



Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 305* 129th General Assembly (As Reported by S. Judiciary)

Sens. Hughes, Patton

BILL SUMMARY

- Prohibits a person from knowingly designing, building, constructing, or fabricating a vehicle with a hidden compartment, or modifying or altering any portion of a vehicle to create or add a hidden compartment, with the intent to facilitate the unlawful concealment or transportation of a controlled substance.
- Prohibits a person from knowingly operating, possessing, or using a vehicle with a hidden compartment with knowledge that the hidden compartment is used or intended to be used to facilitate the unlawful concealment or transportation of a controlled substance.
- Prohibits a person who has been convicted of or pleaded guilty to the offense of "aggravated trafficking in drugs" when the offense is a first or second degree felony from operating, possessing, or using a vehicle with a hidden compartment.
- Provides exemptions from the prohibitions, in specified circumstances, for: (1) law enforcement officers, (2) licensed motor vehicle dealers or manufacturers that repair, purchase, receive in trade, lease, or sell a motor vehicle, and (3) a box, safe, container, or other item added to a vehicle that is manufactured and advertised for securing valuables, electronics, or firearms and does not contain a controlled substance or controlled substance residue.

* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

CONTENT AND OPERATION

The bill enacts three separate prohibitions that relate to a person engaging in any of several types of specified conduct that involve a "hidden compartment" in a "vehicle" and conduct or a purpose related to a "controlled substance" (see "**Definitions**," below, for definitions of the terms in quotation marks).

Prohibitions and penalties

The first prohibition prohibits a person from knowingly designing, building, constructing, or fabricating a vehicle with a hidden compartment, or modifying or altering any portion of a vehicle in order to create or add a hidden compartment, with the intent to facilitate the unlawful concealment or transportation of a controlled substance. A violation of this prohibition is the offense of "designing a vehicle with a hidden compartment used to transport a controlled substance." The offense generally is a fourth degree felony, but it is a third degree felony if offender previously has been convicted of or pleaded guilty to a violation of the prohibition.¹

The second prohibition prohibits a person from knowingly operating, possessing, or using a vehicle with a hidden compartment with knowledge that the hidden compartment is used or intended to be used to facilitate the unlawful concealment or transportation of a controlled substance. A violation of this prohibition is the offense of "operating a vehicle with a hidden compartment used to transport a controlled substance." The offense generally is a fourth degree felony, but it is a third degree felony if the offender previously has been convicted of or pleaded guilty to a violation of the prohibition or the prohibition described in the next paragraph, and it is a second degree felony if the hidden compartment contains a controlled substance at the time of the offense.²

The third prohibition prohibits a person who has been convicted of or pleaded guilty to the offense of "aggravated trafficking in drugs" under R.C. 2925.03 (see "**Background – aggravated trafficking in drugs**," below) when the offense is a first or second degree felony from operating, possessing, or using a vehicle with a hidden compartment. A violation of this prohibition also is the offense of "operating a vehicle with a hidden compartment used to transport a controlled substance" and is punished in the manner described in the preceding paragraph.³

¹ R.C. 2923.241(B) and (E).

² R.C. 2923.241(C) and (F).

³ R.C. 2923.241(D) and (F).

The bill's prohibitions described above do not do any of the following:

(1) Apply to any law enforcement officer acting in the performance of the officer's duties;⁴

(2) Apply to any licensed "motor vehicle dealer" or motor vehicle "manufacturer" (see "**Definitions**," below) that in the ordinary course of business repairs, purchases, receives in trade, leases, or sells a motor vehicle;⁵

(3) Impose a duty on a licensed motor vehicle dealer to know, discover, report, repair, or disclose the existence of a hidden compartment to any person;⁶

(4) Apply to a box, safe, container, or other item added to a vehicle that is commercially manufactured and advertised for the purpose of securing valuables, electronics, or firearms provided that at the time of discovery the box, safe, container, or other item added to the vehicle does not contain a controlled substance or residue of a controlled substance.⁷

Definitions

As used in the bill:

"Controlled substance" means a drug, compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V. As used in this definition, "**schedule I**" "**schedule II**," "**schedule III**," "**schedule IV**," and "**schedule V**" mean controlled substance schedules I, II, III, IV, and V, respectively, established pursuant to R.C. 3719.41, as amended pursuant to R.C. 3719.43 or 3719.44.⁸

"Hidden compartment" means a container, space, or enclosure that conceals, hides, or otherwise prevents the discovery of the contents of the container, space, or enclosure. "**Hidden compartment**" includes, but is not limited to, any of the following: (1) false, altered, or modified fuel tanks, (2) any original factory equipment on a vehicle that has been modified to conceal, hide, or prevent the discovery of the modified equipment's contents, or (3) any compartment, space, box, or other closed container that

⁴ R.C. 2923.241(G).

⁵ R.C. 2923.241(H)(1).

⁶ R.C. 2923.241(H)(2).

⁷ R.C. 2923.241(I).

⁸ R.C. 2923.241(A)(1), by reference to R.C. 3719.01, which is not in the bill.

is added or attached to existing compartments, spaces, boxes, or closed containers integrated or attached to a vehicle.⁹

"Manufacturer" and "dealer" include all persons and firms that are regularly engaged in the business of manufacturing, selling, displaying, offering for sale, or dealing in motor vehicles, at an established place of business that is used exclusively for the purpose of manufacturing, selling, displaying, offering for sale, or dealing in motor vehicles. A place of business that is used for manufacturing, selling, displaying, offering for sale, or dealing in motor vehicles is deemed to be used exclusively for those purposes even though snowmobiles or all-purpose vehicles are sold or displayed for sale thereat, even though farm machinery is sold or displayed for sale thereat, or even though repair, accessory, gasoline and oil, storage, parts, service, or paint departments are maintained thereat, or, in any county having a population of less than 75,000 at the last federal census, even though a department in a place of business is used to dismantle, salvage, or rebuild motor vehicles by means of used parts, if such departments are operated for the purpose of furthering and assisting in the business of manufacturing, selling, displaying, offering for sale, or dealing in motor vehicles. Places of business or departments in a place of business used to dismantle, salvage, or rebuild motor vehicles by means of using used parts are not considered as being maintained for the purpose of assisting or furthering the manufacturing, selling, displaying, and offering for sale or dealing in motor vehicles.¹⁰

"Motor vehicle dealer" means any "new motor vehicle dealer," any "motor vehicle leasing dealer," and any "used motor vehicle dealer."¹¹ As used in the definition of "motor vehicle dealer" that applies to the bill:¹²

"New motor vehicle dealer" means any person engaged in the business of selling at retail, displaying, offering for sale, or dealing in new motor vehicles pursuant to a contract or agreement entered into with the manufacturer, remanufacturer, or distributor of the motor vehicles.

"Motor vehicle leasing dealer" means any person engaged in the business of regularly making available, offering to make available, or arranging for another person to use a motor vehicle pursuant to a bailment, lease, sublease, or other contractual arrangement under which a charge is made for its use at a

⁹ R.C. 2923.241(A)(2).

¹⁰ R.C. 2923.241(A)(4), by reference to R.C. 4501.01, which is not in the bill.

¹¹ R.C. 2923.241(A), by reference to R.C. 4517.01, which is not in the bill.

¹² R.C. 4517.01, which is not in the bill.

periodic rate for a term of 30 days or more, and title to the motor vehicle is in and remains in the motor vehicle leasing dealer who originally leases it, irrespective of whether or not the motor vehicle is the subject of a later sublease, and not in the user, but does not mean a manufacturer or its affiliate leasing to its employees or to dealers.

"Used motor vehicle dealer" means any person engaged in the business of selling, displaying, offering for sale, or dealing in used motor vehicles, at retail or wholesale, but does not mean any new motor vehicle dealer selling, displaying, offering for sale, or dealing in used motor vehicles incidentally to engaging in the business of selling, displaying, offering for sale, or dealing in new motor vehicles, any person engaged in the business of dismantling, salvaging, or rebuilding motor vehicles by means of using used parts, or any public officer performing official duties.

"Vehicle" means every device, including a "motorized bicycle," in, upon, or by which any person or property may be transported or drawn upon a highway, except that it does not include any "motorized wheelchair," any "electric personal assistive mobility device," any device that is moved by power collected from overhead electric trolley wires or that is used exclusively upon stationary rails or tracks, or any device, other than a "bicycle," that is moved by human power. **"Vehicle"** includes, but is not limited to, a "motor vehicle," "commercial tractor," "trailer," "noncommercial trailer," "semitrailer," "mobile home," "recreational vehicle," or "motor home."¹³

As used in the definition of "**vehicle**" that applies to the bill:

"Motorized bicycle" means any vehicle having either two tandem wheels or one wheel in the front and two wheels in the rear, that is capable of being pedaled and is equipped with a helper motor of not more than fifty cubic centimeters piston displacement that produces no more than one brake horsepower and is capable of propelling the vehicle at a speed of no greater than twenty miles per hour on a level surface.¹⁴

"Motorized wheelchair" means any self-propelled vehicle designed for, and used by, a handicapped person and that is incapable of a speed in excess of eight miles per hour.¹⁵

¹³ R.C. 2923.241(A) and R.C. 4511.01, which is not in the bill, by reference.

¹⁴ R.C. 4511.01, which is not in the bill.

¹⁵ R.C. 4511.01, which is not in the bill.

"Electric personal assistive mobility device" means a self-balancing two non-tandem wheeled device that is designed to transport only one person, has an electric propulsion system of an average of 750 watts, and when ridden on a paved level surface by an operator who weighs 175 pounds has a maximum speed of less than 20 miles per hour.¹⁶

"Bicycle" means every device, other than a tricycle designed solely for use as a play vehicle by a child, propelled solely by human power upon which any person may ride having either two tandem wheels, or one wheel in the front and two wheels in the rear, or two wheels in the front and one wheel in the rear, any of which is more than 14 inches in diameter.¹⁷

"Motor vehicle" means any vehicle, including mobile homes and recreational vehicles, that is propelled or drawn by power other than muscular power or power collected from overhead electric trolley wires. **"Motor vehicle"** does not include utility vehicles as defined in R.C. 4501.01(VV), motorized bicycles, road rollers, traction engines, power shovels, power cranes, and other equipment used in construction work and not designed for or employed in general highway transportation, well-drilling machinery, ditch-digging machinery, farm machinery, and trailers that are designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a public road or highway for a distance of no more than ten miles and at a speed of 25 miles per hour or less.¹⁸

"Trailer" means any vehicle without motive power that is designed or used for carrying property or persons wholly on its own structure and for being drawn by a motor vehicle, and includes any such vehicle that is formed by or operated as a combination of a semitrailer and a vehicle of the dolly type such as that commonly known as a trailer dolly, a vehicle used to transport agricultural produce or agricultural production materials between a local place of storage or supply and the farm when drawn or towed on a public road or highway at a speed greater than 25 miles per hour, and a vehicle that is designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a public road or highway for a

¹⁶ R.C. 4501.01, which is not in the bill.

¹⁷ R.C. 4511.01, which is not in the bill.

¹⁸ R.C. 2923.241(A), by reference to R.C. 4501.01, which is not in the bill.

distance of more than ten miles or at a speed of more than 25 miles per hour. "**Trailer**" does not include a manufactured home or travel trailer.¹⁹

"**Noncommercial trailer**" means any trailer, except a travel trailer or trailer that is used to transport a boat as described in R.C. 4511.01(B), but, where applicable, includes a vehicle that is used to transport a boat as described in R.C. 4511.01(M), that has a gross weight of no more than 10,000 pounds, and that is used exclusively for purposes other than engaging in business for a profit, such as the transportation of personal items for personal or recreational purposes.²⁰

"**Semitrailer**" means any vehicle of the trailer type that does not have motive power and is so designed or used with another and separate motor vehicle that in operation a part of its own weight or that of its load, or both, rests upon and is carried by the other vehicle furnishing the motive power for propelling itself and the vehicle referred to in this division, and includes, for the purpose only of registration and taxation under those chapters, any vehicle of the dolly type, such as a trailer dolly, that is designed or used for the conversion of a semitrailer into a trailer.²¹

"**Mobile home**" means a building unit or assembly of closed construction that is fabricated in an off-site facility, is more than 35 body feet in length or, when erected on site, is 320 or more square feet, is built on a permanent chassis, is transportable in one or more sections, and does not qualify as a manufactured home as defined in R.C. 3781.06(C)(4) or as an industrialized unit as defined in division (C)(3) of that section.²²

"**Recreational vehicle**" means a vehicular portable structure that meets all of the following conditions:²³ (1) it is designed for the sole purpose of recreational travel, (2) it is not used for the purpose of engaging in business for profit, (3) it is not used for the purpose of engaging in intrastate commerce, (4) it is not used for the purpose of commerce as defined in 49 C.F.R. 383.5, (5) it is not regulated by the Public Utilities Commission of Ohio, and (6) it is classed as one of the following:

¹⁹ R.C. 2923.241(A), by reference to R.C. 4501.01, which is not in the bill.

²⁰ R.C. 2923.241(A), by reference to R.C. 4501.01, which is not in the bill.

²¹ R.C. 2923.241(A), by reference to R.C. 4501.01, which is not in the bill.

²² R.C. 2923.241(A), by reference to R.C. 4501.01, which is not in the bill.

²³ R.C. 2923.241(A), by reference to R.C. 4501.01, which is not in the bill.

(a) "**Travel trailer**" means a nonself-propelled recreational vehicle that does not exceed an overall length of 35 feet, exclusive of bumper and tongue or coupling, and contains less than 320 square feet of space when erected on site. "**Travel trailer**" includes a tent-type fold-out camping trailer as defined in R.C. 4507.01.

(b) "**Motor home**" means a self-propelled recreational vehicle that has no fifth wheel and is constructed with permanently installed facilities for cold storage, cooking and consuming of food, and for sleeping.

(c) "**Truck camper**" means a nonself-propelled recreational vehicle that does not have wheels for road use and is designed to be placed upon and attached to a motor vehicle. "**Truck camper**" does not include truck covers that consist of walls and a roof, but do not have floors and facilities enabling them to be used as a dwelling.

(d) "**Fifth wheel trailer**" means a vehicle that is of such size and weight as to be movable without a special highway permit, that has a gross trailer area of 400 square feet or less, that is constructed with a raised forward section that allows a bi-level floor plan, and that is designed to be towed by a vehicle equipped with a fifth-wheel hitch ordinarily installed in the bed of a truck.

(e) "**Park trailer**" means a vehicle that is commonly known as a park model recreational vehicle, meets the American National Standard Institute standard A119.5 (1988) for park trailers, is built on a single chassis, has a gross trailer area of 400 square feet or less when set up, is designed for seasonal or temporary living quarters, and may be connected to utilities necessary for the operation of installed features and appliances.

"**Commercial tractor**" is not defined in the bill for purposes the definition of "vehicle" that applies to the bill; the bill specifies that the R.C. 4501.01 definition of "**commercial trailer**" applies to the bill,²⁴ but R.C. 4501.01 does not define that term and the bill does not use that term.

Background – aggravated trafficking in drugs

Relevant to the bill, the existing controlled substances law prohibits a person from selling or offering to sell a controlled substance. It also prohibits a person from preparing for shipment, shipping, transporting, delivering, preparing for distribution,

²⁴ R.C. 2323.241(A).

or distributing a controlled substance, when the offender knows or has reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person.²⁵

The prohibitions do not apply to manufacturers, licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with R.C. Chapters 3719., 4715., 4723., 4729., 4730., 4731., and 4741. If the drug involved is an anabolic steroid, the prohibitions do not apply to any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the U.S. Food and Drug Administration, or to any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act" and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that Act.²⁶

If a person violates either prohibition described above and the drug involved in the violation is a compound, mixture, preparation, or substance included in Schedule I or Schedule II, with the exception of marihuana, 1-Pentyl-3-(1-naphthoyl)indole, 1-Butyl-3-(1-naphthoyl)indole, 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole, 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, cocaine, L.S.D., heroin, and hashish, the violation is the offense of "aggravated trafficking in drugs." If the amount of the drug involved equals or exceeds the bulk amount but is less than five times the bulk amount, aggravated trafficking in drugs generally is a felony of the third degree, but if the offense is committed in the vicinity of a school or in the vicinity of a juvenile it is a second degree felony. If the amount of the drug involved equals or exceeds five times the bulk amount but is less than 50 times the bulk amount, aggravated trafficking in drugs generally is a second degree felony, but if it is committed in the vicinity of a school or in the vicinity of a juvenile it is a first degree felony. If the amount of the drug involved equals or exceeds 50 times the bulk amount but is less than 100 times the bulk amount and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a first degree felony. If the amount of the drug involved equals or exceeds 100 times the bulk amount and regardless of whether the offense was committed in the vicinity of a school or in the

²⁵ R.C. 2925.03(A), which is not in the bill.

²⁶ R.C. 2925.03(B), which is not in the bill.

vicinity of a juvenile, aggravated trafficking in drugs is a first degree felony, and the offender is a major drug offender.²⁷

If a person violates either prohibition described above and the drug involved in the violation is any compound, mixture, preparation, or substance included in Schedule III, Schedule IV, or Schedule V, or is marihuana, 1-Pentyl-3-(1-naphthoyl)indole, 1-Butyl-3-(1-naphthoyl)indole, 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole, 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, cocaine, L.S.D., heroin, and hashish, the violation is not the offense of "aggravated trafficking in drugs." Rather, depending upon the drug involved, the violation is the offense of "trafficking in drugs," "trafficking in marihuana," "trafficking in cocaine," "trafficking in L.S.D.," "trafficking in heroin," "trafficking in hashish," or "trafficking in spice."²⁸

HISTORY

ACTION	DATE
Introduced	02-27-12
Reported, S. Judiciary	--

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²⁷ R.C. 2925.03(C)(1), which is not in the bill.

²⁸ R.C. 2925.03(C)(2) to (8), which are not in the bill.

