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## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Rep. Young, B.

Yosef Schiff, Attorney

### SUMMARY

- Makes a catalytic converter a special purchase article, requiring scrap metal dealers who purchase them to comply with additional requirements.
- Requires purchasers of catalytic converters who are not scrap metal dealers to comply with the same recordkeeping and transaction data submission requirements applicable to scrap metal dealers, subject to the same penalties when the purchaser is an individual.
- Imposes a \$10,000 to \$50,000 penalty on a business entity that violates the above requirements.
- Prohibits a license or registration authority from issuing or renewing the license or registration, and requires the authority to revoke the license or registration, of a junk yard operator, motor vehicle salvage dealer, salvage motor vehicle auction, salvage motor vehicle pool, or motor vehicle collision repair operator who violates any of the bill's provisions.
- Requires the Director of Public Safety to use catalytic converter transaction data to make a mandatory do-not-buy-from list of persons who attempt to sell more than one catalytic converter in a day and requires the Director to keep those persons on the list for not more than 60 days.
- Prohibits a person from selling more than one catalytic converter per day unless the person obtains a bulk catalytic converter sales license.
- Prescribes requirements for a catalytic converter sales license.
- Requires the holder of a bulk catalytic converter sales license to submit transaction data of all catalytic converters the licensee purchases and sells for inclusion in the same system as scrap metal dealer transaction data.
- Enhances the penalties for theft when the item stolen is a catalytic converter.

- Enhances the penalties for receiving a 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 gold, platinum, and palladium.<sup>1</sup> The bill increases the oversight of the sale of catalytic converters to scrap metal dealers, licenses people engaged in bulk catalytic converter sales, and increases penalties relating to stolen catalytic converters.

### Scrap Metal Dealer Law

The bill makes catalytic converters, including catalytic converter cores, special purchase articles, thereby requiring scrap metal dealers who purchase them to comply with additional requirements. It also requires purchasers who are not scrap metal dealers to comply with similar requirements.

Current 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 (not just special purchase articles) purchased by the dealer and submit this record by noon the following day to the Director of Public Safety for inclusion in the Communication and Information Management System (CIMS).<sup>2</sup> The CIMS is a system that allows the receipt and transmission of scrap theft alerts to dealers and law enforcement.<sup>3</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 any car in which the seller arrived at the dealer.<sup>4</sup> Also, continuing law 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, including a catalytic converter.<sup>5</sup>

In submitting its daily record, a dealer must do the following with respect to recyclable materials that the dealer purchases:

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<sup>1</sup> Autozone, *Catalytic converters*, <https://www.autozone.com/emission-control-and-exhaust/catalytic-converter>.

<sup>2</sup> R.C. 4737.04(A), (C), and (E)(1)(b).

<sup>3</sup> R.C. 4737.045(E)(1).

<sup>4</sup> R.C. 4737.04(C).

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

- For recyclable materials that *are not* special purchase articles, identify the relevant recyclable materials category code. One such code under current law is “catalytic converters,” which the bill removes.<sup>6</sup>
- For recyclable materials that *are* special purchase articles, identify the relevant special purchase article category. The bill adds “catalytic converter” as a special purchase article category.<sup>7</sup>

The bill makes several changes relating to the sale of catalytic converters. For catalytic converters, the report must be submitted immediately up completion of the purchase or receipt, rather than once a day. In addition, the bill includes catalytic converters as special purchase articles, requiring the scrap metal dealer to comply with additional requirements described below. It also requires *any person* purchasing a catalytic converter to follow the same requirements that scrap metal dealers must follow when they purchase catalytic converters.

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 same record described above, except that the record must be submitted immediately upon the completion of the purchase;
- Refrain from purchasing a catalytic converter from a person identified by law enforcement or the Director of Public Safety as a known thief or receiver of stolen property;
- Refrain from purchasing more than one catalytic converter per day from the same person except from a motor vehicle dealer;
- Take a photograph of each person who sells the purchaser a catalytic converter;
- Take a photograph of each catalytic converter;
- Obtain from the seller proof that the seller owns the catalytic converter;
- If payment is rendered, issue a check for the purchase;
- Withhold payment for two days;
- If an asserted owner of a stolen catalytic converter provides proof of having filed a stolen property report with law enforcement, make records describing the catalytic converter the person purchased after the alleged date of theft available for inspection to the asserted owner for a period of six months after the alleged date of theft, except that the person must withhold the name of the person from whom the catalytic converter was purchased and the amount paid;

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<sup>6</sup> R.C. 4737.04(C)(5).

<sup>7</sup> R.C. 4737.04(C)(6) and (A)(2).

- Refrain from recklessly failing to comply with the above requirements.<sup>8</sup>

## Penalty

Under current law, a scrap metal dealer that violates the above provisions 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.

By requiring persons other than scrap metal dealers to abide by the same requirements when purchasing a catalytic converter, the bill provides that any person, other than a business entity, who fails to comply with the above requirements is subject to the same penalties (except for suspension of a dealer's registration, as they are not registered dealers) as a dealer.<sup>9</sup> The bill also adds that any business entity that violates any of the above provisions must be fined at least \$10,000 but not more than \$50,000 per violation; the Revised Code's default organizational penalty for a first degree misdemeanor is a fine of \$5,000, and for a fourth degree felony is a fine of \$10,000.<sup>10</sup>

Regarding licenses and registrations under the junk yard provisions of Chapter 4737 and Chapters 4738 (motor vehicle salvage dealers, salvage motor vehicle auctions, and salvage motor vehicle pools) and 4775 (motor vehicle collision repair operators), the relevant licensing or registration authority is prohibited from issuing a license or registration to a person who violated any of the above provisions relating to the sale of catalytic converters. The relevant authority must also revoke and is prohibited from renewing the license or registration of such a person who already has a license or registration.<sup>11</sup>

## Communication and Information Management System (CIMS)

The bill requires the Director of Public Safety to use the transaction data submitted following the purchase of a used catalytic converter to make a list of all persons who, without a license as described under "**Bulk Catalytic Converter Sales License Law**" below, sold more than one used catalytic converter in a day. The Director must ensure that the list is updated within six hours of receiving the data and must remove such a person from the list only after a period of 60 days has elapsed during which the person did not make another unlicensed bulk sale.<sup>12</sup> The bill prohibits a person from purchasing a catalytic converter from any person on the list.<sup>13</sup>

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<sup>8</sup> R.C. 4737.04(E)(1)(c) and (F)(2) and (5) and 4737.041(B); conforming change in R.C. 4737.12.

<sup>9</sup> R.C. 4737.99(C)(1).

<sup>10</sup> R.C. 4737.99(C)(2).

<sup>11</sup> R.C. 4737.10, 4737.045(H), 4738.07, 4738.12, and 4775.09.

<sup>12</sup> R.C. 4737.045(E)(1)(e).

<sup>13</sup> R.C. 4737.04(F)(2) and (5) and 4737.041(B).

## **Bulk Catalytic Converter Sales License Law**

The bill prohibits a person from selling catalytic converters in bulk (more than one catalytic converter per day regardless of the number of purchasers) without a license, subject to a civil fine of not more than \$1,000 for a first offense and \$1,000 to \$5,000 for each subsequent offense.<sup>14</sup> A person holding a license or registration under Chapter 4737 (scrap metal dealers, bulk merchandise container dealers, and junk yards), 4738 (motor vehicle salvage dealers, salvage motor vehicle auctions, and salvage motor vehicle pools), or 4775 (motor vehicle collision repair operators) may sell catalytic converters in bulk without obtaining a bulk catalytic converter sales license.<sup>15</sup>

### **Director of Public Safety duties**

The Director of Public Safety must do all of the following under the bill:

- Adopt rules as necessary to carry out the purpose of the Bulk Catalytic Converter Sales License Law;
- Determine whether to refuse to issue, refuse to renew, suspend, or revoke a license;
- Do all acts and perform all functions as are necessary for the administration and enforcement of the Bulk Catalytic Converter Sales License Law.<sup>16</sup>

### **Application procedures; fee; changes in information**

Under the bill, each person applying for a bulk catalytic converter sales license must submit an application to the Director on a form prescribed by the Director and signed by the applicant. The applicant must include a fee of \$100, which fee the Director may adjust as necessary in order to cover the expenses of administering the Secondhand Dealer, Scrap Metal Dealer, Bulk Merchandise Container Dealer, and Junk Yard Law. The application must include all of the following along with any other information the Director requires:

- The name and state tax identification number of the applicant and, if applicable, the location of the applicant's principal place of business. If the applicant has no principal place of business, then the home address of the applicant.
- The name or style under which the business is to be conducted if any and, if a corporation, the state of incorporation;
- A statement showing whether the applicant has previously been convicted of or pleaded guilty to an offense that has a direct nexus to bulk catalytic converter sales, including an offense under R.C. Chapter 2911 (robbery, burglary, trespass, and safecracking), 2913 (theft and fraud), or 2923 (conspiracy, attempt, and complicity; weapons control;

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<sup>14</sup> R.C. 4737.20, 4737.21(A), and 4737.99(G).

<sup>15</sup> R.C. 4737.21(B).

<sup>16</sup> R.C. 4737.22.

corrupt activity), provided the Director considers factors including the nature and seriousness of the offense, the passage of time since the offense, evidence of mitigating circumstances, and certain other specified factors;

- A statement showing whether the applicant has previously applied for a bulk catalytic converter sales license and the result of the application, and whether the applicant has ever been the holder of any such license that was revoked or suspended;
- If the applicant is a corporation or partnership, a statement showing whether any of the partners, officers, or directors have been refused a license under the Secondhand Dealer, Scrap Metal Dealer, Bulk Merchandise Container Dealer, and Junk Yard Law, or have been the holder of any such license that was revoked or suspended.<sup>17</sup>

Upon receipt of a completed application and the fee, if the Director determines that the applicant meets the requirements for licensure, the Director must issue a license. Each license issued expires annually on the date of its original issuance and may be renewed in accordance with the Standard License Renewal Procedure Law. An application for renewal must be accompanied by the same information and proof as required to accompany an initial application and a renewal fee of \$100, which fee the Director may adjust as necessary in order to cover the expenses of administering the Secondhand Dealer, Scrap Metal Dealer, Bulk Merchandise Container Dealer, and Junk Yard Law.<sup>18</sup>

When a licensee experiences a change in any information or data required in an application or by rule of the Director for licensure, the bill requires a licensee to submit written notification of the change to the Director within 60 days after the date that the previously submitted information becomes obsolete. If a licensee fails to do so, the license is automatically suspended, except that the Director may waive the suspension for good cause shown.<sup>19</sup>

The bill provides that the Department of Taxation may disclose to the Motor Vehicle Repair Board any information necessary for the board to verify the existence of an applicant's valid vendor's license and current state tax identification number.<sup>20</sup>

### **Suspension, revocation, and refusal to issue license; investigations**

The bill allows the Director of Public Safety to refuse to issue or renew a license or, in the case of a licensee who fails to notify the Director of a change in the licensee's information as required above, to determine whether to waive a suspension of a license. In addition, the Director must investigate any alleged violation of the bill's licensing provisions.<sup>21</sup>

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<sup>17</sup> R.C. 4737.23(A) and 4737.24 and R.C. 9.79, not in the bill.

<sup>18</sup> R.C. 4737.23(B) and (C) and 4737.24 and R.C. Chapter 4745, not in the bill.

<sup>19</sup> R.C. 4737.23(D).

<sup>20</sup> R.C. 4737.23(E).

<sup>21</sup> R.C. 4737.25.

## Documentation

Under the bill, a person required to hold a bulk catalytic converter sales license must maintain documentation of each catalytic converter the person sells or purchases. The documentation must include all of the following:

- The name and residence of the purchaser or seller, or the name and business address of such purchaser or seller if a business;
- The date and time of each sale or purchase;
- If the purchaser or seller arrives at the person's residence or place of business in a motor vehicle, the license plate number of that motor vehicle along with the state that issued the license plate;
- A full and accurate description of each catalytic converter sold or purchased that includes identifying letters or marks written, inscribed, or otherwise included on the article and the name and maker of the catalytic converter if known.<sup>22</sup>

The bill also requires the person to transmit the above information to the Director of Public Safety for inclusion in the CIMS immediately upon completion of each transaction.<sup>23</sup>

## Theft and receiving stolen property

The bill increases 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 specified ways. 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.

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:

- R.C. Chapter 2911 – the robbery, burglary, trespass, and safecracking offenses;
- R.C. Chapter 2913 – the theft and fraud offenses;
- R.C. Chapter 2923 – the conspiracy, attempt, and complicity offenses; the weapons control offenses; and the corrupt activity offenses.

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<sup>22</sup> R.C. 4737.26(A) and (B).

<sup>23</sup> R.C. 4737.26(C).

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 \$7,500, and for a fourth degree felony is a fine of \$10,000.<sup>24</sup>

### **Receiving stolen property**

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.

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:

- R.C. Chapter 2911 – the robbery, burglary, trespass, and safecracking offenses;
- R.C. Chapter 2913 – the theft and fraud offenses;
- R.C. Chapter 2923 – the conspiracy, attempt, and complicity offenses; the weapons control offenses; and the corrupt activity offenses.

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 \$7,500, and for a fourth degree felony is a fine of \$10,000.<sup>25</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:

- 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.<sup>26</sup>

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<sup>24</sup> R.C. 2913.02(B)(10) and R.C. 2929.31, not in the bill.

<sup>25</sup> R.C. 2913.51(F) and R.C. 2929.31, not in the bill.

<sup>26</sup> R.C. 2923.03(A).



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>27</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>28</sup>

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## HISTORY

Action	Date
Introduced	09-02-21

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H0408-I-134/ar

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<sup>27</sup> R.C. 2923.03(F).

<sup>28</sup> R.C. 4737.99(H).