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Bill Analysis
Legislative Service Commission

S.B. 204
127th General Assembly
(As Introduced)

Sens. Cafaro, Fedor, D. Miller, Mason, Kearney, Smith, Bocchieri, Wilson

BILL SUMMARY

- Modifies the guidelines governing the seizure of a motorcycle or motorcycle part by a law enforcement officer when the identity of the motorcycle or motorcycle part cannot be determined.
- Establishes limited civil liability if the law enforcement officer or agency fails to comply with the specified guidelines.

CONTENT AND OPERATION

Seizure of a vehicle or vehicle part

Existing law

Existing law permits 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 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 of the Supreme Court of Ohio. (R.C. 4549.63(A).) A vehicle or vehicle seized under the provision described above must be held in custody pursuant to R.C. 2981.11 (care of property in law enforcement custody) or any applicable municipal ordinance (R.C. 4549.63(B)).

Operation of the bill

The bill provides that if a vehicle or vehicle part that is seized under R.C. 4549.63(A) is a motorcycle 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 must cause the motorcycle or motorcycle part to be transported, secured, and stored, in a manner that protects the motorcycle or motorcycle part from damage (R.C. 4549.63(B)(2)).

Within 30 days of seizing a motorcycle or motorcycle part, the law enforcement officer or agency must do the following (R.C. 4549.63(B)(3)):

(1) Locate the vehicle identification number if possible and determine whether the motorcycle or motorcycle part is stolen;

(2) If the motorcycle or motorcycle part is not determined to be stolen, except as otherwise provided in any provision of federal law, return the motorcycle or motorcycle part to the person from whom the motorcycle or motorcycle part was seized, the lawful owner, or owner of record in accordance with R.C. 4549.63(D), as amended by the bill (permits the lawful owner or owner of record to reclaim property by submitting satisfactory proof of ownership of the vehicle or vehicle part) or otherwise make a good faith effort to return the motorcycle or motorcycle part to the person from whom the motorcycle or motorcycle part was seized, the lawful owner, or owner of record in accordance with R.C. 4549.63(D).

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 seizure of such motorcycle or motorcycle part is liable for damages (R.C. 4549.63(B)(4)).

Civil liability

Existing law

Under existing law, a law enforcement officer who acts in good faith in the belief that the seizure of a vehicle or vehicle part is justified is immune from any civil or criminal liability for such seizure (R.C. 4549.63(C)).

Operation of the bill

The bill provides, notwithstanding the existing law described above, the state or any political subdivision associated with a law enforcement officer or agency that seizes a motorcycle or motorcycle part 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 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 the bill's requirements as set forth above for what action must be taken within 30 days after seizing a motorcycle or motorcycle part.

Reclamation of property

Existing law provides that the lawful owner of a vehicle or vehicle part seized under R.C. 4549.63 that is not needed as evidence and is not subject to forfeiture may reclaim the property by submitting satisfactory proof of ownership to the law enforcement agency or court holding the property. The bill allows the *owner of record* to reclaim that property as well and specifies that the owner or owner of record submit satisfactory proof of ownership *of the vehicle or vehicle part* to the law enforcement agency or court holding the property. (R.C. 4549.63(D).)

Miscellaneous

The bill provides that "motorcycle" has the same meaning as in R.C. 4511.01 and makes other technical changes. Under R.C. 4511.01(C), "motorcycle" means every motor vehicle, other than a tractor, having a saddle for the use of the operator and 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.

HISTORY

ACTION	DATE
Introduced	07-26-07

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