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CHAPTER 29.

 MOTOR VEHICLE CHOP SHOP, STOLEN, AND ALTERED PROPERTY ACT

**SECTION 56‑29‑10.** Title.

 This chapter may be cited as the Motor Vehicle Chop Shop, Stolen, and Altered Property Act.

HISTORY: 1987 Act No. 16, Section 2.

**SECTION 56‑29‑20.** Definitions.

 As used in this chapter:

 (1) "Chop shop" means any building, lot, or other premises where one or more persons are or have been knowingly engaged in altering, destroying, disassembling, dismantling, reassembling, or knowingly storing any motor vehicle, or motor vehicle part known to be illegally obtained by theft, fraud, or conspiracy to defraud, in order either to:

 (a) alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity, including the vehicle identification number of the motor vehicle or motor vehicle part, in order to misrepresent the identity of the motor vehicle or motor vehicle part, or to prevent the identification of the motor vehicle or motor vehicle part, or

 (b) sell or dispose of the motor vehicle or motor vehicle part.

 (2) "Vehicle" includes every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, which is self‑propelled or which may be connected to and towed by a self‑propelled device, and also includes any and all other land‑based devices which are self‑propelled but which are not designed for use upon a highway including, but not limited to, farm machinery and construction equipment.

 (3) "Person" includes a natural person, company, corporation, unincorporated association, partnership, professional corporation, and any other legal entity.

 (4) "Unidentifiable" means that the uniqueness of a motor vehicle or motor vehicle part cannot be established by either expert law enforcement investigative personnel specially trained and experienced in motor vehicle theft investigative procedures and motor vehicle identification examination techniques, or by expert employees of not‑for‑profit motor vehicle theft prevention agencies specially trained and experienced in motor vehicle theft investigation procedures and motor vehicle identification examination techniques.

 (5) "Vehicle identification number" means a number, a letter, a character, a datum, a derivative, or a combination thereof, used by the manufacturer or the Department of Motor Vehicles for the purpose of uniquely identifying a motor vehicle or motor vehicle part.

HISTORY: 1987 Act No. 16, Section 3; 1993 Act No. 181, Section 1500; 1996 Act No. 459, Section 243.

**SECTION 56‑29‑30.** Penalty, restitution.

 (A) It is unlawful for a person to:

 (1) own, operate, or conduct a chop shop;

 (2) transport a motor vehicle or motor vehicle part to or from a location knowing it to be a chop shop; or

 (3) sell, transfer, purchase, or receive a motor vehicle or motor vehicle part either to or from a location knowing it to be a chop shop.

 A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than one hundred thousand dollars, or both.

 (B) A person who knowingly alters, counterfeits, defaces, destroys, disguises, falsifies, forges, obliterates, or knowingly removes a vehicle identification number, or causes any of the above to be done, with the intent to misrepresent the identity or prevent the identification of a motor vehicle or motor vehicle part, is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not less than five thousand nor more than ten thousand dollars, or both.

 (C)(1) A person who buys, disposes, sells, transfers, or possesses a motor vehicle or motor vehicle part, with knowledge that the vehicle identification number of the motor vehicle or motor vehicle part has been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed, or causes any of the above to be done, is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not less than five thousand nor more than ten thousand dollars, or both.

 (2) The provisions of item (1) of subsection (C) do not apply to a motor vehicle scrap processor who, in the normal legal course of business and in good faith, processes a motor vehicle or motor vehicle part by crushing, compacting, or other similar methods, provided that any vehicle identification number is not removed from the motor vehicle or motor vehicle part before or during the processing.

 (D) A person commits an attempt when, with intent to commit a violation proscribed by subsection (A), (B), or (C) of this section, the person does any act which constitutes a substantial step toward the commission of the violation proscribed by those subsections and is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not less than five thousand nor more than ten thousand dollars, or both.

 (E) A person commits the offense of conspiring to violate the provisions of this act if he knowingly and wilfully agrees with another person to the commission of the offenses proscribed by subsection (A), (B), or (C) of this section and is guilty of a felony. Upon conviction, the person must be imprisoned not more than five years, or fined not more than five thousand dollars.

 (F)(1) In addition to any other punishment, a person who violates this section must be ordered to make restitution to the lawful owner of the stolen motor vehicle or the stolen motor vehicle part, or to the owner's insurer to the extent that the owner has been compensated by the insurer, and to any other person for any financial loss sustained as a result of a violation of this section.

 Financial loss includes, but is not limited to, loss of earnings, out‑of‑pocket and other expenses, repair and replacement costs, and claims payments. Lawful owner includes an innocent bona fide purchaser for value of a stolen motor vehicle or stolen motor vehicle part who does not know that the motor vehicle or part is stolen; or an insurer to the extent that the insurer has compensated a bona fide purchaser for value.

 (2) The court shall determine the extent and method of restitution. In an extraordinary case, the court may determine that the best interests of the victim and justice would not be served by ordering restitution. In that case, the court shall make and enter specific written findings on the record concerning the extraordinary circumstances presented which militated against restitution.

HISTORY: 1987 Act No. 16, Section 4; 1993 Act No. 184, Section 253.

**SECTION 56‑29‑40.** Seizure of motor vehicle, tools, implements, or other instrumentality.

 (A) Any tool, implement, or instrumentality, including but not limited to a motor vehicle or motor vehicle part, used or possessed in connection with any violation of Section 56‑29‑30 may be seized by a member of a state or local law enforcement agency upon process issued by any court of competent jurisdiction.

 (B) Seizure of property described in subsection (A) of this section may be made by a member of a state or local law enforcement agency without process if:

 (1) it is in accordance with any applicable law or regulation;

 (2) the seizure is incident to inspection under an administrative inspection warrant;

 (3) the seizure is incident to search made under a search warrant;

 (4) the seizure is incident to a lawful arrest;

 (5) the seizure is made pursuant to a valid consent to search;

 (6) the property seized has been the subject of a prior judgment in favor of the State in a criminal proceeding, or in an injunction or forfeiture proceeding under Section 56‑29‑60; or

 (7) there are reasonable grounds to believe that the property is directly or indirectly dangerous to health or safety.

 (C) When property is seized under this section, the seizing agency may:

 (1) place the property under seal; or

 (2) remove the property to a place selected and designated by the seizing agency.

HISTORY: 1987 Act No. 16, Section 5.

**SECTION 56‑29‑50.** Forfeiture of motor vehicle, tools, implements, or other instrumentality.

 (A) The following are subject to forfeiture unless obtained by theft, fraud, or conspiracy to defraud and the rightful owner is known or can be identified and located:

 (1) any tool;

 (2) any instrumentality, including but not limited to any motor vehicle or motor vehicle part, whether owned or unowned by the person from whose possession or control it was seized, which is used or possessed either in violation of Section 56‑29‑30 or to promote or facilitate a violation of Section 56‑29‑30.

 (B) Any motor vehicle, other conveyance, or motor vehicle part used by any person as a common carrier is subject to forfeiture under this section where the owner or other person in charge of the motor vehicle, other conveyance, or motor vehicle part is a consenting party to a violation of Section 56‑29‑30.

 (C) Any motor vehicle, motor vehicle part, other conveyance, tool, implement, or instrumentality is not subject to forfeiture under this section by reason of any act or omission which the owner proves to have been committed or omitted without the owner's knowledge or consent.

 (D) A forfeiture of a motor vehicle, motor vehicle part, or other conveyance encumbered by a bona fide security interest is subject to the interest of the secured party where the secured party neither had knowledge of nor consented to the act or omission forming the ground for the forfeiture.

 (E)(1) The circuit solicitor shall give notice of the forfeiture proceeding by mailing a copy of the complaint in the forfeiture proceeding to each person whose right, title, or interest is of record at the Department of Motor Vehicles or any other department of the State, or any other state or territory of the United States, or of the federal government if the property is required to be registered in the Department of Motor Vehicles.

 (2) Notice of the proceeding must be given to any other person as may appear, from the facts and circumstances, to have any right, title, or interest in or to the property.

 (3) The owner of the property, or any person having, or claiming right, title, or interest in the property, may within thirty days after the mailing of the notice file a verified answer to the complaint and may appear at the hearing on the action for forfeiture.

 (4) The circuit solicitor shall show at a forfeiture hearing, by a preponderance of the evidence, that the property was used in the commission of a violation of Section 56‑29‑30, or was used or possessed to facilitate the violation.

 (5) Unless the circuit solicitor makes the showing required, the court shall order the property released to the owner. Where the prosecutor has made a showing, the court shall order:

 (a) the property be destroyed by the agency which seized it or some other agency designated by the court;

 (b) the property be delivered and retained for use by the agency which seized it or some other agency designated by the court; or

 (c) any other disposition which the court considers appropriate under the circumstances.

 (F) A copy of a forfeiture order must be filed with the clerk of court of the county in which the forfeiture occurs and with each federal or state department with which the property is required to be registered. The order, when filed, constitutes authority for the issuance to the agency to whom the property is delivered and retained for use or to any purchaser of the property of a title certificate, registration certificate, or other special certificate as may be required by law considering the condition of the property.

 (G) Proceeds from sale at public auction, after payment of all reasonable charges and expenses incurred by the agency designated by the court to conduct the sale in storing and selling the property, must be paid to the general fund of the county in which the seizure occurred.

 (H) No motor vehicle, either seized under Section 56‑29‑40 or forfeited under this section, may be released by the seizing agency or used or sold by an agency designated by the court unless any altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed vehicle identification number is corrected by the issuance and affixing of either an assigned or replacement vehicle identification number plate as may be appropriate under laws or regulations of this State.

 (I) No motor vehicle or motor vehicle part may be forfeited under this section solely on the basis that it is unidentifiable. Instead of forfeiture, any seized motor vehicle or motor vehicle part which is unidentifiable must be the subject of a written report sent by the seizing agency to the Department of Motor Vehicles which report must include a description of the motor vehicle or motor vehicle part, its color, if any, the date, time, and place of its seizure, the name of the person from whose possession or control it was seized, the grounds for its seizure, and the location where it is held or stored.

 (J) The proceeds of the public sale of an unidentifiable motor vehicle or motor vehicle part must be deposited in the general fund of the governmental unit employing the seizing agency after deduction of any reasonable and necessary towing and storage charges.

 (K) A seized motor vehicle or motor vehicle part that is neither forfeited nor unidentifiable must be held subject to the order of the court in which the criminal action is pending or, if a request for its release from custody is made, until the prosecutor has notified the defendant or the defendant's attorney of the request and both the prosecution and defense have been afforded a reasonable opportunity for an examination of the property to determine its true value and to produce or reproduce, by photographs or other identifying techniques, legally sufficient evidence for introduction at trial or other criminal proceedings. Upon expiration of a reasonable time for the completion of the examination which in no event shall exceed fourteen days from the date of service upon the defense of the notice of request for return of property as provided herein, the property must be released to the person making the request after satisfactory proof of such person's entitlement to the possession thereof. Notwithstanding the foregoing, upon application by either party with notice to the other, the court may order retention of the property if it determines that retention is necessary in the furtherance of justice.

 (L) When a seized vehicle is forfeited, restored to its owner, or disposed of as unidentifiable, the seizing agency shall retain a report of the transaction for a period of at least seven years from the date of the transaction.

 (M) When an applicant for a certificate of title or salvage certificate presents to the Department of Motor Vehicles proof that the applicant purchased or acquired a motor vehicle at the public sale conducted pursuant to this section and that fact is attested to by the seizing agency, the department shall issue a certificate of title, or salvage certificate for the motor vehicle upon receipt of the statutory fee, properly executed application for a certificate of title, or other certificate of ownership, and the certification of the seizing agency that a state‑assigned number was applied for and affixed to the motor vehicle prior to the time that the motor vehicle was released by the seizing agency to the purchaser.

HISTORY: 1987 Act No. 16, Section 6; 1993 Act No. 181, Section 1501; 1996 Act No. 459, Section 244.

**SECTION 56‑29‑60.** Civil proceedings.

 (A) The Attorney General, any circuit solicitor, or any aggrieved person may institute civil proceedings against any person in any court of competent jurisdiction seeking relief from conduct constituting a violation of any provision of this chapter. If the plaintiff in the proceeding proves the alleged violation, or its threat, by a preponderance of the evidence, any court of competent jurisdiction after due provision for the rights of innocent persons, shall grant relief by entering any appropriate order or judgment, including, but not limited to:

 (1) ordering any defendant to be divested of any interest in any property;

 (2) imposing reasonable restrictions upon the future activities or investments of any defendant, including prohibiting any defendant from engaging in the same type of endeavor as the defendant was engaged in previously;

 (3) ordering the surrender of the charter of a corporation organized under the laws of the State or the revocation of a certificate authorizing a foreign corporation to conduct business within the State upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct made unlawful by this chapter and that, for the prevention of future criminal conduct, the public interest requires the charter of the corporation be surrendered and the corporation dissolved or the certificate revoked.

 (B) In a proceeding under this section, injunctive relief must be granted in conformity with the principles that govern the granting of relief from injury or threatened injury in other cases, but no showing of special or irreparable injury must be made. Pending final determination of a proceeding under this section, a temporary restraining order or a preliminary injunction may be issued upon a showing of immediate danger of significant injury, including the possibility that any judgment for money damages might be difficult to execute, and, in a proceeding initiated by an aggrieved person, upon the execution of proper bond against injury for an injunction improvidently granted.

 (C) Any person injured, directly or indirectly, by conduct constituting a violation by any person of Section 56‑29‑30, in addition to any other relief, shall have a cause of action for threefold the actual damages sustained by the person.

 (D) A final judgment or decree rendered against the defendant in any civil or criminal proceeding shall estop the defendant in any subsequent civil action or proceeding brought by any person as to all matters as to which the judgment or decree would be an estoppel as between the parties to the civil or criminal proceeding.

 (E) Personal service of any process in an action under this section may be made upon any person outside the State if the person has engaged in any conduct constituting a violation of Section 56‑29‑30 in this State. The person is considered to have thereby submitted to the jurisdiction of the courts of this State for the purposes of this provision.

 (F) Obtaining any civil remedy under this section does not preclude obtaining any other civil or criminal remedy under either this act or any other provision of law. Civil remedies under this section are supplemental and not mutually exclusive.

HISTORY: 1987 Act No. 16, Section 7.