (Forfeiture Law), including the custody provisions of R.C. 2981.11 and the disposition provisions of R.C. 2981.12 and 2981.13 do not apply to certain types of property listed in R.C. 2981.11(A)(2). Among these excluded types of property are vehicles subject to forfeiture under R.C. Title XLV (Motor Vehicle Law). However, vehicles and vehicle parts forfeited under R.C. 4549.61 to 4549.63 (tampering with vehicle identification numbers) may be given to a law enforcement agency for use in performing 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. 2981.11(A)(2)(a) and 2981.12(A)(6)(b).)

2. R.C. 4549.62(D)(2)(a) provides that, generally, a vehicle or vehicle part from which the vehicle identification number or a derivative of the vehicle identification 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 must be seized and forfeited under R.C. Chapter 2981. (Forfeiture Law). 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 the Forfeiture Law 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 the Forfeiture Law, (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, and (4) payment of all costs of removing the part.

3. The relevant federal law provisions are the following:

18 U.S.C.A. 2321, which provides as follows:

(a) Whoever buys, receives, *possesses*, or obtains control of, *with intent to sell or otherwise dispose of*, a motor vehicle or motor vehicle part, *knowing that an identification number for such motor vehicle or part has been removed, obliterated, tampered with, or altered*, shall be fined under this title or imprisoned not more than ten years, or both.

(b) Subsection (a) does not apply if the removal, obliteration, tampering, or alteration--

(1) is caused by collision or fire; or

(2) is not a violation of section 511 of this title.

(c) As used in this section, the terms "identification number" and "motor vehicle" have the meaning given those terms in section 511 of this title.

(Emphasis added.)

18 U.S.C.A. 511, which provides in relevant part as follows:

(a) A person who--

(1) knowingly removes, obliterates, tampers with, or alters an identification number for a motor vehicle or motor vehicle part; or

(2) with intent to further the theft of a motor vehicle, knowingly removes, obliterates, tampers with, or alters a decal or device affixed to a motor vehicle pursuant to the Motor Vehicle Theft Prevention Act,

shall be fined under this title, imprisoned not more than 5 years, or both.

(b)(1) Subsection (a) of this section does not apply to a removal, obliteration, tampering, or alteration by a person specified in paragraph (2) of this subsection (unless such person knows that the vehicle or part involved is stolen).

(2) The persons referred to in paragraph (1) of this subsection are--

(A) a motor vehicle scrap processor or a motor vehicle demolisher who complies with applicable State law with respect to such vehicle or part;

(B) a person who repairs such vehicle or part, if the removal, obliteration, tampering, or alteration is reasonably necessary for the repair;

(C) a person who restores or replaces an identification number for such vehicle or part in accordance with applicable State law; and

(D) a person who removes, obliterates, tampers with, or alters a decal or device affixed to a motor vehicle

pursuant to the Motor Vehicle Theft Prevention Act, if that person is the owner of the motor vehicle, or is authorized to remove, obliterate, tamper with or alter the decal or device by--

- (i) the owner or his authorized agent;
- (ii) applicable State or local law; or
- (iii) regulations promulgated by the Attorney General to implement the Motor Vehicle Theft Prevention Act.

18 U.S.C.A. 512, which provides in relevant part as follows:

(a) If an identification number for a motor vehicle or motor vehicle part is removed, obliterated, tampered with, or altered, such vehicle or part shall be subject to seizure and forfeiture to the United States unless--

(1) in the case of a motor vehicle part, such part is attached to a motor vehicle and the owner of such motor vehicle does not know that the identification number has been removed, obliterated, tampered with, or altered;

(2) such motor vehicle or part has a replacement identification number that--

(A) is authorized by the Secretary of Transportation under chapter 301 of title 49; or

(B) conforms to applicable State law;

(3) such removal, obliteration, tampering, or alteration is caused by collision or fire or is carried out as described in section 511(b) of this title; or

(4) such motor vehicle or part is in the possession or control of a motor vehicle scrap processor who does not know that such identification number was removed, obliterated, tampered with, or altered in any manner other than by collision or fire or as described in section 511(b) of this title.

HISTORY

ACTION

DATE

Introduced

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