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# OHIO LEGISLATIVE SERVICE COMMISSION

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**H.B. 328**  
**135<sup>th</sup> General Assembly**

## Bill Analysis

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**Version:** As Passed by the House

**Primary Sponsors:** Reps. Plummer and Roemer

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### SUMMARY

- Requires scrap metal dealers and other persons who purchase used catalytic converters to comply with certain additional recordkeeping, reporting, and process requirements.
- Imposes a \$10,000 to \$50,000 penalty on a business entity that violates the above requirements.
- Prohibits a motor vehicle salvage dealer from purchasing or accepting catalytic converters.
- Requires the Registrar of Motor Vehicles or the Motor Vehicle Repair Board to refuse to revoke, refuse to renew, or refuse to issue a license to a motor vehicle salvage dealer or motor vehicle repair and window tint operator that fails to comply with the bill's requirements related to catalytic converters.
- Enhances the penalties for theft when the item stolen is a catalytic converter.
- Enhances the penalties for receiving stolen property when the item stolen is a catalytic converter.
- Provides that a person is guilty of complicity if the person sells a catalytic converter to another person who violates the bill's provisions.

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## DETAILED ANALYSIS

### Overview

A catalytic converter is part of an automobile’s exhaust system that reduces the toxicity of the pollutants the car emits. Catalytic converters often contain precious metals such as rhodium, platinum, and palladium.<sup>1</sup> The bill increases oversight of the sale of catalytic converters to scrap metal dealers and other persons and increases penalties relating to stolen catalytic converters.

### Secondhand dealer law

The bill establishes new requirements in association with the sale and acquisition of used catalytic converters – including catalytic converter cores, diesel particulate filters, and diesel oxidation catalysts. Some of the bill’s requirements are similar to those that apply under continuing law to special purchase articles. Others are entirely new. In either case, the bill’s requirements apply to both scrap metal dealers and other purchasers of used catalytic converters, including a junk yard, motor vehicle salvage yard, or motor vehicle repair and window tint operator.<sup>2</sup>

### Recordkeeping

Continuing law requires a scrap metal dealer (the owner or operator of a business that purchases or receives scrap metal for the purpose of sorting, grading, and shipping metals to third parties for direct or indirect melting into new products) to maintain a daily record of all articles purchased by the dealer. The dealer must submit this record by noon the following day to the Director of Public Safety for inclusion in the Communication and Information

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<sup>1</sup> See Carfax, “[What is a Catalytic Converter](http://www.carfax.com/blog),” which is available on Carfax’s website: [carfax.com/blog](http://www.carfax.com/blog).

<sup>2</sup> R.C. 4737.04(A)(5) and 4737.041(B).

Management System (CIMS).<sup>3</sup> CIMS is a system that allows the receipt and transmission of scrap theft alerts to dealers and law enforcement.<sup>4</sup>

The record must include several pieces of information, including a description of the article purchased, the identity of the seller, and the license plate number of the vehicle in which the seller arrived at the dealer. The bill adds that, in the case of a catalytic converter or special purpose article, the record must include a copy of the check issued as payment for the item.<sup>5</sup> Continuing law also requires a dealer to take a photograph of each person who sells the dealer an article for which the dealer is required to make a record.<sup>6</sup> In submitting its daily record, a dealer must do the following with respect to recyclable materials that the dealer purchases:

- For recyclable materials that *are not* special purchase articles, identify the relevant recyclable materials category code. One such code is “catalytic converters.”<sup>7</sup>
- For recyclable materials that *are* special purchase articles, identify the relevant special purchase article category.<sup>8</sup>

### **Special purpose article requirements**

The bill does not make catalytic converters special purchase articles, but it does subject catalytic converters to many of the same extra requirements that are otherwise limited to special purpose articles. Specifically, the bill requires a scrap metal dealer or other purchaser of a catalytic converter to do all of the following:

- Prepare and submit the records described above;
- Take a photograph of each catalytic converter;
- Obtain proof of ownership from the seller (see “**Proof of ownership,**” below);
- Issue payment for the catalytic converter by check;
- Withhold payment for two days after the catalytic converter is purchased;
- Upon receiving a catalytic converter that was stolen, make certain records available to the lawful owner for inspection.<sup>9</sup>

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<sup>3</sup> R.C. 4737.04(A), (C), and (E)(1)(b).

<sup>4</sup> R.C. 4737.045(E)(1).

<sup>5</sup> R.C. 4737.04(C).

<sup>6</sup> R.C. 4737.04(I).

<sup>7</sup> R.C. 4737.04(C)(5).

<sup>8</sup> R.C. 4737.04(C) and (A)(2).

<sup>9</sup> R.C. 4737.041(A).

## **Proof of ownership**

As mentioned above, the bill requires a scrap metal dealer or other purchaser of a used catalytic converter to obtain proof of ownership from the seller. The bill specifies that proof of ownership must be established as follows:

- If the seller owns the car, the car's title or registration or a repair receipt indicating replacement of the catalytic converter and the car's make, model, year, and vehicle identification number;
- If the seller is the motor vehicle dealer that repaired the car, the dealer's license number along with a receipt indicating replacement of the catalytic converter and the make, model, year, and vehicle identification number;
- If the seller is a motor vehicle collision repair operator, the operator's registration certificate along with a receipt indicating replacement of the catalytic converter and the make, model, year, and vehicle identification number.

In lieu of the information described above, the seller may provide the dealer with an affidavit, in a form provided by the Director of Public Safety, which includes the name and contact information of the seller or provider, a statement of the reasons the seller or provider is unable to produce the items described above, and any other information and documents required by the Director. The form must be published on the Department of Public Safety's website within 90 days after the bill's effective date. A person who makes a false statement on such an affidavit is guilty of falsification.<sup>10</sup>

## **Business-to-business transactions**

The bill requires a scrap metal dealer or other purchaser of a used catalytic converter, upon re-selling the catalytic converter to a business or any person that is not an individual, to provide the Director with all of the following:

- A copy of the scrap metal dealer's (or other purchaser's) primary owner's driver's license or state identification card;
- The scrap metal dealer's (or other purchaser's) federal employer identification number;
- The scrap metal dealer's (or other purchaser's) permanent physical address, which must not be a post office box;
- Any other information required by the Director.<sup>11</sup>

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<sup>10</sup> R.C. 4737.041(C).

<sup>11</sup> R.C. 4737.04(K) and 4737.041(B).

## Posting requirements

The bill requires scrap metal dealers and bulk merchandise container dealers to post a copy of the dealer's registration in a conspicuous place.<sup>12</sup>

## Exemptions

Under continuing law, certain transactions are exempt from the reporting, recordkeeping, and process requirements described above. The following types of transactions qualify for exemption under current law:

- Donations to nonprofit organizations and others for which the person donating receives no payment;
- Sales and donations of common recycled matter;
- Sales between a scrap metal dealer and tax exempt organizations that collect scrap metals for fundraising purposes;
- Certain sales between businesses, and between a business and the government;
- Sales between scrap metal dealers and persons who create products that result in bulk quantities of recyclable materials;
- Sales of catalytic converters between a scrap metal dealer and a motor vehicle dealer.

The bill repeals the last exception, and specifies that none of the others apply to sales or donations of used catalytic converters.<sup>13</sup>

## Penalties

Under current law, a scrap metal dealer or bulk merchandise container dealer that violates the secondhand dealer law is guilty of at least a first degree misdemeanor and at most a fourth degree felony, depending on the number of prior convictions. In addition, for any second or subsequent violation, a court may suspend the dealer's registration for a period of 90 days. The bill requires the Director of Public Safety to revoke, or refuse to issue or renew the registration of a scrap metal dealer or bulk merchandise container dealer that fails to comply with recordkeeping and reporting requirements related to special purpose articles or that is convicted of, or pleads guilty to stealing a used catalytic converter or receiving a stolen used catalytic converter.

In addition, the bill requires the Director of Public Safety to impose the following sanctions:

- Respecting a dealer that fails to properly submit a daily record of purchases for inclusion in CIMS (as described above), a \$500 fine for each day the violation occurs, and

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<sup>12</sup> R.C. 4717.04(G).

<sup>13</sup> R.C. 4737.043.

suspension of the dealer's registration until the Director determines that the dealer has taken "necessary steps" to comply with the reporting requirements;

- Respecting a dealer that does not post a copy of the dealer's registration in a conspicuous place, as required by the bill (see above), a \$500 fine;
- Respecting a person that acts as a scrap metal dealer or bulk merchandise container dealer, an injunction, and a \$10,000 fine for the first day in violation, plus a \$1,000 fine for each consecutive day of violation.

These fines must be deposited to the infrastructure protection fund.<sup>14</sup>

The bill also prescribes penalties for persons other than a scrap metal dealer that do not abide by the bill's requirements when purchasing a used catalytic converter. Any person, other than a business entity, who fails to comply with the above requirements is subject to the same penalties as a scrap metal dealer (except for suspension of a dealer's registration, as they are not registered dealers).<sup>15</sup> Any business entity that fails to comply with such requirements must be fined at least \$10,000, but not more than \$50,000 per violation. This exceeds the default organizational penalty for a first degree misdemeanor, which is a fine of \$5,000, and for a fourth degree felony, which is a fine of \$10,000.<sup>16</sup> In the case of a business entity that is a motor vehicle salvage dealer or a motor vehicle repair and window tint operator, the bill requires revocation, refusal to renew, or refusal to issue a license to that business.<sup>17</sup>

When any fine is imposed for an offense involving the sale or purchase of a used catalytic converter, other than a fine explicitly designated for the infrastructure protection fund, the bill requires the clerk of courts to pay the fine to the county, township, municipal corporation, park district, or state law enforcement agencies that were primarily responsible for, or involved in, arresting and prosecuting the offender.<sup>18</sup>

## **Communication and Information Management System (CIMS)**

The bill requires a law enforcement agency to submit all records of any investigation into a scrap metal dealer or bulk merchandise container dealer to the Director.<sup>19</sup>

## **Investigations**

The bill allows the Director of Public Safety, under certain circumstances, to investigate a scrap metal dealer, a person (other than a licensed motor vehicle dealer) who receives a used catalytic converter in the ordinary course of business, and employees, officers, and agents of

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<sup>14</sup> R.C. 4737.99(C), 4737.045(H), 4737.046(G), and 4737.04(E) and (G)(3).

<sup>15</sup> R.C. 4737.99(C).

<sup>16</sup> R.C. 4737.99(C)(2).

<sup>17</sup> R.C. 4738.07, 4738.12, and 4775.09.

<sup>18</sup> R.C. 4737.99(H).

<sup>19</sup> R.C. 4717.04(F)(3).

the foregoing. The Director's investigative authority also extends to persons acting as a scrap metal dealer or bulk merchandise container dealer without a registration or license. In either case, an investigation may be initiated only after consulting with local law enforcement.

As part of an investigation, the Director is empowered to search the alleged violator's premises during normal business hours, apply for court orders, and issue subpoenas. If the Director finds a violation, the Director must suspend the person's registration or license and reinstate such registration or license only if the person remedies the violation. Following a suspension or revocation, the Director must conduct a follow-up investigation to determine if the person continues to act in violation of the law. If so, the Director must seek an injunction from a court of common pleas and revoke the person's registration or license.

In the case of a person who violates the law by failing to register or obtain a license, the Director must instead seek an injunction from a court of common pleas and impose a civil penalty of \$1,000 for each day the violation occurred. The Director must certify unpaid fines to the Attorney General for collection.<sup>20</sup>

In addition, the bill requires the Director of Public Safety to do the following:

- Provide a standardized inspection report or form to local law enforcement;
- Prepare an annual public report summarizing all inspection reports for the previous year;
- Establish streamlined procedures for receiving information regarding noncompliance and forwarding information to proper legal authorities;
- Record information on all noninvestigative visits made by the Director to scrap metal dealers or bulk merchandise container dealers, and report the information on the Department of Commerce's website on a quarterly basis.<sup>21</sup>

## **Motor vehicle salvage dealers**

The bill prohibits licensed motor vehicle salvage dealers from purchasing or accepting catalytic converters.<sup>22</sup> Furthermore, it requires the Registrar of Motor Vehicles to revoke, refuse to renew, or refuse to issue a motor vehicle salvage dealer's license with respect to any person that fails to comply with recordkeeping and reporting requirements or that is convicted of, or pleads guilty to stealing a used catalytic converter or receiving a stolen used catalytic converter.<sup>23</sup>

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<sup>20</sup> R.C. 4347.046.

<sup>21</sup> R.C. 4737.22 and 4737.046(J).

<sup>22</sup> R.C. 4738.03.

<sup>23</sup> R.C. 4738.07 and 4738.12.

## Exemption from regulatory restriction requirements

The bill exempts rules adopted by the Director of Public Safety under the secondhand dealer law, from continuing law requirements concerning reductions in regulatory restrictions. Currently, the Department of Public Safety must take actions to reduce regulatory restrictions, including, by June 30, 2025, reducing the amount of regulatory restrictions contained in an inventory created in 2019 in accordance with a statutory schedule. A “regulatory restriction” is any part of an administrative rule that requires or prohibits an action.

Without that exemption, the Department must do all of the following with respect to any regulatory restrictions contained in rules adopted under the bill:

- Until June 30, 2025, and for so long as the Department fails to reach the reductions required under the statutory schedule, remove two or more existing regulatory restrictions for each new restriction adopted (referred to as the “two-for-one rule”);
- Refrain from adopting a regulatory restriction when doing so would negate a previous reduction;
- Beginning July 1, 2025, refrain from adopting a regulatory restriction when doing so would cause the total number of regulatory restrictions in effect to exceed a statewide cap calculated by the Joint Committee on Agency Rule Review.<sup>24</sup>

## Theft and receiving stolen property

The bill enhances the penalties for the offenses of theft and receiving stolen property when the item stolen is a catalytic converter.

### Theft

Under continuing law, a person commits the offense of theft if the person, with purpose to deprive the owner of property, knowingly obtains or exerts control over the property in any of the following ways: (1) without the consent of the owner or person authorized to give consent, (2) beyond the scope of the express or implied consent of the owner or person authorized to give consent, (3) by deception, (4) by threat, or (5) by intimidation. Under current law, the penalties for theft range from a first degree misdemeanor to a first degree felony depending on the value of the item stolen, the type of item, and whether the victim is a member of a protected class.<sup>25</sup>

The bill provides a specific penalty when the item stolen is a catalytic converter. Specifically, theft of a catalytic converter is generally a fifth degree felony. But, if the offender previously had been convicted of any of the following types of offenses, the violation is a fourth degree felony:<sup>26</sup>

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<sup>24</sup> R.C. 4737.98; R.C. 121.95 to 121.953, not in the bill.

<sup>25</sup> R.C. 2913.02.

<sup>26</sup> R.C. 2913.02(B)(10)(a) and (b).



- R.C. Chapter 2911 – robbery, burglary, trespass, and safecracking offenses;
- R.C. Chapter 2913 – theft and fraud offenses.

The default penalty for a fifth degree felony is a definite prison term of 6, 7, 8, 9, 10, 11, or 12 months and a fine of not more than \$2,500. The default penalty for a fourth degree felony is a definite prison term of 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months and a fine of not more than \$5,000.<sup>27</sup>

The bill provides that if the offender is a business entity, a violation is called enterprise theft of a catalytic converter and is punishable by a fine of not less than \$10,000 and not more than \$50,000 per violation. The default organizational penalty for a fifth degree felony is a fine of not more than \$7,500, and for a fourth degree felony is a fine of not more than \$10,000.<sup>28</sup>

When one of the above fines is imposed, the bill requires the clerk of courts to pay the fine to the county, township, municipal corporation, park district, or state law enforcement agencies that were primarily responsible for, or involved in, arresting and prosecuting the offender.<sup>29</sup>

### **Receiving stolen property**

Under continuing law, a person commits the offense of receiving stolen property if the person receives, retains, or disposes of property of another knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense. Under current law, the penalties for receiving stolen property range from a first degree misdemeanor to a third degree felony depending on the value of the property.<sup>30</sup>

The bill provides a specific penalty when the stolen property is a catalytic converter. Specifically, receiving a stolen catalytic converter is generally a fifth degree felony. But, if the offender previously had been convicted of any of the following types of offenses, the violation is a fourth degree felony.<sup>31</sup>

- R.C. Chapter 2911 – robbery, burglary, trespass, and safecracking offenses;
- R.C. Chapter 2913 – theft and fraud offenses.

The default penalty for a fifth degree felony is a definite prison term of 6, 7, 8, 9, 10, 11, or 12 months and a fine of not more than \$2,500. The default penalty for a fourth degree felony is a

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<sup>27</sup> R.C. 2929.14 and 2929.18, not in the bill.

<sup>28</sup> R.C. 2913.02(B)(10)(c) and R.C. 2929.31, not in the bill.

<sup>29</sup> R.C. 2913.02(B)(10)(d).

<sup>30</sup> R.C. 2913.51.

<sup>31</sup> R.C. 2913.51(F)(1) and (2).

definite prison term of 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months and a fine of not more than \$5,000.<sup>32</sup>

The bill provides that if the offender is a business entity, a violation is enterprise receipt of a stolen catalytic converter and is punishable by a fine of not less than \$10,000 and not more than \$50,000 per violation. The default organizational penalty for a fifth degree felony is a fine of not more than \$7,500, and for a fourth degree felony is a fine of not more than \$10,000.<sup>33</sup>

When one of the above fines is imposed, the bill requires the clerk of courts to pay the fine to the county, township, municipal corporation, park district, or state law enforcement agencies that were primarily responsible for, or involved in, arresting and prosecuting the offender.<sup>34</sup>

## Complicity

Under current law, a person, acting with the kind of culpability required for the commission of an offense, is prohibited from doing any of the following:<sup>35</sup>

- Soliciting or procuring another to commit the offense;
- Aiding or abetting another in committing the offense;
- Conspiring with another to commit an offense;
- Causing an innocent or irresponsible person to commit the offense.

A person who does any of the above is guilty of complicity in the commission of an offense, and can be prosecuted and punished as if the person were a principal offender.<sup>36</sup>

The bill states that a person is complicit if the person sells a catalytic converter to another person who, in the purchase or receipt of the catalytic converter, violates any of the bill's provisions. As stated above, however, to be found guilty, the seller would need to have acted with the kind of culpability required for the commission of the principal offense.<sup>37</sup>

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<sup>32</sup> R.C. 2929.14 and 2929.18, not in the bill.

<sup>33</sup> R.C. 2913.51(F)(3); R.C. 2929.31, not in the bill.

<sup>34</sup> R.C. 2913.51(F)(4).

<sup>35</sup> R.C. 2923.03(A), not in the bill.

<sup>36</sup> R.C. 2923.03(F), not in the bill.

<sup>37</sup> R.C. 4737.99(G).

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## HISTORY

Action	Date
Introduced	11-14-23
Reported, H. Criminal Justice	06-25-24
Passed House (93-2)	06-26-24

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