

HOUSE BILL REPORT

E2SHB 1815

As Passed Legislature

Title: An act relating to deterring catalytic converter theft.

Brief Description: Deterring catalytic converter theft.

Sponsors: House Committee on Transportation (originally sponsored by Representatives Ryu, Boehnke, Johnson, J., Berry, Fitzgibbon, Orwall, Shewmake, Leavitt, Chase, Sells, Gregerson, Bateman, Fey, Goodman, Robertson, Macri, Ramos, Santos, Wylie, Simmons, Slatter, Bergquist, Tharinger, Valdez, Thai, Wicks, Pollet, Graham, Young and Frame).

Brief History:

Committee Activity:

Public Safety: 1/18/22, 1/27/22 [DPS];
Transportation: 2/3/22, 2/7/22 [DP2S(w/o sub PS)].

Floor Activity:

Passed House: 2/12/22, 68-30.
Senate Amended.
Passed Senate: 3/4/22, 48-0.
House Concurred.
Passed House: 3/8/22, 97-0.
Passed Legislature.

Brief Summary of Engrossed Second Substitute Bill

- Requires the Washington State University to convene a work group to study and provide options and recommendations related to reducing catalytic converter theft in Washington.
- Requires the Washington Association of Sheriffs and Police Chiefs (WASPC) to establish, to the extent funds are appropriated, a comprehensive state law enforcement strategy targeting metal theft, including a metal theft grant and training program.
- Expands the WASPC no-buy list database program to include tracking of

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certain individuals and require additional reporting by grant recipients from the WASPC metal theft grant and training program.

- Modifies certain business regulations, recordkeeping requirements, and criminal and civil penalties related to transactions involving nonferrous or private metal property.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Davis, Graham, Griffey, Hackney, Orwall, Ramos, Simmons, Thai and Young.

Staff: Corey Patton (786-7388).

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Public Safety. Signed by 23 members: Representatives Fey, Chair; Wylie, 1st Vice Chair; Bronoske, 2nd Vice Chair; Ramos, 2nd Vice Chair; Barkis, Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Volz, Assistant Ranking Minority Member; Berry, Chapman, Donaghy, Duerr, Entenman, Goehner, Griffey, Hackney, Klicker, Paul, Ramel, Riccelli, Slatter, Taylor, Valdez and Wicks.

Minority Report: Do not pass. Signed by 2 members: Representatives Eslick, Assistant Ranking Minority Member; Walsh.

Minority Report: Without recommendation. Signed by 3 members: Representatives Dent, Orcutt and Sutherland.

Staff: Beth Redfield (786-7140).

Background:

Transactions Involving Metal Property.

Scrap metal businesses engaged in purchasing or receiving private, nonferrous, or commercial metal property are subject to certain statutory requirements. These requirements include specific recordkeeping duties, restrictions on transactions, and obligations to cooperate with law enforcement to assist in preserving evidence of stolen property. Certain violations of these requirements carry criminal penalties. For example, it is a gross misdemeanor to deliberately remove, alter, or obliterate any identifying marks on

an item of private, nonferrous, or commercial metal property to deceive a scrap metal business; or to purchase or receive any private, nonferrous, or commercial metal property where identifying marks engraved or etched upon the property have been deliberately and conspicuously removed, altered, or obliterated.

Vehicle wreckers engaged in the business of buying, selling, or dealing in certain vehicles for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of a vehicle, or buying, selling, or dealing in secondhand parts or component material thereof, are subject to certain statutory requirements. These requirements include specific recordkeeping duties, such as maintaining a record and description of particular component parts acquired by the vehicle wrecker along with a bill of sale signed by the seller. Failure to comply with these duties constitutes a gross misdemeanor.

"Private metal property" means catalytic converters, either singly or in bundles, bales, or bulk, that have been removed from vehicles for sale as a specific commodity. "Nonferrous metal property" means metal property for which the value of the metal property is derived from the property's content of copper, brass, aluminum, bronze, lead, zinc, nickel, and their alloys, not including precious metals.

Criminal Penalties Related to Theft of Private Metal Property.

Theft in the First Degree. A person is guilty of Theft in the first degree if he or she commits theft of:

- property or services which exceed \$5,000 in value, other than a firearm;
- property of any value, other than a firearm or a motor vehicle, taken from the person of another;
- a search and rescue dog, while the search and rescue dog is on duty; or
- commercial metal property, nonferrous metal property, or private metal property when the costs of the damage to the owner's property exceed \$5,000 in value.

Theft in the first degree is a class B felony.

Theft in the Second Degree. A person is guilty of Theft in the second degree if he or she commits theft of:

- property or services which exceed \$750 in value but do not exceed \$5,000 in value, other than a firearm or a motor vehicle;
- a public record, writing, or instrument kept, filed, or deposited according to law with or in the keeping of any public office or public servant;
- commercial metal property, nonferrous metal property, or private metal property when the costs of the damage to the owner's property exceed \$750 but do not exceed \$5,000 in value; or
- an access device.

Theft in the second degree is a class C felony.

Theft in the Third Degree. A person is guilty of Theft in the third degree if he or she commits theft of property or services which does not exceed \$750 in value, or includes 10 or more merchandise pallets, or 10 or more beverage crates, or a combination of 10 or more merchandise pallets and beverage crates. Theft in the third degree is a gross misdemeanor.

Metal Theft Grant Program and No-Buy List Database.

Metal Theft Grant Program. In 2013 the Legislature enacted a bill requiring the Washington Association of Sheriffs and Police Chiefs (WASPC), when funded, to establish a grant program to assist local law enforcement agencies in support of special enforcement emphasis targeting metal theft. Funding has not been provided to WASPC to establish the grant program.

Grant applicants are required to:

- show a significant metal theft problem in the jurisdiction or jurisdictions receiving the grant;
- verify that grant awards are sufficient to cover increased investigation, prosecution, and jail costs;
- design an enforcement program that best suits the specific metal theft problem in the jurisdiction or jurisdictions receiving the grant;
- demonstrate community coordination focusing on prevention, intervention, and suppression; and
- collect data on performance.

Grant applications must be reviewed and awarded through peer review panels. Grant applicants are encouraged to utilize multijurisdictional efforts. The cost of administering grants may not exceed \$60,000, or 3 percent of appropriated funding, whichever is greater. Grant awards may not be used to supplant preexisting funding sources for special enforcement targeting metal theft.

No-Buy List Database. The bill further required WASPC, when funded, to implement and operate an ongoing electronic statewide no-buy list database program. Funding has not been provided to WASPC to establish the database.

The database must be made available on a website and allow for any scrap metal business to enter a customer's name and date of birth into the database and determine if the customer has been convicted in Washington of any crime involving burglary, robbery, theft, or possession of or receiving stolen property within the past four years. If the customer has been convicted of such a crime, the database must immediately send an alert to the scrap metal business, including a notification that entering into a transaction with the customer is prohibited.

Summary of Engrossed Second Substitute Bill:

Transactions Involving Metal Property.

A scrap metal business engaging in a transaction specifically involving a catalytic converter that has been removed from a vehicle must record documentation indicating that the private metal property in the seller's possession was the result of the seller replacing private metal property from a vehicle registered in the seller's name. A scrap metal business is prohibited from engaging in certain cash transactions involving private metal property or nonferrous metal property with a person who does not provide a street address and photographic identification. A scrap metal business may pay up to a maximum of \$30 in cash, stored value device, or electronic funds transfer for nonferrous metal property, and pay the balance by nontransferable check, stored value device, or electronic funds transfer at the time the transaction is made if the scrap metal business digitally captures a copy of a current government-issued picture identification and either a picture or video of the material subject to the transaction. A scrap metal business's video surveillance is sufficient to comply with the digital recording requirement if the video captures the material subject to the transaction. A scrap metal business is prohibited from making payment to individual sellers of private metal property until three business days after the transaction is made. Records of payment for private metal property must be retained and be available for review for two years from the date of the transaction.

Violations of specific regulations related to scrap metal businesses are punishable by a \$1,000 fine per catalytic converter. Ten percent of such fines must be directed to the Washington Association of Sheriffs and Police Chiefs (WASPC) no-buy list database program, and the remainder must be directed to WASPC solely for grants issued under the WASPC metal theft grant and training program. Facilitating the offer of used catalytic converters for sale without first verifying proof of ownership, or failing to retain certain verified records of ownership for at least two years, is an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce for purposes of a Consumer Protection Act claim. Ten percent of all damages awarded to Washington pursuant to such claims must be distributed to the WASPC no-buy list database program, and the remainder must be distributed to the WASPC metal theft grant and training program.

A vehicle wrecker's statutory recordkeeping duties are expanded to apply to catalytic converters acquired by the wrecker. A vehicle wrecker is prohibited from engaging in a transaction involving catalytic converters with any person who does not provide a street address and photographic identification. A vehicle wrecker may only engage in a transaction involving catalytic converters if payment is made by nontransferable check at least three business days after the transaction.

Catalytic Converter Theft Work Group.

The Washington State University is required to convene a catalytic converter theft work group to study and provide options and recommendations related to reducing catalytic converter theft in Washington. The work group must consist of, but is not limited to, the following membership:

- one member representing the Washington State Patrol;

- one member representing the WASPC;
- one member representing the Washington Association of Prosecuting Attorneys;
- one member representing the Office of Public Defense;
- one member representing the Superior Court Judges' Association;
- one member representing the District and Municipal Court Judges' Association;
- one member representing the Association of Washington Cities;
- one member representing the Office of the Attorney General;
- one member representing the property and casualty insurance industry;
- one member representing the scrap metal recycling industry;
- one member representing the auto dealer industry;
- one member representing the auto manufacturer industry;
- one member representing the catalytic converter manufacturer industry;
- one member representing the Independent Business Association;
- one member representing the Towing and Recovery Association of Washington;
- one member representing the Washington State Independent Auto Dealers Association;
- one member representing the Washington Organized Retail Crime Association; and
- two members representing individuals with lived experience being charged with, or convicted of, organized theft.

The work group's study must include, but is not limited to, the following:

- a review of state laws related to catalytic converter theft;
- a review of national efforts to address catalytic converter theft;
- data collection and analysis of catalytic converter theft incidents in Washington;
- options to deter and end catalytic converter theft, including marking catalytic converters;
- options and opportunities to reduce costs to victims of catalytic converter theft; and
- a review of the effectiveness of the WASPC metal theft grant and training program.

The work group's recommendations must include, but are not limited to, the following:

- changes to state law to reduce catalytic converter theft;
- a potential pilot program to decrease catalytic converter theft, including prioritizing specific communities impacted by catalytic converter theft; and
- cost estimates for the pilot program and recommendations on evaluation criteria and metrics to determine the efficacy and benefits of the program.

The work group must submit a preliminary report and recommendations to the Transportation Committee and Public Safety Committee of the Legislature by November 1, 2022. The work group must submit a final report and recommendations by January 1, 2023.

State Law Enforcement Strategy and No-Buy List Database.

State Law Enforcement Strategy. To the extent funds are appropriated, WASPC is required to develop a comprehensive state law enforcement strategy targeting metal theft in consultation with the Criminal Justice Training Commission, including the following:

- development of the best practices for targeting illegal purchasers and sellers involved in metal theft, with specific enforcement focus on catalytic converter theft;
- strategies for development and maintenance of relationships between law enforcement and scrap metal recyclers; and
- establishment of a metal theft grant and training program.

Grant applications must be reviewed by WASPC in consultation with other appropriate entities, such as those involved with enforcement against metal theft. Grant applicants with a demonstrated increase in metal theft over the previous 24 months are encouraged to focus solely on metal theft and unlawful purchasing and selling of unlawfully obtained metal in their jurisdiction but may coordinate with other jurisdictions. The restrictions on the cost of administering grants are eliminated.

Grant applicants are required to:

- show a significant metal theft problem in the jurisdiction or jurisdictions receiving the grant;
- propose an enforcement program that best suits the specific metal theft problem in the jurisdiction, including the number of enforcement stings to be conducted;
- demonstrate community coordination focusing on prevention, intervention, and suppression; and
- collect data on performance, including the number of enforcement stings to be conducted.

No-Buy List Database. To the extent funds are appropriated, WASPC must implement and operate an ongoing electronic statewide no-buy list database program. The database must be made available on a secured network or website. The database must include individuals who have attempted to purchase or sell unlawfully obtained metals at licensed scrap metal recyclers and individuals who attempt to conduct a transaction while under the influence of controlled substances. Local jurisdictions applying for a grant through the WASPC metal theft grant and training program must provide updates to the database annually and 120 days after a grant is distributed.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 2, 2022.

Effective Date: The bill contains an emergency clause and takes effect immediately, except for section 4, related to regulation of scrap metal businesses, which takes effect May 1, 2022, and sections 5, 6, and 7, related to regulation of vehicle wreckers and certain gross misdemeanor crimes involving catalytic converters, which take effect July 1, 2022.

Staff Summary of Public Testimony (Public Safety):

(In support) The National Insurance Crime Bureau reports a tenfold increase in catalytic

converter thefts. Cities in Washington are receiving numerous complaints about the huge increase in thefts and the devastating consequences for victims. Stolen catalytic converters contain precious metals which can be sold for quick cash. Additionally, the market for catalytic converters extends interstate and internationally because they can be easily mailed. However, the amount that thieves receive for a stolen catalytic converters is typically around 10 percent of the total costs suffered by the owners of the vehicles they are stolen from. Even when insurance companies cover part of customers' expenses, those customers' insurance premiums rise as a result. In addition to the financial consequences, people who depend on their vehicles for work and other life activities lose their time. Older cars and vans are effectively totaled by having their catalytic converters stolen. The trucking industry and supply chains are likewise impacted by the rise of thefts.

This bill was the result of listening to and working with scrap metal recyclers, automobile manufacturers, and law enforcement. The pilot project created by this bill would permanently mark catalytic converters with unique identifiers, such as vehicle identification numbers (VINs), which will allow local jurisdictions to better identify the owners of catalytic converters and make it difficult for thieves to sell them illegally. This bill also establishes a task force to develop creative solutions to these difficult, cross-jurisdictional problems.

Under current law, there is little a peace officer can do to stop a catalytic converter theft unless the officer catches the thief in the act. There is some concern that marking catalytic converters would do little to deter theft, and therefore the Legislature should consider making it illegal to buy, possess, or sell a used converter without proper documentation from the vehicle's registered owner. There is also concern that the pilot project should not mark converters with VINs. There is no reason a catalytic converter should be presented for sale separate from the car it came from. When a thief presenting a catalytic converter for sale is unable to identify the VIN associated with the catalytic converter, it is easier to tell it has been stolen. Most licensed entities in this state only purchase catalytic converters from commercial sellers, so there is a significant flow of stolen catalytic converters going to buyers that have not been identified, possibly through online markets. Auto wreckers should be included on the task force to provide their expertise in interstate and international markets.

Washington previously enacted legislation to require significant record keeping when purchasing materials that may be stolen, but some components of that legislation did not receive funding. The Legislature should follow through with funding on those efforts.

(Opposed) None.

(Other) Although this bill is well-intended, manufacturers of automobiles and catalytic converters should also be considered for membership on the task force.

Staff Summary of Public Testimony (Transportation):

(In support) The National Insurance Crime Bureau reports a 10-fold increase in catalytic converter thefts. There are devastating consequences for victims. Even when insurance covers the expenses, customers' premiums rise, and everyone pays for it. In addition to financial consequences, people who depend on their cars for their livelihood lose precious time. Older cars and vans may be effectively totaled by having their catalytic converters stolen. Even the trucking industry, the supply chain, and new dealerships have been hit by the rise of these thefts. Previous laws in Washington required significant record keeping when purchasing materials that may be stolen. This time there is a need to work on getting funding for the program. For 50 years the auto wreckers have been fighting against stolen auto parts. Most components are already marked and those records are kept. Auto recyclers are not the problem; the scrap dealers are not the problem. These things are stolen and go into the black market, where they often go overseas. Finding the tools to track that down is difficult. In the City of Des Moines in 2020, there were 12 thefts and in 2021, there were 82 thefts through October. This is a huge destruction of societal wealth when a repair can cost \$2,000 and yet the stolen part may only sell for one-tenth of that. Licensed scrap yards are committed to requiring proof of ownership before a catalytic converter is purchased by a yard. One of the tools is to have some kind of marking on the catalytic converter. Currently if someone brings a catalytic converter to a yard, it is usually attached to a car, but if cut off the bottom, they are often sold in illicit markets and other places not regulated by this legislation. It is important to resolve the differences between the proposals to address this.

(Opposed) None.

(Other) The Washington State Patrol (WSP) understands that catalytic converter theft has been growing in the state. The WSP does not have the resources to complete the pilot project or to facilitate a task force without the appropriate fiscal support. Secondly, the WSP does not want to be held liable for the marking of catalytic converters. If an individual volunteers to have their catalytic converter marked and it is different from what the manufacturer intended, the WSP would not want to carry the liability risk. Adding a clause that would hold the state harmless would satisfy that concern. In addition, it is not clear who is responsible for marking the catalytic converters. The WSP doesn't have the resources to assume this responsibility. Clarification is needed as to whether it would be auto dealers, repair shops, local law enforcement agencies, or community groups. Also clarify what happens if the marked catalytic converter is stolen. Would this be reported to local law enforcement agency and the WSP? Will local law enforcement be required to report to the WSP regarding any recovered catalytic converters and the outcome of their investigations? The final concern is that the WSP is getting involved when local law enforcement is the primary investigator. These thefts are reported to local jurisdictions and the WSP does not have authority over local law enforcement and wants to be sensitive regarding the state's role regarding these thefts.

Persons Testifying (Public Safety): (In support) Representative Cindy Ryu, prime sponsor; Jim King, Independent Business Association; James McMahan, Washington

Association of Sheriffs and Police Chiefs; Laurie Layne; Jeff DeVere, Washington Trucking Associations; Matt Mahoney, City of Des Moines; Holly Chisa, Institute of Scrap Recycling Industries Pacific Northwest Chapter; Brad Tower, Schnitzer; and Lisa Herbold, City of Seattle.

(Other) Ryan Spiller, Alliance for Automotive Innovation.

Persons Testifying (Transportation): (In support) Representative Cindy Ryu, prime sponsor; Jim King, Independent Business Association; Matt Mahoney, City of Des Moines; Laurie Layne; and Holly Chisa, Institute of Scrap Recycling Industries.

(Other) Neil Weaver, Washington State Patrol.

Persons Signed In To Testify But Not Testifying (Public Safety): None.

Persons Signed In To Testify But Not Testifying (Transportation): None.