

SENATE BILL REPORT

SB 5495

As Reported by Senate Committee On:
Law & Justice, February 3, 2022
Ways & Means, February 7, 2022

Title: An act relating to catalytic converters.

Brief Description: Concerning catalytic converters.

Sponsors: Senators Wilson, J., Dozier, Fortunato, Gildon, Honeyford, Keiser, McCune, Mullet, Randall, Rolfes, Schoesler, Sheldon, Van De Wege, Wagoner, Warnick and Wilson, L..

Brief History:

Committee Activity: Law & Justice: 1/25/22, 2/03/22 [DPS-WM, DNP].
Ways & Means: 2/05/22, 2/07/22 [DP2S, DNP, w/oRec].

Brief Summary of Second Substitute Bill

- Amends the regulations for scrap metal businesses payment of cash, and record keeping thereof.
- Moves removing identifying marks from private metal property to a new chapter.
- Creates the crime of unlawful possession of a catalytic converter that has been removed from a vehicle.
- Creates the crime of attempting the unlawful sale or purchase of a catalytic converter that has been removed from a vehicle.
- Requires fines collected to be specifically allocated.
- Requires the Washington State Patrol to develop a comprehensive state law enforcement strategy targeting metal theft, including establishing a grant and training program to assist local law enforcement agencies in the support of special enforcement targeting metal theft.
- Requires the Washington State Patrol to implement and operate a

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statewide no-buy list database program.

- Requires the database to include individuals who have attempted to purchase or sell unlawfully obtained metals and individuals who attempt to conduct transactions while under the influence of controlled substances.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5495 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Dhingra, Chair; Padden, Ranking Member; McCune, Assistant Ranking Member; Honeyford, Salomon and Wagoner.

Minority Report: Do not pass.

Signed by Senators Trudeau, Vice Chair; Kuderer.

Staff: Joe McKittrick (786-7287)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5495 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Schoesler, Assistant Ranking Member, Capital; Honeyford, Ranking Minority Member, Capital; Billig, Braun, Carlyle, Conway, Dhingra, Gildon, Mullet, Muzzall, Pedersen, Van De Wege, Wagoner, Warnick and Wellman.

Minority Report: Do not pass.

Signed by Senator Hunt.

Minority Report: That it be referred without recommendation.

Signed by Senators Hasegawa, Keiser and Rivers.

Staff: Trevor Press (786-7446)

Background: Scrap Metal Businesses. A scrap metal business is a scrap metal supplier, scrap metal recycling center, and scrap metal processor. At the time of a transaction, every scrap metal business doing business in the state must produce, wherever that business is conducted, an accurate and legible record of each transaction involving private metal property or nonferrous metal property. The record must include specified identification

information of the seller and an affirmation that the private metal or nonferrous metal property is not stolen property.

Private metal property includes catalytic converters that have been removed from vehicles. Nonferrous metal property is 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. Nonferrous metal property does not include precious metals. Precious metals means gold, silver, and platinum.

Transaction Requirements. Scrap metal businesses may not enter into any transaction to purchase or receive private metal property or nonferrous metal property from any person who cannot produce at least one piece of current government-issued picture identification. No scrap metal business may purchase or receive private metal property unless the seller:

- has a commercial account with the scrap metal business;
- can prove ownership of the property by producing written documentation that the seller is the owner of the property; or
- can produce written documentation that the seller is an employee or agent authorized to sell the property on behalf of a commercial enterprise.

No transaction involving private metal property or nonferrous metal property may be made in cash with any person who does not provide their street address as provided by statute, unless the scrap metal business digitally captures a copy of one piece of current government-issued picture identification and either a picture or video of either the material subject to the transaction in the form received, or the material subject to the transaction within the vehicle which the material was transported to the scrap metal business. Such digital images or pictures must be available for two years from the date of the transaction, and video recordings must be available for 30 days.

Payment for such a transaction must be made through a nontransferable check, mailed by the scrap metal business to the provided street address no earlier than three days after the transaction was made.

It is a gross misdemeanor, punishable by up to 365 days in jail, a \$5,000 fine, or both, to:

- deliberately remove, alter, or obliterate any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon an item of private metal property, nonferrous metal property, or commercial metal property in order to deceive a scrap metal business;
- enter into a transaction to purchase or receive any private metal property, nonferrous metal property, or commercial metal property where the manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon the property have been deliberately and conspicuously removed, altered, or obliterated;
- knowingly make, cause, or allow to be made any false entry or misstatement of any material matter in any book, record, or writing required to be kept;

- enter into a transaction to purchase or receive private metal property, nonferrous metal property, or commercial metal property with anyone whom the scrap metal business has been informed by a law enforcement agency to have been convicted of specific crimes;
- sign a declaration knowing that the private metal property or nonferrous metal property subject to the transaction is stolen;
- possess private metal property or commercial metal property that was not lawfully purchased or received;
- engage in a series of transactions valued at less than \$30 with the same seller to avoid the recording requirements; or
- knowingly make a false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, with the intent to deceive a scrap metal business as to the actual seller of scrap metal.

Individuals who violate scrap metal laws who are not subject to criminal penalties may be punished, upon conviction, by a fine of not more than \$1,000. If the individual violates the scrap metal statutes again within two years, each noncriminal violation is punishable, upon conviction, by a fine of not more than \$2,000.

Summary of Bill (Second Substitute): Cash payments from a scrap metal business for catalytic converters must be made no earlier than five days after the transaction was made. Records of cash payments for catalytic converters must be kept in the same file or record as all records collected under this subsection and retained and be available for review for two years from the date of the transaction.

Removing identifying marks from private metal property, is moved to a new section and chapter in current law. Notwithstanding any fine imposed as part of a sentence handed down pursuant to this section, each offense is likewise punishable by a fine of \$1,000 per catalytic converter. Ten percent of fines collected pursuant to this section must be directed to the no-buy list database, and the remainder must be directed to the Washington State Patrol solely for grants issued to assist local law enforcement agencies in the support of special enforcement targeting metal theft.

The gross misdemeanor crime of unlawful possession of a catalytic converter is created. A person commits this crime if the person is unable to produce proof of ownership of the catalytic converter. Proof of ownership may be demonstrated by presenting documentation that the private metal property in the seller's possession is the result of the seller replacing private metal property from a vehicle registered in the seller's name. Proof of ownership may also be established through the production of a unique catalytic converter serial number, or successor catalytic converter identification number program that corresponds to a vehicle for which the person can prove documentation of proof of ownership. Proof of ownership may also be demonstrated by providing proof that the seller is an agent of a specified legal or commercial entity. Pursuant to this crime each catalytic converter is subject to an additional penalty of \$2,000 per catalytic converter. Such fines collected must

be directed as follows:

- 50 percent must be retained by the local jurisdiction;
- 10 percent must be directed to the no-buy list database; and
- the remainder must be directed to the Washington State Patrol solely for grants issued to assist local law enforcement agencies in the support of special enforcement targeting metal theft.

The class C felony crime of attempting the unlawful sale or purchase of metal property is created. A person commits this crime if the person, upon contact by law enforcement, is unable to produce documentation of proof of ownership of the catalytic converter for which the person is offering to sell or advertise the sale, without being an agent of a corporation, partnership, limited liability company, association, state agency, political subdivision of the state, public corporation, or any other legal or commercial entity. A person is also commits this crime if the person is offering to purchase or advertising for the purchase, without maintaining a scrap metal business license . If the attempted sale or purchase is for more than five catalytic converters, the crime is elevated to a class B felony. Pursuant to this crime, each catalytic converter is subject to an additional criminal penalty of \$5,000. Such fines collected must be directed as follows:

- 50 percent must be retained by the local jurisdiction;
- 10 percent must be directed to the no-buy list database; and
- the remainder must be directed to the Washington State Patrol solely for grants issued to assist local law enforcement agencies in the support of special enforcement targeting metal theft.

The consumer protection act violation for facilitating the offer of used catalytic converters for sale without first verifying proof of ownership of the catalytic converter or failing to retain verified records of ownership of used catalytic converters offered for sale for at least two years is created.

The Washington State Patrol must develop a comprehensive state law enforcement strategy targeting metal theft. This strategy must include:

- development of best practices for targeting illegal purchasers and sellers of metal property, focusing on catalytic converter theft;
- strategies for developing and maintaining relationships between licensed scrap metal recyclers and local law enforcement; and
- establishment of a grant and training program to assist local law enforcement agencies in support of targeting metal theft.

Such grants must be reviewed by the chief of the Washington State Patrol after coordination with county and city elected officials in areas with a demonstrated increase in metal theft over the previous 24 months.

The Washington State Patrol must implement and operate an ongoing electronic statewide no-buy database program. Beyond the current requirements for information collected for

this database, the database must also 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.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

- Removes appropriations from the bill
- Changes the record keeping retention requirement from three years to two years.
- Denotes that a scrap metal business involved in a transaction to purchase or receive nonferrous metal property is in compliance with the law if the scrap metal business retains the required transaction documentation.
- Provides that proof of ownership of a catalytic converter may be demonstrated by proof the person is an agent of specified entities.
- Denotes that a person is guilty of attempting the unlawful sale of a catalytic converter, if upon contact by law enforcement, the person cannot produce documentation of proof of ownership, without being an agent of specified entities.
- Creates a consumer protection act violation for facilitating the offer of used catalytic converters for sale without first verifying proof of ownership of the catalytic converter or failing to retain verified records of ownership of used catalytic converters offered for sale for at least two years.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Removes amendments regarding precious metals.
- Removes prohibitions against scrap metal businesses entering into a transaction with any person who is not a commercial enterprise or owner of the vehicle from which the catalytic converter was taken.
- Moves removing identifying marks from private metal property to a new chapter.
- Creates the crime of unlawful possession of a catalytic converter.
- Creates the crime of attempting the unlawful sale or purchase of a catalytic converter.
- Requires fines collected pursuant to this bill to be specifically allocated.
- Requires the Washington State Patrol to develop a comprehensive state law enforcement strategy targeting metal theft, including the establishment of a grant and training program to assist local law enforcement agencies in the support of special enforcement targeting metal theft.
- Requires the Washington State Patrol to implement and operate a statewide no-buy list database program.
- Requires the database to include individuals who have attempted to purchase or sell unlawfully obtained metals and individuals who attempt to conduct transactions while under the influence of controlled substances.
- Creates an appropriation of \$4 million.

Appropriation: The bill contains an appropriation totaling \$4 million from the general fund.

Fiscal Note: Requested on February 3, 2022.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: This bipartisan legislation is important given the epidemic of catalytic converter thefts we have seen in Washington in recent years. This crime affects nearly every car on the road today. Catalytic converters are an important and required part of vehicles and they can be stolen from a vehicle with nothing more than a simple hand-held saw. This crime leaves a trail of victims throughout the state who are then left with exorbitant expenses in replacing the catalytic converter. This bill is not an attack on recyclers or the scrap metal industry who provide an important service to their communities. Protecting victims and public safety is what is driving this legislation. If your catalytic converter is stolen and you continue to use that vehicle, you are now on the wrong side of the law. Incidents of this crime have risen over 1,000 percent over the last year alone, and Washington has the highest rate of catalytic converter thefts per 100,000 vehicles in the nation.

We are currently in the perfect setting for catalytic converter thievery, and given COVID and other issues, judges are unlikely to hold these offenders on low-level property crimes. Targeting the supply side is ineffective because there is little risk and big rewards. On the demand side, this is a big money business, and there is little to no risk for the buyers of catalytic converters. Currently there is no funding to drive a regulatory scheme for buying catalytic converters. If you dry up the demand side of the equation, you dry up catalytic converter thefts overnight. This requires strict record keeping, photographic records of transactions, information on the vehicle it came off, mandatory permissive inspection, significant fines, and fines should be distributed amongst the investigative agencies to ensure this is not an unfunded mandate.

We have seen an uptick in catalytic converter thefts over recent years and replacing these parts can be costly and time consuming. I support this bill, but I would suggest increasing the fines.

I like this bill, but I also like the House bill because it helps identify the catalytic converters that are being stolen. This is a big issue.

CON: There are a lot of misconceptions on how community scrap yards are regulated. Currently, scrap yards are required to collect nine separate pieces of documentation when engaging in a transaction for personal metal property. This bill doesn't really change the

record keeping requirements. What it does is pull in precious metals which in turn pulls in pawn shops and other entities that purchase precious metals, thus confusing the issue. It is already illegal for a scrap yard to purchase stolen metal property. The bill currently in the House does a better job of targeting where these catalytic converters are going. Continuing to regulate the regulated doesn't target where these catalytic converters are going. This bill does not target the sales of catalytic converters between two private parties.

Catalytic converter theft is an exploding problem. The scrap metal industry is already doing many of the requirements of this bill. Requiring scrap metal yards to take possession of catalytic converters that are suspected of being stolen, along with the current documenting procedures would create a traceable record for law enforcement to target the actual thief. Washington scrap yards are cautious in taking any material. It is already a class B felony for anyone to knowingly traffic in stolen property.

OTHER: Law enforcement is well aware of the impact of these crimes, but this legislation does not provide the answers we need. Law enforcement's goals are to prevent victimization, give law enforcement the tools they need to investigate, and put in place strong penalties as a deterrent. The language in this bill does not help achieve these goals. The bill currently in the house does a better job of reaching these goals.

Persons Testifying (Law & Justice): PRO: Senator Jeff Wilson, Prime Sponsor; Brad Thurman, Cowlitz County Sheriffs Office; Gary Ernsdorff, King County Prosecuting Attorney's Office; Thomas Teseniar; Laurie Layne.

CON: Holly Chisa, Institute of Scrap Recycling Industries (ISRI) PNW Chapter; Brad Tower, Schnitzer Steel.

OTHER: Taylor Gardner, WASPC.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* CON: Nine pieces of data are required to purchase a piece of scrap metal property. We support the funding for investigation of crimes of catalytic converter theft. This bill inhibits transactions that do not have to do with catalytic converters. A lot of these illegal transactions are done by people who know they are breaking the law.

OTHER: We are concerned that this bill misses the point of catalytic converter theft being a problem. It is already illegal for a non-auto wrecker to buy catalytic converters. To deal with this problem we have to correctly define what catalytic converters are. The bill in the other chamber is better. There is still a lot of confusion about what needs to be done to address catalytic converter theft.

Persons Testifying (Ways & Means): CON: Holly Chisa, Institute of Scrap Recycling

Industry, PNW Chapter; Brad Tower, Schnitzer Steel.

OTHER: Jim King, Independent Business Association.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.