

SUBJECT:	Revising criminal penalties for offenses related to catalytic converters
COMMITTEE:	Homeland Security & Public Safety — favorable, without amendment
VOTE:	7 ayes — Guillen, Jarvis Johnson, Dorazio, Goodwin, Harless, Holland, Troxclair  0 nays  2 absent — Bowers, Canales
SENATE VOTE:	On final passage (April 3) — 30 - 0
WITNESSES:	None ( <i>considered in formal meeting on May 4</i> )
BACKGROUND:	Some have suggested that comprehensive regulation of catalytic converters, including adding or increasing criminal penalties for related offenses, would help to address increasing rates of catalytic converter theft.
DIGEST:	<p>CSSB 224, which could be cited as the Deputy Darren Almendarez Act, would revise provisions regarding the possession, theft, or removal of catalytic converters and establish regulations for transactions involving catalytic converters and the recycling of metals from such a source.</p> <p><b>Theft.</b> An actor who was in possession of one or more catalytic converters that were removed from a motor vehicle would be presumed to have unlawfully appropriated the property unless the actor was the owner of each vehicle from which the converters originated or the actor possessed the converters in the ordinary course of business.</p> <p>The bill would establish that an offense of theft would be punishable as a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) if:</p> <ul style="list-style-type: none"><li>• the amount of pecuniary loss was less than \$30,000 and the</li></ul>

- property was a motor vehicle that was damaged, destroyed, or tampered with during the removal or attempted removal of a catalytic converter; or
- the cost of replacing the property stolen was less than \$30,000 and the property stolen was a catalytic converter.

The penalty for an offense involving the theft of a catalytic converter and the possession of a firearm during the offense would be increased to the next higher category of offense.

**Unauthorized possession.** CSSB 224 would create a state-jail felony offense for unauthorized possession of a catalytic converter by a person who intentionally or knowingly possessed a catalytic converter that had been removed from a motor vehicle and was not otherwise authorized to possess the converter. A person would be presumed to be authorized to possess a catalytic converter if the person was the owner of the vehicle from which the catalytic converter was removed or possessed the catalytic converter in the ordinary course of business, unless the person knew that the catalytic converter was unlawfully obtained.

An offense would be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the person had previously been convicted of an offense under the bill's provisions, engaged in conduct constituting criminal conspiracy to commit theft or criminal mischief relating to a catalytic converter, or possessed a firearm during the commission of the offense. If conduct constituting an offense under this provision also constituted an offense under any other law, the actor could be prosecuted under these provisions, the other law, or both.

A person would commit an offense of engaging in organized criminal activity if the person committed certain offenses established in the bill 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 provisions relating to these criminal offenses and penalties would apply only to an offense committed on or after the bill's effective date.

**Metal recycling advisory committee.** The bill would require the Department of Public Safety (DPS) to appoint at least one representative who had substantial business experience with transactions involving the purchase or acquisition of catalytic converters to the advisory committee on matters related to the regulation of metal recycling entities. The provision would apply only to members whose terms expired after the effective date of the bill.

**Fixed location.** CSSB 224 would make revise the definition of a "fixed location" in relation to a metal recycling entity. Such an entity would have to maintain a fixed location and use the location at least partially to conduct a qualifying metal recycling activity.

**Certificate of registration.** By October 1, 2023, an applicant for a certificate of registration for the operation of a metal recycling entity would be required to submit certain additional information, including a declaration describing the extent to which the applicant intended to engage in transactions involving removed catalytic converters. The qualifications established by the Public Safety Commission for the holder of such a certificate could vary based on the extent to which the person engaged in transactions involving catalytic converters. This transaction information would have to be included in the DPS database of all registered metal recycling entities. To renew a certificate of registration, a person would be required to update the declaration regarding transactions involving catalytic converters.

**Transactions involving catalytic converters.** CSSB 224 would prohibit a metal recycling entity from purchasing or otherwise acquiring a catalytic converter that was removed from a motor vehicle from certain service providers or a public utility unless the seller acquired the converter in the ordinary course of business of certain entities specified by the bill. The bill would also require that the person acting on behalf of such an entity acted in the scope of the person's apparent authority to enter into the transaction. The recycling entity would be required to maintain an accurate record of each relevant catalytic converter transaction that

contained:

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

A metal recycling entity would have to preserve each record for two years after it was made and maintained in compliance with certain other provisions of the bill. A record containing information that was maintained in accordance with other law or as a routine business practice also would satisfy the recordkeeping requirement. The bill would create a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) offense for a recycling entity that intentionally or knowingly failed to maintain a record as required by the bill. On request, a recycling entity would be required to permit inspection of the records by relevant authorities.

A county, municipality, or political subdivision could not restrict the purchase, acquisition, sale, transfer, or possession of a catalytic converter that was obtained in accordance with the bill's provisions, nor could it alter or add to the specified recordkeeping requirements. This provision would not affect the entity's authority to issue a relevant license or permit or to inspect relevant records. The Public Safety Commission could impose an administrative penalty on a metal recycling entity for a violation of the bill, up to \$10,000.

The bill would prohibit any person who engaged in the business of repairing or buying and selling motor vehicles, or operated a shop or garage to do so, from buying or selling a catalytic converter removed from a motor vehicle, unless the converter was removed in connection with repair of the vehicle. A violation of this provision would be a class A misdemeanor. An applicable person would be required to maintain an accurate record of the sale or transfer of catalytic converters for two years after the date of the transaction. The record would be required to contain

certain information specified by the bill. A violation of these recordkeeping requirements would constitute a class A misdemeanor.

An entity authorized by the bill to sell catalytic converters could be subject to record inspections by a licensing authority in accordance with the bill's conditions. DPS would be required to adopt rules as soon as practicable after the bill's effective date to implement changes concerning the regulation of metal recycling entities.

**Crime prevention.** The bill would increase the fee an insurer would have to pay to the Motor Vehicle Crime Prevention Authority from \$4 to \$5 multiplied by the total number of motor vehicle years of insurance for relevant insurance policies. The additional \$1 would be deposited to the credit of the general revenue fund to be used only for certain regulatory and law enforcement activities to detect and prevent catalytic converter theft. The provisions would apply only to a fee due on or after the bill's effective date.

By January 1, 2024, the Motor Vehicle Crime Prevention Authority would be required to develop and implement a plan to coordinate its efforts with DPS, the Texas Department of Licensing and Regulation, and the Texas Department of Motor Vehicles to review the applicable transaction records involving catalytic converters and respond to suspicious activities that could be detected through the analysis of these records. The authority could establish a task force composed of certain persons who had substantial business experience in transactions involving catalytic converters to participate in the development of the plan. The authority could appoint members to the task force as it determined appropriate.

In developing and implementing the plan, the authority would have to focus on protecting the legitimate stream of commerce involving the removal and recycling of catalytic converters, as well as providing risk-based targeting and random auditing of the applicable records.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take

effect September 1, 2023. Provisions relating to fixed locations would take effect July 1, 2023.

**NOTES:**

According to the Legislative Budget Board, the bill would have an estimated positive impact of about \$54 million to general revenue related funds during fiscal 2024-25.