

BILL ANALYSIS

Senate Research Center

S.B. 224
By: Alvarado; Whitmire
Criminal Justice
5/25/2023
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

What does this bill do?

- S.B. 224 creates a presumption of illegal possession for those who possess two or more catalytic converters ("CCs"), adds a specific theft offense in the Penal Code for catalytic converter theft, and creates a penalty enhancement for those who possess a firearm while committing the theft.

How does the bill do it?

- It amends the Penal Code to create a presumption that someone in possession of two or more CCs, which have been removed from vehicles, obtained the CCs unlawfully unless it can be proven that they are the owners of the CCs.
- It lists CCs specifically in the theft statute when the value of the stolen property is less than \$30,000 – at this value the penalty is a state jail felony. Creating the theft offense in the Penal Code allows it to fit into the Penal Code's value ladder. This gives prosecutors the flexibility to aggregate the value of stolen converters to combat crime rings. Once the value of multiple stolen CCs exceeds \$30,000, the offense becomes a third-degree felony. Once the value exceeds \$150,000 the offense becomes a second-degree felony. Once the value exceeds \$300,000, the offense becomes a first-degree felony.
- If the person who commits the theft is in possession of a firearm, the prosecution can increase the base offense to the next highest offense, according to the above value ladder.

Background and Purpose:

- Catalytic converter thefts have dramatically increased in Houston from 375 in 2019 to 7,822 in 2021. At current trends, Houston is poised to end 2022 with 2,000 more thefts than in 2021. While recent changes in the law have helped reduce some catalytic converter thefts, criminals have found ways to exploit loopholes. Importantly, catalytic converter theft is no longer just a property crime. It is increasingly becoming a more violent crime with gangs and robbery crews creating dangerous crime rings.

(Original Author's/Sponsor's Statement of Intent)

S.B. 224 amends current law relating to catalytic converters, including criminal conduct involving catalytic converters, provides an administrative penalty, creates a criminal offense, increases a criminal penalty, and increases a fee.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Public Safety of the State of Texas in SECTION 4.04 of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. TITLE

SECTION 1.01. Authorizes this Act to be cited as the Deputy Darren Almendarez Act.

ARTICLE 2. CRIMINAL OFFENSES

SECTION 2.01. Amends Section 28.03(b), Penal Code, as follows:

(b) Provides that an offense under Section 28.03 (Criminal Mischief), except as provided by Subsections (f) (relating to providing that an offense under this section is a state jail felony if the damage or destruction is inflicted on certain places and the pecuniary loss to real property or to tangible personal property is a certain amount) and (h) (relating to providing that an offense under this section is a state jail felony if the amount of the pecuniary loss to real property or to tangible personal property is \$750 or more but less than \$30,000 and the damage or destruction is inflicted on certain educational institutions) is:

(1)-(3) makes no changes to these subdivisions;

(4) a state jail felony if the amount of pecuniary loss is:

(A)-(B) makes no changes to these paragraphs;

(C)-(D) makes nonsubstantive changes to these paragraphs; or

(E) less than \$30,000, if the property is a motor vehicle that is damaged, destroyed, or tampered with during the removal or attempted removal of a catalytic converter from the motor vehicle; or

(5)-(7) makes no changes to these subdivisions.

SECTION 2.02. Amends Section 31.03, Penal Code, by amending Subsections (c) and (e) and adding Subsection (f-1), as follows:

(c) Provides that for the purposes of Subsection (b) (relating to providing that the appropriation of property is unlawful if it meets certain criteria):

(1) evidence that the actor has previously participated in recent transactions other than, but similar to, the transaction for which, rather than similar to that which, the prosecution is based is admissible for the purpose of showing knowledge or intent and the issues of knowledge or intent are raised by the actor's plea of not guilty;

(2)-(7) makes no changes to these subdivisions;

(8)-(9) makes nonsubstantive changes to these subdivisions; and

(10) an actor in possession of property consisting of one or more catalytic converters that have been removed from a motor vehicle is presumed to have unlawfully appropriated the property unless the actor:

(A) is the owner, as defined by Section 601.002 (Definitions), Transportation Code, of each vehicle from which the catalytic converters were removed;

(B) possesses the catalytic converters in the ordinary course of the actor's business, including in the ordinary course of business of an entity described by Section 1956.123(1), Occupations Code.

(e) Provides that an offense under Section 31.03 (Theft), except as provided by Subsections (f) (relating to increasing an offense described for purposes of punishment to the next higher category of offense for certain circumstances) and (f-1), rather than Subsection (f), is:

(1)-(3) makes no changes to these subdivisions;

(4) a state jail felony if:

(A)-(B) makes no changes to these paragraphs;

(C) the property stolen is a firearm, rather than the property stolen is a firearm as defined by Section 46.01 (Definitions);

(D) makes no changes to this paragraph;

(E)-(F) makes nonsubstantive changes to these paragraphs; or

(G) the cost of replacing the property stolen is less than \$30,000 and the property stolen is a catalytic converter; or

(5)-(7) makes no changes to these subdivisions.

(f-1) Provides that an offense described for purposes of punishment by Subsections (e)(4)-(6) is increased to the next higher category of offense if it is shown on the trial of the offense that:

(1) the property stolen is a catalytic converter; and

(2) the actor possessed a firearm during the commission of the offense.

SECTION 2.03. Amends Section 31.03(h), Penal Code, by adding Subdivisions (7) and (8) to define "catalytic converter" and "firearm."

SECTION 2.04. Amends Chapter 31, Penal Code, by adding Section 31.21, as follows:

Sec. 31.21. UNAUTHORIZED POSSESSION OF CATALYTIC CONVERTER. (a) Provides that a person commits an offense if the person:

(1) intentionally or knowingly possesses a catalytic converter that has been removed from a motor vehicle; and

(2) is not a person who is authorized under Subsection (b) to possess the catalytic converter.

(b) Provides that a person is presumed to be authorized to possess a catalytic converter that has been removed from a motor vehicle if the person:

(1) is the owner, as defined by Section 601.002, Transportation Code, of the vehicle from which the catalytic converter was removed; or

(2) possesses the catalytic converter in the ordinary course of the person's business, including in the ordinary course of business of an entity described by Section 1956.123(1), Occupations Code.

(c) Provides that the presumption established under Subsection (b) does not apply to a person described by Subsection (b)(2) who knows that the catalytic converter was unlawfully removed from a motor vehicle or otherwise unlawfully obtained.

(d) Provides that an offense under this section, except as provided by Subsection (e), is a state jail felony.

(e) Provides that an offense under this section is a felony of the third degree if it is shown on the trial of the offense that the person:

(1) has been previously convicted of an offense under this section;

(2) in connection with the offense, engaged in conduct constituting conspiracy under Section 15.02 (Criminal Conspiracy) to commit an offense under Section 28.03 or 31.03 with respect to a catalytic converter; or

(3) possessed a firearm during the commission of the offense.

(f) Authorizes the actor, if conduct constituting an offense under this section also constitutes an offense under any other law, to be prosecuted under this section, the other law, or both.

SECTION 2.05. Amends Section 71.02(a), Penal Code, as follows:

(a) Provides that a person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit certain offenses, including an offense under Section 28.03 that is punishable under Subsection (b)(4)(E) of that section or an offense under Section 31.21 that is punishable under Subsection (d) of that section. Makes nonsubstantive changes.

ARTICLE 3. REGULATORY PROVISIONS

SECTION 3.01. Amends Section 1956.001, Occupations Code, by amending Subdivision (6-b) and (7) and adding Subdivision (6-c) to define "fixed location" and redefine "lead material" and "metal recycling entity."

SECTION 3.02. Amends Section 1956.016, Occupations Code, as follows:

Sec. 1956.016. REGISTRATION DATABASE. Requires that the list of all registered metal recycling entities contain certain information for each registered metal recycling entity, including a description of the extent to which the entity engages in transactions involving catalytic converters based on the entity's most recent declaration submitted under Section 1956.022(a) or 1956.127, as applicable. Makes nonsubstantive changes.

SECTION 3.03. Amends Section 1956.017(b), Occupations Code, as follows:

(b) Provides that the advisory committee on regulation of metal recycling entities (advisory committee) consists of 15 members appointed by the public safety director as follows:

(1)-(4) makes no changes to these subdivisions;

(5) five representatives of metal recycling entities, at least one of whom is required to have substantial business experience with transactions involving the purchase or acquisition of catalytic converters; and

(6)-(8) makes no changes to these subdivisions.

SECTION 3.04. Amends Section 1956.022, Occupations Code, as follows:

Sec. 1956.022. ISSUANCE OF CERTIFICATE; QUALIFICATIONS. (a) Requires the Department of Public Safety of the State of Texas (DPS) to issue a certificate of registration to an applicant who:

(1)-(2) makes nonsubstantive changes to these subdivisions;

(3) submits a declaration describing the extent to which the applicant intends to engage in transactions involving catalytic converters removed from motor vehicles in the course of the applicant's business activity;

(4) presents evidence satisfactory to DPS that the applicant intends to act as a metal recycling entity and use a fixed location to wholly or partly conduct an activity described by Section 1956.001(7) (relating to the definition of "metal recycling entity"); and

(5) provides the physical address of the fixed location described by Subdivision (4).

(a-1) Requires that the declaration described by Subsection (a)(3), if the applicant's business activity involves catalytic converters removed from motor vehicles, state certain information.

(a-2) Requires an applicant who intends to conduct an activity described by Section 1956.001(7) at more than one fixed location to complete an application and obtain a certificate of registration for each fixed location.

(b) Authorizes the qualifications to differ for a holder of a certificate of registration under Chapter 1956 (Metal Recycling Entities) based on the extent to which the person engages in transactions involving catalytic converters removed from motor vehicles as stated on the person's declaration submitted under Subsection (a).

SECTION 3.05. Amends Section 1956.024(a), Occupations Code, as follows:

(a) Requires a person, to renew a certificate of registration, to:

(1) creates this subdivision from existing text; and

(2) update the person's declaration submitted under Section 1956.022(a).

SECTION 3.06. Amends Subchapter A-3, Chapter 1956, Occupations Code, by adding Section 1956.030, as follows:

Sec. 1956.030. FIXED LOCATION. (a) Requires a metal recycling entity at all times to maintain a fixed location and use the fixed location to at least partly conduct an activity described by Section 1956.001(7).

(b) Requires a metal recycling entity to maintain a fixed location as required by Subsection (a) for each certificate of registration held by the metal recycling entity.

SECTION 3.07. Amends Chapter 1956, Occupations Code, by adding Subchapter C-1, as follows:

SUBCHAPTER C-1. CERTAIN TRANSACTIONS INVOLVING CATALYTIC CONVERTERS REMOVED FROM MOTOR VEHICLES

Sec. 1956.121. DEFINITION. Defines "motor vehicle."

Sec. 1956.122. APPLICABILITY; EFFECT OF LAW. (a) Provides that this subchapter, notwithstanding any other provision of this chapter, applies to the purchase or acquisition, from a person described by Section 1956.002(1) (relating to providing this chapter does not apply to certain purchases by certain sellers that sell regulated material in the ordinary course of business), of a catalytic converter removed from a motor vehicle.

(b) Provides that this subchapter does not affect any requirement under Subchapter A-3 (Practice by Certificate Holders), including any requirement applicable to the purchase or acquisition of a catalytic converter removed from a motor vehicle from a person not described by Section 1956.002(1).

Sec. 1956.123. LIMITATION ON PURCHASING OR OTHERWISE ACQUIRING CATALYTIC CONVERTERS. Prohibits a metal recycling entity from purchasing or otherwise acquiring a catalytic converter that was removed from a motor vehicle from a person described by Section 1956.002(1), unless each of the following is satisfied:

- (1) the person selling the catalytic converter to the metal recycling entity acquired it in the ordinary course of the person's business, including in the ordinary course of business of certain entities; and
- (2) any individual acting on behalf of the person described by Subdivision (1) has apparent authority to enter into the transaction and is acting in the scope of that authority.

Sec. 1956.124. CERTAIN RECORDS REQUIRED WHEN PURCHASING OR OTHERWISE ACQUIRING CATALYTIC CONVERTER; OFFENSE. (a) Requires a metal recycling entity to maintain an accurate record of each transaction in which the entity purchases or otherwise acquires a catalytic converter that is removed from a motor vehicle from a person described by Section 1956.123.

(b) Provides that a record meets the requirements of Subsection (a) if it contains:

- (1) a description made in accordance with the custom of the trade for the volume of catalytic converters purchased or otherwise acquired;
- (2) the business name of the person from whom the catalytic converters were purchased or otherwise acquired; and
- (3) the date of the transaction.

(c) Requires a metal recycling entity to preserve each record required by this section until the second anniversary of the date the record was made. Requires that the records be maintained in an easily retrievable format and be available for inspection as provided by Section 1956.125 not later than 72 hours after the time of purchase or acquisition.

(d) Provides that a record containing the information described by Subsection (b) that is maintained in accordance with other law or as a routine business practice satisfies the requirements of Subsection (a).

(e) Provides that a metal recycling entity commits an offense if the entity intentionally or knowingly fails to maintain a record as required by this section. Provides that an offense under this subsection is a Class A misdemeanor.

Sec. 1956.125. INSPECTION OF RECORDS. Requires a metal recycling entity, on request, to permit a peace officer, a representative of DPS, or a representative of a county, municipality, or other political subdivision that issues a license or permit under Section 1956.003(b) (relating to authorizing a county, municipality, or political subdivision of this state to issue a license or permit to a business to allow the business to act as a metal recycling entity in that county), during the entity's usual business hour, to:

- (1) enter the premises of the entity; and
- (2) inspect a record required to be maintained by Section 1956.124.

Sec. 1956.126. EFFECT ON LOCAL LAW. (a) Prohibits a county, municipality, or political subdivision of this state, notwithstanding Section 1956.003 (Local Law; Criminal Penalty), from:

(1) with respect to a catalytic converter removed from a motor vehicle, restricting the purchase, acquisition, sale, transfer, or possession of the catalytic converter by a person described by Section 1956.123; or

(2) altering or adding to the recordkeeping requirements provided by Section 1956.124.

(b) Provides that Subsection (a) does not affect the authority of a county, municipality, or political subdivision of this state to:

(1) issue a license or permit as provided by Section 1956.003; or

(2) inspect a record as provided by Section 1956.125.

Sec. 1956.127. **DECLARATION UPDATE.** Requires a metal recycling entity, if the business activity of the entity substantially changes in the extent to which the entity engages in transactions involving catalytic converters removed from motor vehicles, to update the entity's declaration submitted under Section 1956.022.

Sec. 1956.128. **ADMINISTRATIVE PENALTY.** (a) Authorizes the Public Safety Commission to impose an administrative penalty under Subchapter R (Administrative Penalty), Chapter 411, Government Code, on a metal recycling entity that:

(1) violates Section 1956.123 due to the entity's failure to exercise due diligence in purchasing or acquiring a catalytic converter removed from a motor vehicle; or

(2) violates Section 1956.124.

(b) Prohibits the amount of the administrative penalty from exceeding \$10,000.

SECTION 3.08. Amends Subchapter A, Chapter 2305, Occupations Code, by adding Section 2305.0041, as follows:

Sec. 2305.0041. **LIMITATION ON BUYING AND SELLING CATALYTIC CONVERTERS.** Prohibits a person subject to Subchapter A (Records Maintained by Certain Entities) from buying or selling a catalytic converter removed from a motor vehicle unless the catalytic converter was removed from the motor vehicle in connection with the person's repair of the vehicle.

SECTION 3.09. Amends the heading to Section 2305.0051, Occupations Code, to read as follows:

Sec. 2305.0051. **REPAIR RECORDS RELATED TO CATALYTIC CONVERTERS.**

SECTION 3.10. Amends Section 2305.0051(a), Occupations Code, as follows:

(a) Requires the owner of a garage or repair shop that sells or transfers to any person, including a metal recycling entity registered under Chapter 1956, a catalytic converter that was removed, rather than that the person removed, in connection with a motor vehicle repair to maintain a record of all repairs for the vehicle that includes:

(1) makes a nonsubstantive change to this subdivision;

(2) the vehicle identification number of the vehicle; and

(3) copies of all related invoices including, as applicable, a notation that a catalytic converter was removed from the vehicle.

SECTION 3.11. Amends Section 2305.101(c), Occupations Code, as follows:

(c) Provides that an offense under Chapter 2305 (Records of Certain Vehicle Repairs, Sales, and Purchases) that consists of the violation of Section 2305.0041, 2305.0051, or 2305.007 (Entry and Inspection) is a Class A misdemeanor.

SECTION 3.12. Amends Chapter 2305, Occupations Code, by adding Subchapter D, as follows:

SUBCHAPTER D. RECORDS OF CERTAIN SALES OR TRANSFERS OF CATALYTIC CONVERTERS REMOVED FROM MOTOR VEHICLES

Sec. 2305.151. DEFINITION. Defines "catalytic converter."

Sec. 2305.152. APPLICABILITY. Provides that this subchapter applies only to a person described by Section 1956.123(1)(A) through (G).

Sec. 2305.153. RECORD REQUIRED. (a) Requires a person to whom this subchapter applies, for each transaction in which the person sells or transfers to another person a catalytic converter that is removed from a motor vehicle, to maintain an accurate record of the transaction until the second anniversary of the date of the transaction.

(b) Provides that a record is sufficient to meet the requirements of Subsection (a) if it contains:

(1) a description made in accordance with the custom of the trade for the volume of catalytic converters sold or transferred;

(2) the name of the person to whom the catalytic converters were sold or transferred; and

(3) the date of the transaction.

(c) Provides that a record containing the information described by Subsection (b) that is maintained in accordance with other law or as a routine business practice satisfies the requirements of Subsection (a).

Sec. 2305.154. OFFENSE: FAILURE TO MAINTAIN RECORD. (a) Provides that a person commits an offense if the person intentionally or knowingly fails to maintain a record as required by Section 2305.153.

(b) Provides that an offense under this section is a Class A misdemeanor.

(c) Authorizes a person to be prosecuted only under this section if conduct that constitutes an offense under this section also constitutes an offense under another provision of this chapter.

Sec. 2305.155. INSPECTION OF CERTAIN RECORDS. (a) Defines "licensing authority" and "occupational license."

(b) Authorizes the licensing authority that issues an occupational license, if the occupational license is required for a person to engage in a business or occupation described by Section 1956.123(1)(A) through (G), at a reasonable time to:

(1) enter the premises at which the person engages in the regulated business or occupation; and

(2) inspect the records or information required to be maintained under Section 2305.153.

(c) Authorizes an officer of DPS or another peace officer, regardless of whether an occupational license is required, to enter the premises of and inspect the

records of a person described by Section 1956.123(1)(A) through (G), as provided by Subsection (b).

SECTION 3.13. Amends Section 1006.001(2), Transportation Code, to redefine "economic motor vehicle theft."

SECTION 3.14. Amends Sections 1006.153(b) and (e), Transportation Code, as follows:

(b) Requires an insurer to pay to the Motor Vehicle Crime Prevention Authority (authority) a fee equal to \$5, rather than \$4, multiplied by the total number of motor vehicle years of insurance for insurance policies delivered, issued for delivery, or renewed by the insurer.

(e) Requires that \$1, out of each fee collected under Subsection (b), be deposited to the credit of the general revenue fund to be used only for coordinated regulatory and law enforcement activities intended to detect and prevent catalytic converter theft in this state. Requires that the remainder of each fee collected under Subsection (b) and any amount collected under Subsection (b-1), rather than an amount collected under Subsection (b-1), be allocated meeting certain criteria.

ARTICLE 4. TRANSITIONS

SECTION 4.01. Provides that the change in law made by this Act to Section 1956.017, Occupations Code, does not affect the entitlement of a member serving on the advisory committee established under that section immediately before the effective date of this Act to continue to serve for the remainder of the member's term. Requires the director of DPS, as the terms of members expire after the effective date of this Act, to appoint or reappoint members who have the qualifications required by that section.

SECTION 4.02. Requires a metal recycling entity registered under Chapter 1956, Occupations Code, on the effective date of this Act, to, not later than October 1, 2023, submit a declaration described by Section 1956.022(a)(3), as added by this Act, to DPS.

SECTION 4.03. Makes application of Section 1956.022(a), Occupations Code, as amended by this Act, prospective to January 1, 2024.

SECTION 4.04. Requires DPS, as soon as practicable after the effective date of this Act, to adopt rules necessary to implement the changes in law made by this Act to Chapter 1956, Occupations Code.

SECTION 4.05. Makes application of Sections 28.03, 31.03, and 71.02, Penal Code, as amended by this Act, prospective.

SECTION 4.06. Makes application of Section 1006.153, Transportation Code, as amended by this Act, prospective.

ARTICLE 5. COORDINATION OF STATE AGENCIES TO DETECT AND PREVENT THEFT OF CATALYTIC CONVERTERS

SECTION 5.01. (a) Defines "authority."

(b) Requires the authority, not later than January 1, 2024, to develop and implement a plan to coordinate efforts with DPS, the Texas Department of Licensing and Regulation, and the Texas Department of Motor Vehicles, to:

(1) review the records of persons regulated by each agency involving the purchase, acquisition, sale, or transfer of catalytic converters removed from motor vehicles; and

(2) respond to suspicious activities that may be detected through the analysis of the records described by Subdivision (1) of this subsection.

(c) Authorizes the authority to establish a task force composed of persons regulated by the agencies listed in Subsection (b) of this section who have substantial business experience in transactions involving catalytic converters. Requires the authority to develop the plan described by Subsection (b) of this section with the participation of the task force, if established.

(d) Authorizes the authority, except as provided by Subsection (c) of this section, to appoint members to the task force as the authority determines appropriate.

(e) Requires the authority, in developing and implementing the plan described by Subsection (b) of this section, to focus on:

(1) protecting each step in the legitimate stream of commerce that begins with the removal of a catalytic converter from a motor vehicle and includes recycling those catalytic converters to ensure that the persons regulated by the agencies listed in Subsection (b) of this section are not the means for inserting stolen catalytic converters into the stream of commerce; and

(2) providing risk-based targeting and random auditing of the records of the persons regulated by the agencies listed in Subsection (b) of this section.

(f) Authorizes the money deposited to the credit of the general revenue fund for coordinated regulatory and law enforcement activities intended to detect and prevent catalytic converter theft in this state as described by Section 1006.153(e), Transportation Code, as amended by this Act, to be appropriated to the authority for the activities required by this section.

ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. (a) Effective date: upon passage or September 1, 2023.

(b) Effective date, Sections 1956.001(6-b) and (7), Occupations Code, as amended by this Act, and Section 1956.030, Occupations Code, as added by this Act: July 1, 2023.