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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 328
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 328's Bill Analysis](#)

Version: As Passed by the House

Primary Sponsors: Reps. Roemer and Plummer

Local Impact Statement Procedure Required: No

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Highlights

Department of Public Safety

- The Ohio Department of Public Safety (ODPS) may incur minimal additional costs to implement the bill's provisions, including to: (1) modify the existing Scrap Metal and Bulk Merchandise Container Dealers website and the Communication and Information Management System (CIMS), and (2) perform additional investigations.
- The Infrastructure Protection Fund (Fund 5ML0) used by the Department of Public Safety may gain an indeterminate amount of annual revenue from civil penalties imposed for violations of the law pertaining to scrap metal and bulk merchandise container dealers.

State and local criminal justice systems

- The bill may increase the number of cases for local criminal justice systems to adjudicate and may subject others to penalty enhancements (from a misdemeanor to a felony) causing those cases to shift from a county or municipal court to a court of common pleas, thus impacting fines, fees, and court costs retained by counties and municipalities, as well as the amount of court costs forwarded to the state. In the event of a conviction, the bill would also shift sanctioning costs from a local authority to the Department of Rehabilitation and Correction.
- There may be some increase in fine revenue generated and credited to the county treasury when an offender is a business entity. The magnitude of any increase depends on how many business entities are convicted of specified offenses.

Detailed Analysis

The bill makes several changes to the Secondhand Dealer Law regarding the sale of used catalytic converters including the increase in certain penalties related to their theft and noncompliant regulatory behavior by industry participants. Generally, these changes are expected to increase oversight over the sale of catalytic converters to scrap metal dealers. The bill also provides funding to support the operations of catalytic converter theft task forces established by the Attorney General's Organized Crime Investigations Commission (OCIC).

Department of Public Safety

Investigations

The bill gives the Ohio Department of Public Safety (ODPS), after first consulting with local law enforcement, certain investigative powers related to scrap metal dealers, bulk merchandise container dealers, and persons (other than a licensed motor vehicle dealer) who receive a used catalytic converter in the ordinary course of business, and any employee, officer, or agent of the foregoing. If it is found that a violation was committed, ODPS is required to suspend the person's license or registration until the person has presented evidence that they have remedied the violation, as well as conduct a follow-up investigation. If a person is found to have engaged in activities that require a license or registration during a suspension or following a revocation, ODPS must seek an injunction from a court of common pleas and impose a civil penalty of \$10,000, and \$1,000 for each subsequent day the violation occurred. ODPS must certify unpaid fines to the Attorney General for collection. Under the bill, the collected fines would be deposited to the credit of Fund 5ML0. If the Attorney General collects the debt on behalf of ODPS, a portion would be retained by the Attorney General and deposited to the credit of their Claims Fund (Fund 4190). A person who knowingly engages in fraud or fails to provide relevant information when applying for a license is subject to a \$500 fine.

Scrap Metal Dealer Law

The bill places additional recordkeeping and transaction data submission requirements on scrap metal dealers¹ and any person who is not a scrap metal dealer who purchases a catalytic converter,² and requires ODPS to perform a number of other duties related to enforcement of the Scrap Metal Dealer Law, including: (1) investigating licensees, registrants, and unlicensed or unregistered persons, (2) recording certain information on noninvestigative visits to be reported to the public via the Department of Commerce's website on a quarterly basis, and (3) creating and making publicly available, within 90 days of the bill's effective date, an affidavit form that contains specified information and can be accepted by scrap metal dealers, bulk merchandise container dealers, and other recipients of a catalytic converter in lieu of otherwise required forms of proof of ownership. The bill specifies that whoever knowingly makes a false statement on an affidavit is guilty of falsification, which is generally a first degree misdemeanor. The bill also

¹ Scrap metal dealers engaged in the business-to-business sale of catalytic converters are also required to provide the ODPS Director with specified identification information.

² The bill exempts licensed motor vehicle dealers from the bill's requirements to comply with the Scrap Metal Dealer Law when receiving catalytic converters if the business sells or receives catalytic converters in ordinary course of business typical for that type of business (R.C. 4737.041(B)).

creates a \$500 civil penalty for specified violations of the Scrap Metal Dealer Law, which is required to be credited to Fund 5ML0. For certain violations the bill specifies that an additional \$500 must be imposed per day that the violation continues.

As a result, Ohio Homeland Security, which houses the scrap metal dealer oversight program within ODPS, may incur minimal additional costs related to administering the Scrap Metal Dealer Law and sanctioning violators, with any additional costs incurred or increase in workload likely to be absorbed by existing staff. In order to comply with the bill's recordkeeping requirements, ODPS may incur minimal one-time costs to modify its existing Scrap Metal and Bulk Merchandise Container Dealers website, which is used by registered scrap metal dealers to register their business and upload transactions to ODPS, and the Communication and Information Management System (CIMS), which ODPS uses to access that information, to accommodate transaction data related to the purchase and sale of catalytic converters. To the extent that the civil penalty is collected, ODPS may also experience an indeterminate gain in revenue, which may help to offset any additional costs incurred.

The costs incurred by the Department of Commerce to make information available on their website regarding noninvestigative visits made by ODPS to a scrap metal dealer, bulk merchandise container dealer is uncertain, but likely minimal.

Infrastructure Protection Fund

The amount of revenue generated as a result of the bill's civil penalties and credited to the existing Infrastructure Protection Fund (Fund 5ML0) will depend on the fines imposed on scrap metal dealers and bulk merchandise container dealers for violations of the bill's requirements or prohibitions. Under continuing law, Fund 5ML0 is used by Ohio Homeland Security, housed within the Department of Public Safety, for the scrap metal dealer oversight program.

State and local criminal justice systems

Law enforcement reporting requirements

Existing law requires a law enforcement agency serving a jurisdiction in which a scrap metal or bulk merchandise container dealer is located to provide a searchable electronic list of the names and descriptions of persons known to be thieves or receivers of stolen property to ODPS for inclusion in the existing scrap metal dealer and bulk merchandise container dealer registry. The bill expands this requirement to also include the submission of all records of any investigation into a scrap metal dealer or bulk merchandise container dealer. Any additional costs or workload incurred for a law enforcement agency to comply will depend on the number of investigations that an agency conducted into scrap metal or bulk merchandise container dealers.

Criminal penalties

The bill modifies the penalties for specified offenses involving catalytic converters by: (1) elevating the offenses of theft and receiving stolen property (RSP) from a first degree misdemeanor generally to a fifth degree felony generally if the property involved is a catalytic converter or a fourth degree felony if the offender has specified prior convictions, (2) specifying that a person can be charged with complicity under certain circumstances if they sell a catalytic converter to another person who violates any of the bill's provisions, and (3) applying the first degree misdemeanor penalty that applies to a scrap metal dealer for failure to comply with

reporting requirements to a person who purchases a catalytic converter or who knowingly makes a false statement on an affidavit that is used as proof of ownership when selling a catalytic converter. Table 1 below lists the sentences and fines for catalytic converter-related offenses under H.B. 328.

Offense Level	Fine	Term of Incarceration
Felony, 4 th degree	Up to \$5,000	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months definite prison term
Felony, 5 th degree	Up to \$2,500	6, 7, 8, 9, 10, 11, or 12 months definite prison term
Misdemeanor, 1 st degree	Up to \$1,000	Jail, not more than 180 days

As a result of these modifications, the bill may increase the number of cases for local criminal justice systems to adjudicate and may, in certain theft and RSP cases, shift adjudication costs from a county or municipal court to a court of common pleas. In the event of a theft or RSP conviction, the bill may also shift sanctioning costs for certain offenders whose sentence involves a period of incarceration from a local jail to the Ohio Department of Rehabilitation and Correction (ODRC). Any potential savings experienced by local authorities to adjudicate and house certain theft and RSP offenders is likely to be minimal at most. Similarly, any additional costs incurred by ODRC are likely to be marginal.³ The magnitude of any increased costs incurred by criminal justice systems as a result of any new cases generated by the bill will depend on the number of individuals who are ultimately charged, convicted, and subsequently sentenced to a period of incarceration.

Business entities as violators

Under the bill, a business entity convicted of enterprise theft of a catalytic converter (theft) or enterprise receipt of a stolen catalytic converter (RSP), or who is found to have violated any of the bill's reporting provisions is required to pay an organizational fine of not less than \$10,000 but not more than \$50,000 per violation. The default organizational penalty is up to \$5,000 for a first degree misdemeanor, up to \$7,500 for a fifth degree felony, and up to \$10,000 for a fourth degree felony.⁴ Thus, under the bill, more organizational fine revenue may be collected than otherwise may have been under current law.

The magnitude of any increase in fine revenue that may be generated annually will depend upon the number of business entities convicted of enterprise theft of a catalytic converter or enterprise receipt of a stolen catalytic converter, or found to be in violation of the bill's recordkeeping requirements. Under current law's general distribution rules, organizational fines would be paid to the treasury of the county in which the court is located.

³ Marginal costs are those that increase or decrease directly on a per-person basis with changes in prison population (i.e., clothing, food, medical services, etc.). For FY 2023, ODRC's reported marginal daily cost per offender was \$11.98, or \$4,373 per year.

⁴ R.C. 2929.31.

Fines, fees, and court costs

To the extent that additional cases are generated or certain cases are shifted from a municipal or county court to a court of common pleas, the bill may also impact the amount of fine, fee, and court cost revenue, including the amount of court costs forwarded to the state. Table 2 below shows the fines, fees, and court costs for H.B. 328 offenses.

Table 2. Fines, Fees, and Court Costs for H.B. 328 Offenses		
Financial Penalty Component	Amount Paid by Violator	Recipient of Amount
Fine	Varies by offense	<ul style="list-style-type: none"> Retained by the county, township, municipal corporation, park district, or state law enforcement agencies that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender
Local court costs and fees	Varies by local jurisdiction	<ul style="list-style-type: none"> Generally retained by the county or municipality
State court costs	\$29	<p style="text-align: center;">Misdemeanor</p> <p>Deposited in the state treasury as follows:</p> <ul style="list-style-type: none"> \$20 to the Indigent Defense Support Fund (Fund 5DY0) \$9 to the Victims of Crime/Reparations Fund (Fund 4020)
	\$60	<p style="text-align: center;">Felony</p> <p>Deposited in the state treasury as follows:</p> <ul style="list-style-type: none"> \$30 to the Indigent Defense Support Fund (Fund 5DY0) \$30 to the Victims of Crime/Reparations Fund (Fund 4020)