

HOUSE BILL REPORT

ESHB 2153

As Passed House:
February 13, 2024

Title: An act relating to deterring the theft of catalytic converters.

Brief Description: Deterring the theft of catalytic converters.

Sponsors: House Committee on Consumer Protection & Business (originally sponsored by Representatives Ryu, Ormsby, Cheney, Reeves, Pollet and Davis).

Brief History:

Committee Activity:

Consumer Protection & Business: 1/16/24, 1/30/24 [DPS];
Transportation: 2/1/24, 2/5/24 [DPS(CPB)].

Floor Activity:

Passed House: 2/13/24, 97-0.

Brief Summary of Engrossed Substitute Bill

- Modifies the regulation of catalytic converter transactions to require a scrap processor or vehicle wrecker license instead of a scrap metal license.
- Establishes new felony and gross misdemeanor crimes for Trafficking in, Possessing, Selling, or Offering to Sell Catalytic Converters, or intentionally altering or obliterating the vehicle identification number on a detached catalytic converter.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Walen, Chair; Reeves, Vice Chair; Robertson, Ranking Minority Member; McClintock, Assistant Ranking Minority Member; Chapman,

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Connors, Donaghy, Hackney, Ryu, Sandlin and Volz.

Minority Report: Without recommendation. Signed by 1 member: Representative Santos.

Staff: Michelle Rusk (786-7153).

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: The substitute bill by Committee on Consumer Protection & Business be substituted therefor and the substitute bill do pass. Signed by 29 members: Representatives Fey, Chair; Donaghy, Vice Chair; Paul, Vice Chair; Timmons, Vice Chair; Barkis, Ranking Minority Member; Hutchins, Assistant Ranking Minority Member; Low, Assistant Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Berry, Bronoske, Chapman, Cortes, Dent, Doglio, Duerr, Entenman, Goehner, Griffey, Hackney, Klicker, Mena, Nance, Orcutt, Ramel, Ramos, Schmidt, Volz, Walsh and Wylie.

Staff: Beth Redfield (786-7140).

Background:

Scrap Metal Transactions Involving Private Metal Property.

Scrap metal businesses engaged in purchasing or receiving commercial, nonferrous, or private metal property are subject to certain statutory requirements. "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. These statutory requirements include licensing, 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: (1) deliberately remove, alter, or obliterate any identifying marks on an item of commercial, nonferrous, or private metal property to deceive a scrap metal business; or (2) purchase or receive any commercial, nonferrous, or private metal property where identifying marks engraved or etched upon the property have been deliberately and conspicuously removed, altered, or obliterated.

A person also commits Theft in the second degree if they commit theft of private metal property and the damages to the property's owner exceeds \$750, up to a maximum of \$5,000; and a person commits Theft in the first degree if they commit theft of private metal property and the damages exceed \$5,000.

Scrap Processors.

Scrap processors are regulated by the Department of Licensing (DOL) and must obtain a license. Scrap processors are licensed establishments that maintain a hydraulic baler and shears, or a shredder for recycling salvage. Any licensed scrap processor may:

- transport flattened or junk vehicles in or out of state to a scrap processor after obtaining the title from the owner; and
- prepare vehicles and vehicle salvage for transportation and delivery to a scrap processor or vehicle wrecker, only by removing specified parts including gas tanks, tires, scrap batteries, and wheels.

The DOL director may deny or suspend a license, or assess civil monetary penalties, if a scrap processor, among other things:

- removes a vehicle or vehicle major component part from property without obtaining the property owner's permission;
- acquires, disposes of, or possesses a vehicle or major component part when they know that the vehicle or major component part has been stolen;
- sells, buys, receives, conceals, possesses, or disposes of a vehicle or vehicle major component part with a missing, defaced, altered, or covered manufacturer's identification number, unless approved by law enforcement.

"Major component parts" include engines and short blocks, frames, transmissions or transfer cases, cabs, doors, front or rear differentials, front or rear clips, quarter panels or fenders, bumpers, truck beds or boxes, seats, and hoods.

Vehicle Wreckers.

Vehicle wreckers are 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 materials thereof, and are subject to certain statutory requirements. These requirements include specific recordkeeping duties, such as maintaining a record and description of particular "major 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.

"Major component parts" includes at least each of the following vehicle parts: (1) engine and short block; (2) frame; (3) transmission and/or transfer case; (4) cab; (5) door; (6) front or rear differential; (7) front or rear clip; (8) quarter panel; (9) truck bed or box; (10) seat; (11) hood; (12) bumper; (13) fender; and (14) airbag. The director may supplement this list by rule.

Classification of Crimes and Fines.

Crimes are classified as misdemeanors, gross misdemeanors, or felonies. The classification of a crime generally determines the maximum term of confinement (prison or jail) and/or fine for an offense. For each classification, the maximum terms of confinement and

maximum fines are as follows:

<u>Classification.</u>	<u>Maximum Confinement.</u>	<u>Maximum Fine.</u>
Misdemeanor	90 days	\$1,000
Gross Misdemeanor	364 days	\$5,000
Class C Felony	5 years	\$10,000
Class B Felony	10 years	\$20,000
Class A Felony	Life	\$50,000

When a person is convicted of a felony, the Sentencing Reform Act applies and determines a specific range of confinement within the statutory maximum. Ranges are determined by a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity or "seriousness level" of the offense and the convicted person's "offender score," which is based on the offender's criminal history. Seriousness levels range from I to XVI and offender scores can range from zero to nine or more points. A higher seriousness level or offender score results in a longer sentence.

Criminal Profiteering Act.

The state Criminal Profiteering Act (Act) provides civil penalties and remedies for a variety of criminal activities. "Criminal Profiteering" is defined to include the commission, or attempted commission, for financial gain, of any one of a number of crimes, including child selling or buying, sexual exploitation of children, and promoting prostitution. The Act provides that a pattern of Criminal Profiteering activity means engaging in at least three acts of Criminal Profiteering within a five-year period. An injured person, the Attorney General, or the county prosecuting attorney may file an action to prevent or restrain a pattern of Criminal Profiteering and recover up to three times the actual damages, as well as the costs of suit. A civil penalty of up to \$250,000 may also be awarded.

Summary of Engrossed Substitute Bill:

Vehicle Dealer Obligation to Offer Vehicle Identification Number Marking.

Offer to Permanently Mark.

Prior to the sale and transfer of a vehicle, vehicle dealers (dealer) must offer a purchaser the option to have the dealer clearly and permanently mark the last eight digits of the originating vehicle's vehicle identification number (VIN) on the vehicle's catalytic converter, unless specified exceptions apply. It is sufficient for a dealer to apply a clear and permanent mark by permanent marker. Dealers may add a fee to a vehicle's sales price for marking, if separately delineated.

Purchaser Disclosure.

If a consumer elects not to have a dealer mark a vehicle's catalytic converter, the dealer must provide a consumer a written disclosure acknowledging that the purchaser:

- is knowingly purchasing the vehicle without a clearly and permanently marked catalytic converter; and
- understands that detached catalytic converters have specified permanent marking requirements under state law and unmarked detached catalytic converters are subject to immediate seizure and forfeiture by law enforcement.

Licensing Changes for Transacting in Catalytic Converters.

Metal Property and Scrap Metal Businesses.

All references to "private metal property" are removed from the Metal Property statute and nothing in the Metal Property statute authorizes scrap metal businesses to purchase or sell junk vehicles or major component parts, including catalytic converters.

Scrap Processor License Required.

A person is prohibited from engaging in the business of disassembling or de-canning a catalytic converter for removal or processing of the internal core to extract specified metals unless the person is a licensed scrap processor under the Hulk Haulers and Scrap Processors Statute.

All licensed scrap processors engaging in disassembling or de-canning of catalytic converters must maintain records of every catalytic converter they disassemble or de-can, and implement a 30-day waiting period between the purchase of a catalytic converter and its disassembly or de-canning, unless the scrap processor is also the registered owner of the originating vehicle. There are also limitations on the timing, form of payment, and identification requirements for scrap processors' catalytic converter transactions.

Scrap processors are required to keep a record of each purchase of catalytic converters that have been removed from a vehicle for three years. Such records must be open to inspection by law enforcement, and the records must include, but are not limited to:

1. the time, date, location, and value of the transaction;
2. the name, street address, and telephone number of the seller;
3. the VIN of the vehicle from which the catalytic converter was removed; and
4. a photo of the catalytic converter that includes the VIN permanent marking.

The foregoing requirements do not apply to a scrap processor's purchase of materials from a licensed business that manufactures catalytic converters in the ordinary course of its business.

Scrap processor licensing fees must include a new \$500 catalytic converter inspection fee to support specified WSP inspections of all licensed purchases of catalytic converters.

Licensed Vehicle Wrecker Requirements.

Catalytic converters are added to the definition of "major component part" under the Vehicle Wrecker statute. In addition to existing recordkeeping requirements, a licensed vehicle wrecker is required to keep other specified records of each purchase of detached catalytic converters including, but not limited to:

1. the time, date, location, and value of the transaction;
2. the name, street address, and telephone number of the seller;
3. the VIN of the vehicle from which the catalytic converter was removed; and
4. a photo of the catalytic converter that includes the VIN permanent marking.

There are also limitations on the timing, form of payment, and identification requirements for vehicle wreckers' catalytic converter transactions.

Violating the catalytic converter recordkeeping requirements is a gross misdemeanor, but the foregoing requirements do not apply to a scrap processor's purchase of materials from a licensed business that manufactures catalytic converters in the ordinary course of its business.

Vehicle wrecker licensing fees are required to include a \$500 catalytic converter inspection fee to support specified WSP inspections of all licensed purchases of catalytic converters.

Washington State Patrol.

Effective April 1, 2025, the WSP is required to:

- conduct periodic inspections at least once a year of all licensed purchases of catalytic converters that have been removed from vehicles. The WSP is not required to inspect attached catalytic converters when performing specified vehicle inspections;
- develop a standardized inspection form and train local law enforcement agencies, civilian employees, and limited authority law enforcement personnel on inspection procedures;
- specify which specific law enforcement agencies have a duty to inspect; and
- authorize inspections to be conducted by civilian employees or limited authority law enforcement agencies, if necessary, to increase the availability of potential inspectors, provided that the WSP must retain oversight of such inspections.

Criminal Offenses Established.

The Criminal Profiteering Act is modified to include the requirement that a person who removes a catalytic converter from a vehicle for a purpose other than maintenance, repair, or demolition, or who knowingly possesses an unmarked detached catalytic converter, must permanently mark the detached catalytic converter with the last eight digits of the originating vehicle's VIN. Detached and unmarked catalytic converters are subject to immediate seizure and forfeiture by law enforcement.

It is a gross misdemeanor for any person to intentionally alter, obliterate, or remove from a

detached catalytic converter the last eight digits of the originating vehicle's VIN. A person is guilty of a class C felony if the person has previously been convicted of this offense.

The following new felony and gross misdemeanor offenses are also established in the Criminal Profiteering Act:

- A new crime of Possessing, Selling, or Offering to Sell, six or fewer detached and unmarked catalytic converters without a scrap processor license or vehicle wrecker license is established as a gross misdemeanor.
- A new crime of Possessing, Selling, or Offering to Sell, seven or more detached and unmarked catalytic converters without a scrap processor or vehicle wrecker license is established as a class C felony ranked at a seriousness level II.
- A new crime of Trafficking in Catalytic Converters in the second degree is established as a class C felony at a seriousness level III. A person commits this offense when they knowingly traffic six or fewer detached catalytic converters without fulfilling the requirements for lawful transfer.
- A new crime of Trafficking in Catalytic Converters in the first degree is established as a class C felony at a seriousness level IV. A person commits this offense when they knowingly: (1) traffic seven or more catalytic converters that have been removed from a motor vehicle without fulfilling the requirements for lawful transfer; or (2) purchase a catalytic converter that has been removed from a vehicle without a required license. A court may impose a 12-month sentencing enhancement if a person is convicted of Trafficking in Catalytic Converters in the first degree for purposes of selling, transferring, or exchanging them online.

The definition of "Criminal Profiteering" is expanded to include any conduct that would be chargeable as first or second degree Trafficking in Catalytic Converters.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 13, 2024.

Effective Date: The bill takes effect on April 1, 2025.

Staff Summary of Public Testimony (Consumer Protection & Business):

(In support) Beginning a couple of years ago, it became clear that a tremendous increase in catalytic converter thefts was occurring. Stolen catalytic converters is an expensive and destructive way to be victimized. The impact on the consumer can feel greater if they are underinsured or have a very high deductible, and they end up not having use of their car for an extended period of time, or their car is essentially totaled. Even if catalytic converter theft may be viewed as leveling off recently, these offenses have leveled off at a very high rate.

This bill only takes some of the recommendations of the work group that was previously

established to study this issue, but it does create new crimes for people trying to run a fencing operation, while still allowing for individual owners to sell their own vehicle parts. The criminal penalties in the bill are something that have been asked for, for a long time. This policy will help equip law enforcement to be more responsive when they come upon piles of unexpected, unexplained, detached, and unmarked catalytic converters. It is helpful that this bill also clarifies what licenses are required and narrows the scope of who can handle catalytic converter transactions.

(Opposed) None.

(Other) One improvement to the bill would be establishing a victim's compensation fund. Many people, including single parents, small businesses, churches, and more have to pay for a stolen catalytic converter and that is very difficult to do.

The catalytic converter marking requirement for vehicle dealers in the underlying bill is concerning. Other states like Minnesota have required catalytic converters to be etched when removed from the vehicle. Please make it an option for consumers to purchase the etching of the catalytic converter in a vehicle they are purchasing. Other states like California have shown the etching requirements are hard to implement and cost a lot of money.

Staff Summary of Public Testimony (Transportation):

(In support) There was a huge spike in catalytic converter thefts in 2021 and the bill before you is acting on some of the recommendations of a 2022 work group. Permanent marking could be engraved by a vehicle seller as well as the use of a permanent marker. If a person decides to remove the catalytic converter from their own vehicle, they could write down the last eight digits of the VIN so that it is traceable. In a way it is an educational process for the buyer, whether the vehicle is new or not. If a dealer incurs costs to mark the catalytic converter, they may pass that along to the buyer. If nothing else, the dealer can have a conversation with the buyer about catalytic converter theft. As far as new crimes, consolidators and fencers of stolen and detached catalytic converters are targeted. The bill has come up with a way for individuals who want to part out their cars, to be able to sell their catalytic converters when permanently marked. The bill will deter catalytic converter thefts without making it unduly onerous for individuals. The scrap processing industry is the recipient of attached and unattached catalytic converters and appreciate the effort to determine the best methodology for dealing with catalytic converter theft. The fiscal issue in the bill relates to the \$500 fee that will be charged to scrap dealer licensees. This does not seem like a lot of money, but for smaller yards it is a significant amount of money. However, it will help fund needed work at the WSP, including investigations that need to take place across the state. More critically, the bill includes new criminal penalties, to get at the problem of people cutting catalytic converters off of cars in parking lots. There are about 12 to 15 million cars annually in the country reaching the end of their life. Attached to each of those vehicles are one or two catalytic converters. Emissions control devices

cannot be reused, and must be disposed of. The legislation preserves the legitimate recycling industry's ability to process that significant amount of material and recapture as much as possible. The fee is going to a good purpose. A benefit of the bill is that it restricts legitimate catalytic converter purchases to only licensed entities that are licensed under the Motor Vehicles Act and each must be inspected at least annually by the WSP, on behalf of the DOL. It is important to make sure the WSP is fully staffed to do this work. The bill seeks to equip law enforcement to be more responsive when they come across piles of undocumented, detached catalytic converters. It is a reality that this theft can be done with a Sawzall in 60 seconds. The volatility of theft rates has a strong relationship with scrap metal prices.

(Opposed) None.

(Other) Tow truck operators are concerned about the reference to the vehicle dealer definition in RCW 46.70.011. That definition includes the auction of vehicles, and tow truck operators do not want to be characterized as vehicle dealers or recreational vehicle dealers. The exemption for vehicle dealers should include registered tow truck operators, who at the end of about 21 days, auction vehicles to satisfy a lien, not as a vehicle sale.

Persons Testifying (Consumer Protection & Business): (In support) Representative Cindy Ryu, prime sponsor; Holly Chisa, Institute of Scrap Recycling Industries; Taylor Gardner, Washington Association of Sheriffs and Police Chiefs; and Brad Tower, Radius Recycling.

(Other) Mark Johnson, Washington Retail Association; Jeff Gombosky, Carvana; and Scott Hazlegrove, Washington State Auto Dealers Association.

Persons Testifying (Transportation): (In support) Representative Cindy Ryu, prime sponsor; Holly Chisa, Institute of Scrap Metal Industries; Taylor Gardner, Washington Association of Sheriffs and Police Chiefs; and Brad Tower, Radius Recycling.

(Other) Peter Lukevicvh, Towing and Recovery Association of Washington.

Persons Signed In To Testify But Not Testifying (Consumer Protection & Business): None.

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