

BILL ANALYSIS

S.B. 224
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Homeland Security & Public Safety
Committee Report (Unamended)

BACKGROUND AND PURPOSE

According to the National Insurance Crime Bureau, catalytic converter thefts have increased 1,200 percent between 2019 and 2021. Catalytic converters contain amounts of precious metals, specifically rhodium, palladium, and platinum, which can be valued at thousands of dollars per ounce. Thieves often saw these converters off of vehicles and sell them to metal recycling entities. Tragically, last year in Harris County, off-duty Deputy Darren Almendarez was shot and killed when he interrupted three men attempting to steal a catalytic converter off of his personal vehicle outside of a grocery store. Catalytic converter theft has become an organized, and often violent, crime.

During the 87th Regular Session, the legislature enacted H.B. 4110, which made several reforms to the regulation of metal recycling. Specifically, this legislation attempted to address the selling of catalytic converters to recycling entities, including by requiring the verification of ownership and instituting additional recordkeeping and documentation requirements. As thefts continue to rise and the problem continues to affect more and more Texans, additional legislative action is needed.

S.B. 224, the Deputy Darren Almendarez Act, seeks to address catalytic converter regulation and theft through a thorough and comprehensive set of regulations, which include making the unauthorized possession of a catalytic converter a felony and increasing other criminal penalties.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Public Safety in SECTION 4.04 of this bill.

ANALYSIS

S.B. 224 sets out provisions relating to catalytic converters, including regulations relating to the acquisition of catalytic converters removed from motor vehicles and the criminal penalties applicable to the theft or removal of a catalytic converter.

Criminal Offenses

Unauthorized Possession of a Catalytic Converter

S.B. 224 amends the Penal Code to create the state jail felony offense of unauthorized possession of a catalytic converter for a person who intentionally or knowingly possesses a catalytic converter that has been removed from a motor vehicle and is not a person who is authorized to possess the catalytic converter. A person is presumed to be authorized to possess the catalytic converter if the person is the owner of the vehicle from which the catalytic converter was removed or possesses the catalytic converter in the ordinary course of the person's business, unless the person knows that the catalytic converter was unlawfully removed from a motor vehicle or otherwise unlawfully obtained. The bill enhances the penalty for the offense to a third degree felony if it is shown on the trial of the offense that the person:

- has been previously convicted of the offense;
- in connection with the offense, engaged in conduct constituting criminal conspiracy to commit theft or criminal mischief with respect to a catalytic converter; or
- possessed a firearm during the commission of the offense.

If conduct constituting the offense also constitutes an offense under any other law, the actor may be prosecuted for either offense or both offenses.

Criminal Mischief

S.B. 224 sets the penalty for all criminal mischief offenses that involve damaging, destroying, or tampering with a motor vehicle during the removal or attempted removal of a catalytic converter from the vehicle and result in a pecuniary loss of less than \$30,000 as a state jail felony, thereby increasing the penalty for offenses involving such conduct that result in a pecuniary loss of less than \$2,500.

Theft

S.B. 224 establishes a presumption that, for purposes of the offense of theft, an actor in possession of property consisting of one or more catalytic converters that have been removed from a motor vehicle unlawfully appropriated the property unless the actor is the owner of each vehicle from which the catalytic converters were removed or possesses the catalytic converters in the ordinary course of the actor's business.

S.B. 224 sets the penalty for all theft offenses where the cost of replacing the property stolen is less than \$30,000 and the property stolen is a catalytic converter as a state jail felony, thereby increasing the penalty for theft of a catalytic converter valued at less than \$2,500. The bill enhances the penalty for theft punishable as a state jail felony or as a second or third degree felony to the next higher category of offense if it is shown on the trial of the offense that the property stolen is a catalytic converter and the actor possessed a firearm during the commission of the offense.

Engaging in Organized Criminal Activity

S.B. 224 expands the conduct that constitutes engaging in organized criminal activity to include a person, 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, committing or conspiring to commit a state jail felony offense of criminal mischief involving the removal of a catalytic converter or a state jail felony offense of unlawful possession of a catalytic converter.

Applicability

S.B. 224 establishes that the changes made with respect to criminal mischief, theft, and engaging in organized criminal activity apply only to an offense committed on or after the bill's effective

date. The bill provides for the continuation of the law in effect before the bill's effective date for purposes of an offense, or any element thereof, that occurred before that date.

Metal Recycling Entities

Fixed Location of Metal Recycling Operations

S.B. 224 amends the Occupations Code to remove from the definition of "metal recycling entity" the requirement that the entity be operated from a fixed location. However, the bill establishes a standalone requirement for a metal recycling entity, at all times, to maintain a fixed location and use the fixed location to at least partially conduct a qualifying metal recycling activity. The bill requires a metal recycling entity to maintain a fixed location for each certificate of registration held by the entity and requires an applicant for a certificate of registration who intends to conduct a metal recycling activity at more than one fixed location to complete an application and obtain a certificate of registration for each fixed location. The bill defines for these purposes "fixed location" as a structure or facility that is attached to real property, has a fixed geographic location with a physical address, and is used wholly or partly to conduct an activity that qualifies as a metal recycling activity. These definitions take effect July 1, 2023.

Metal Recycling Advisory Committee

S.B. 224 requires at least one of the five members of the Department of Public Safety's (DPS) advisory committee on matters related to the regulation of metal recycling entities who are appointed as representatives of those entities to have substantial business experience with transactions involving the purchase or acquisition of catalytic converters. This requirement does not affect the entitlement of a member serving on the advisory committee immediately before the bill's effective date to continue to serve for the remainder of the member's term. As the terms of members expire after the bill's effective date, the public safety director of DPS must appoint or reappoint members who have the requisite qualifications.

Issuance of Certificate of Registration

S.B. 224 requires an applicant for a certificate of registration to operate as a metal recycling entity to present 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 a qualifying metal recycling activity and to provide the physical address of the fixed location. The bill also requires an applicant to submit 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. These provisions apply only to an application submitted on or after January 1, 2024.

S.B. 224 requires the declaration submitted by an applicant whose business activity involves catalytic converters removed from motor vehicles to state the following:

- whether the applicant will engage in a business activity that involves the conversion of catalytic converters removed from motor vehicles into raw material products by a method that in part requires the use of powered tools and equipment or the use of such raw material products in the manufacture of producer or consumer goods;
- whether the applicant will purchase or otherwise acquire catalytic converters removed from motor vehicles for the eventual use of the metal for purposes of the aforementioned business activities but will not actually engage in those activities; or
- that the applicant will deal only incidentally with catalytic converters removed from motor vehicles.

The bill requires a person seeking to renew their certificate of registration to update the declaration submitted with their initial application. The bill requires all metal recycling entities registered on the bill's effective date to submit a declaration to DPS not later than October 1, 2023.

S.B. 224 authorizes the qualifications established by the Public Safety Commission for the holder of a certificate of registration to operate as a metal recycling entity to differ 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 to DPS. The bill requires the DPS database of all registered metal recycling entities to include a description for each entity of the extent to which the entity engages in transactions involving catalytic converters based on the entity's most recently submitted declaration.

Transactions Involving Catalytic Converters Removed From Motor Vehicles

Limitation on Purchasing or Otherwise Acquiring Catalytic Converters

S.B. 224 prohibits a metal recycling entity from purchasing or otherwise acquiring a catalytic converter that was removed from a motor vehicle from a public utility; a telecommunications provider; a cable service provider; a video service provider; or a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of the seller's business, unless each of the following conditions is satisfied:

- 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 any of the following entities:
 - an automotive wrecking and salvage yard;
 - a registered metal recycling entity;
 - a licensed motor vehicle manufacturer, distributor, converter, or dealer, including any department of a dealer or converter that repairs or services motor vehicles;
 - a shop or garage that is engaged in the business of repairing motor vehicles;
 - a licensed used automotive parts recycler;
 - a motor vehicle demolisher;
 - a school or training program in which students are provided instruction on building, repairing, or restoring motor vehicles;
 - a law enforcement agency;
 - the National Insurance Crime Bureau;
 - a business that is located in and regulated by another state or a political subdivision of another state and engaged in an activity for which any of the above businesses are regulated by the State of Texas or a political subdivision thereof;
 - or
 - a business that is located in a jurisdiction outside the United States and operated in a business form recognized by the laws of that jurisdiction and that imports catalytic converters into the United States in accordance with the Harmonized Tariff Schedule of the United States published by the U.S. International Trade Commission; and
- any individual acting on behalf of that person has apparent authority to enter into the transaction and is acting in the scope of that authority.

Records Required when Purchasing or Otherwise Acquiring Catalytic Converter

S.B. 224 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 qualifying person. The bill establishes that a record satisfies this requirement if it contains the following:

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

A record containing such information that is maintained in accordance with other law or as a routine business practice also satisfies this recordkeeping requirement.

S.B. 224 requires a metal recycling entity to preserve each catalytic converter record until the second anniversary of the date the record was made and requires the records to be maintained in an easily retrievable format and to be available for inspection not later than 72 hours after the time of purchase or acquisition. The bill creates a Class A misdemeanor offense for a metal recycling entity that intentionally or knowingly fails to maintain a record as is required.

S.B. 224 requires a metal recycling entity to permit a peace officer, a DPS representative, or a representative of a political subdivision that issues a metal recycling license or permit, on request, to enter the entity's premises during the entity's usual business hours and inspect a catalytic converter record.

Effect on Local Law

S.B. 224 prohibits a political subdivision from taking either of the following actions:

- 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 engaged in a business or occupation from which a metal recycling entity may acquire a catalytic converter under the bill's provisions; or
- altering or adding to the catalytic converter recordkeeping requirements prescribed by the bill.

This prohibition does not affect a political subdivision's authority to issue a license or permit allowing a business to act as a metal recycling entity in that political subdivision or to inspect a catalytic converter record.

Declaration Update

S.B. 224 requires a metal recycling entity whose business activity 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.

Administrative Penalty

S.B. 224 authorizes the Public Safety Commission to impose an administrative penalty capped at \$10,000 on a metal recycling entity that does not comply with the limitation on purchasing or otherwise acquiring catalytic converters due to a failure to exercise due diligence in a purchase or acquisition or that does not comply with the related recordkeeping requirements.

Rulemaking

S.B. 224 requires DPS to adopt rules as soon as practicable after the bill's effective date to implement the changes in law made with respect to the regulation of metal recycling entities.

Lack of Effect on Certain Other State Law

S.B. 224 establishes that the bill's provisions relating to the regulation of transactions by metal recycling entities involving catalytic converters removed from motor vehicles do not affect any requirement of the statutory provisions regulating the practices of metal recycling entity certificate holders generally, including any requirement applicable to the purchase or acquisition of a catalytic converter removed from a motor vehicle from a person other than a public utility; a telecommunications provider; a cable service provider; a video service provider; or a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of the seller's business.

Entities Involved in Selling, Purchasing, and Repairing Motor Vehicles

Limitation on Buying and Selling Catalytic Converters

S.B. 224 prohibits a person who operates a shop or garage that is engaged in the business of repairing motor vehicles or who engages in the business of purchasing or selling used motor vehicles in Texas from buying or selling a catalytic converter removed from a motor vehicle unless it was removed in connection with the person's repair of the vehicle. A violation of this prohibition is a Class A misdemeanor.

Repair Records Related to Catalytic Converters

S.B. 224 broadens the scope of the requirement for the owner of a garage or repair shop that sells to a registered metal recycling entity a catalytic converter that the person removed in connection with a motor vehicle repair to maintain a record of all repairs for the vehicle. The bill makes the recordkeeping requirement applicable instead when the owner sells or transfers to any person a catalytic converter that was removed, by the owner or otherwise, in connection with a motor vehicle repair. The bill expands the required contents of such a record to include the vehicle's vehicle identification number and also requires the copies of all related invoices contained in the record to include, as applicable, a notation that a catalytic converter was removed from the vehicle. The bill increases the penalty for a violation of the recordkeeping requirement from an offense punishable by a fine of not less than \$10 and not more than \$100 to a Class A misdemeanor offense.

Records of Certain Sales or Transfers of Catalytic Converters Removed From Motor Vehicles

S.B. 224 requires a person engaged in a business or occupation that is authorized under the bill's provisions to sell a catalytic converter they acquire to a metal recycling entity, other than a business that is outside of Texas, to maintain, for each transaction in which the person sells or transfers to another person a catalytic converter that is removed from a motor vehicle, an accurate record of the transaction until the second anniversary of the date of the transaction. A record is sufficient to satisfy this requirement if it contains the following information:

- a description made in accordance with the custom of the trade for the volume of catalytic converters sold or transferred;
- the name of the person to whom the catalytic converters were sold or transferred; and
- the date of the transaction.

A record containing such information that is maintained in accordance with other law or as a routine business practice also satisfies the recordkeeping requirement. The bill creates a Class A misdemeanor offense for a person who intentionally or knowingly fails to maintain a record as is required. If conduct constituting this offense also constitutes an offense under another provision of the Occupations Code, the person may be prosecuted only for this offense.

S.B. 224 provides that, if an occupational license is required for a person to engage in the applicable business or occupation that allows them to sell a catalytic converter to a metal recycling entity, the licensing authority that issues the occupational license may, at a reasonable time, enter the premises at which the person engages in the regulated business or occupation and inspect the records or information required to be maintained. Regardless of whether an occupational license is required, a DPS officer or another peace officer may enter the premises and inspect the records at a reasonable time.

Motor Vehicle Crime Prevention Authority

S.B. 224 amends the Transportation Code to increase the amount of the fee an insurer must pay to the Motor Vehicle Crime Prevention Authority from \$4 multiplied by the total number of motor vehicle years of insurance for insurance policies delivered, issued for delivery, or renewed by the insurer to \$5 multiplied by that number. The bill requires this additional \$1 out of each

fee to 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 Texas. These provisions apply only to a fee due on or after the bill's effective date.

For purposes of provisions governing the authority, the bill specifies that theft of a catalytic converter attached to a motor vehicle that is committed for financial gain is considered economic motor vehicle theft.

Coordination of State Agencies to Detect and Prevent Theft of Catalytic Converters

S.B. 224 requires the Motor Vehicle Crime Prevention Authority, not later than January 1, 2024, to develop and implement a plan to coordinate their efforts with DPS, the Texas Department of Licensing and Regulation (TDLR), and the Texas Department of Motor Vehicles (TxDMV) to do the following:

- review the records of persons regulated by each agency involving the purchase, acquisition, sale, or transfer of catalytic converters removed from motor vehicles; and
- respond to suspicious activities that may be detected through the analysis of the records.

The bill authorizes the authority to establish a task force composed of persons regulated by those agencies who have substantial business experience in transactions involving catalytic converters and requires the authority to develop the plan with the participation of the task force, if established. The bill authorizes the authority to appoint members to the task force as the authority determines appropriate.

S.B. 224 requires the authority, in developing and implementing the plan, to focus on the following:

- 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 DPS, TDLR, and TxDMV are not the means for inserting stolen catalytic converters into the stream of commerce; and
- providing risk-based targeting and random auditing of the records of the persons regulated by those agencies.

S.B. 224 authorizes 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 Texas to be appropriated to the authority for these required activities.

EFFECTIVE DATE

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, September 1, 2023.