

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/SB 306

INTRODUCER: Appropriations Committee on Criminal and Civil Justice; Criminal Justice Committee; and Senators Boyd and others

SUBJECT: Catalytic Converters

DATE: March 27, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Fav/CS</u>
3.	<u>Erickson</u>	<u>Yeatman</u>	<u>FP</u>	<u>Pre-Meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 306 creates the Catalytic Converter Antitheft Act, which addresses tampering with and theft of a catalytic converter, a device the bill defines as an emission control device that is designed to be installed and operate in a motor vehicle to convert toxic gases and pollutants in the motor vehicle's exhaust system into less toxic substances via chemical reaction. There have been numerous incidents throughout the United States of catalytic converters being detached from motor vehicles and stolen due to precious metals contained in the devices.

The bill requires recordkeeping and records inspection and disclosure regarding certain transactions involving a catalytic converter, and punishes certain unlawful transactions involving a catalytic converter. Specifically, the bill:

- Defines key terms;
- Limits purchase of a detached catalytic converter to a registered secondary metals recycler and requires that this recycler comply with statutory recordkeeping and other requirements;
- Provides that it is a third degree felony to knowingly possess, purchase, sell, or install a stolen catalytic converter, a catalytic converter removed from a stolen vehicle, a new or detached catalytic converter from which specified information has been removed, or a detached catalytic converter without proof of ownership (with exceptions).
- Provides that it is a second degree felony to knowingly import, manufacture, purchase for the purpose of reselling, etc., a counterfeit, fake, or nonfunctional catalytic converter;

- Provides that proof that a person was in possession of two or more detached catalytic converters, unless satisfactorily explained, gives rise to an inference that the person in possession of the catalytic converters knew or should have known that the catalytic converters may have been stolen or fraudulently obtained; and
- Prohibits a secondary metals recycler from processing or removing from the recycler's place of business a catalytic converter the recycler has purchased for a period of 10 business days after the date of purchase. This prohibition does not apply to a purchase from another secondary metals recycler, a salvage motor vehicle dealer, or a person or entity except under s. 538.22, F.S.

The Legislature's Office of Economic and Demographic Research preliminarily estimated that the original bill would have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Theft of Catalytic Converter

The U.S. Justice Department has described a catalytic converter as "a component of an automotive vehicle's exhaust device that reduce the toxic gas and pollutants from a vehicle's internal combustion engine into safe emissions."¹ The reason why catalytic converters are tampered with (detached) and stolen is the high volume of precious metals in the center or "core" of the converter, "especially the precious metals palladium, platinum, and rhodium."²

Some of these precious metals are more valuable per ounce than gold and their value has been increasing in recent years. The black-market price for catalytic converters can be above \$1,000 each, depending on the type of vehicle and what state it is from. They can be stolen in less than a minute. Additionally, catalytic converters often lack unique serial numbers, VIN information, or other distinctive identification features, making them difficult to trace to their lawful owner. Thus, the theft of catalytic converters has become increasingly popular because of their value, relative ease to steal, and their lack of identifying markings.³

¹ Press Release: *Justice Department Announces Takedown of Nationwide Catalytic Converter Theft Ring* (Nov. 2, 2022), available at <https://www.justice.gov/opa/pr/justice-department-announces-takedown-nationwide-catalytic-converter-theft-ring> (last visited on Feb. 3, 2023). "A catalyst is a device installed in the exhaust system of a vehicle. It treats and eliminates harmful pollution produced in the vehicle's engine, and is a type of device commonly referred to as an 'after-treatment system.' Automakers install catalysts in their new vehicles to meet tailpipe emissions standards (commonly referred to as 'OEM catalysts', which stands for original equipment manufacturer)." *Notice of Availability of EPA Tampering Policy and Request for Information Regarding 1986 Catalyst Policy*, U.S. Environmental Protection Agency (Dec. 14, 2020), 85 FR 80782, available at <https://www.federalregister.gov/documents/2020/12/14/2020-27433/notice-of-availability-of-epa-tampering-policy-and-request-for-information-regarding-1986-catalyst> (last visited on Feb. 3, 2023).

² *Id.*

³ *Id.*

There do not appear to be any official national or statewide data on the number of catalytic converter thefts. However, the National Insurance Crime Bureau, a not-for-profit organization that assists insurers, law enforcement, and representatives of the public in preventing and combatting insurance fraud and crime, reports: “In 2018, there were 1,298 catalytic converter thefts for which a claim was filed. In 2019, it was 3,389 thefts with a claim. In 2020, catalytic converter theft claims jumped massively to 14,433, a 325% increase in a single year.”⁴

The Congressional Research Service reports that “the National Highway Traffic Safety Administration ... issued a Federal Motor Vehicle Theft Standard, which requires manufacturers to apply or stamp a car’s unique Vehicle Identification Number (VIN) on the engine, transmission, and a dozen other major vehicle parts so law enforcement agencies can better identify vehicles from which the parts were stolen. However, the standard does not require automakers to stamp identification numbers on catalytic converters.”⁵

Federal Law on Tampering with Catalytic Converters

According to the U.S. Environmental Protection Agency (EPA), tampering with a catalytic converter “is illegal under federal law[.]” The EPA cites to a 1990 amendment to Part A of Title II of the Clean Air Act (42 U.S.C. s. 7521-7554) which was codified at 42 U.S.C. s. 7522(a)(3)), and which broadened earlier federal tampering provisions to apply them to “everyone, including car owners.”⁶

The Congressional Research Service cites the following federal criminal statutes that authorize federal law enforcement agencies to investigate vehicle or vehicle part theft but notes this theft does not appear to be a priority for these agencies:

- 18 U.S.C. s. 2312, which punishes transportation of a stolen motor vehicle in interstate commerce;
- 18 U.S.C. s. 2313, which punishes receiving, possessing, concealing, storing, bartering, selling, or disposing of a stolen car that has crossed state lines;
- 18 U.S.C. s. 2321, which punishes buying, receiving, possessing, or obtaining control of a car part, with the intent to sell or otherwise dispose of it, if the person knows that the identification number was removed, obliterated, tampered with, or altered; and
- 18 U.S.C. s. 2322, which punishes operating, owning, maintaining, or controlling a chop shop or conducting operations in a chop shop.⁷

⁴ *Catalytic Converter Thefts Skyrocket Across the Nation*, National Insurance Crime Bureau, available at <https://www.nicb.org/news/blog/catalytic-converter-thefts-skyrocket-across-nation> (last visited on Feb. 3, 2023). The organization is not representing that it is reporting all catalytic converter theft for the relevant time period noted.

⁵ *Addressing Catalytic Converter Theft*, IF118700 (July 6, 2021), Congressional Research Service, available at <https://crsreports.congress.gov/product/pdf/IF/IF11870/2> (last visited on Feb 3, 2023).

⁶ *Frequent Questions related to Transportation, Air Pollution, and Climate Change*, U.S. Environmental Protection Agency, available at <https://www.epa.gov/transportation-air-pollution-and-climate-change/frequent-questions-related-transportation-air> (last visited on Feb. 3, 2023). The EPA further notes: “The resale of a vehicle which has already had the catalytic converter removed is not specifically addressed by federal law. Therefore, the person who removed the converter violated federal law, but not necessarily the person who sold the vehicle. However, the sale of vehicles that have had the emission control system removed, disabled, or tampered with may be further governed by state or local laws.” *Id.*

⁷ *Addressing Catalytic Converter Theft*, IF118700 (July 6, 2021), Congressional Research Service, available at <https://crsreports.congress.gov/product/pdf/IF/IF11870/2> (last visited on Feb 3, 2023).

National Motor Vehicle Title Information System and Catalytic Converter Theft

The National Motor Vehicle Title Information System (NMVTIS) was established by federal law “to protect consumers from fraud and unsafe vehicles and to keep stolen vehicles from being resold.”⁸ The U.S. Department of Justice says the NMVTIS is “a tool that assists local, state, and federal law enforcement in investigating, deterring, and preventing vehicle-related crimes.”⁹ The NMVTIS is “[a]dministered by the American Association of Motor Vehicle Administrators” and “requires regular reporting by scrap recyclers and salvage yards”¹⁰

Florida Law

Section 812.014(1), F.S., provides that a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

The statute, in part, provides for escalating punishment for grand theft based on the property value range applicable to the value of the property stolen in the theft.

Grand theft is theft of property valued at \$750 or more. If the property stolen is valued at:

- \$750 or more, but less than \$5,000, it is grand theft of the third degree and a Level 2¹¹ third degree felony;¹²
- \$5,000 or more, but less than \$10,000, it is grand theft of the third degree and a Level 3 third degree felony;¹³
- \$10,000 or more, but less than \$20,000, it is grand theft of the third degree and a Level 4 third degree felony;¹⁴

⁸ *Law Enforcement*, National Motor Vehicle Title Information System, U.S. Department of Justice, available at https://vehiclehistory.bja.ojp.gov/nmvtis_law_enforcement (last visited on Feb. 3, 2023). The Congressional Research Service says the federal law has facilitated “identifying stolen vehicle parts.” *Addressing Catalytic Converter Theft*, IF118700 (July 6, 2021), Congressional Research Service, available at <https://crsreports.congress.gov/product/pdf/IF/IF11870/2> (last visited on Feb 3, 2023).

⁹ *Id.*

¹⁰ *Consumers Don’t Be Fooled. Protect Yourself*, National Motor Vehicle Title Information System, U.S. Department of Justice, available at <https://vehiclehistory.bja.ojp.gov/> (last visited on Feb. 3, 2023).

¹¹ The Criminal Punishment Code (Code) (ss. 921.002-921.0027, F.S.) is Florida’s primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10). Section 921.0022(2), F.S. Points are assigned and accrue based upon the offense severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Section 921.0024, F.S. Sentence points escalate as the severity level escalates. These points are relevant to determining whether the offender scores a prison sentence as the minimum sentence, and if so scored, the length of that sentence. *Id.* The offense severity ranking is either assigned by specifically ranking the offense in the Code offense severity level chart (s. 921.0022(3), F.S) or ranking the offense by “default” based on its felony degree (s. 921.0023, F.S.).

¹² Sections 812.014(2)(c)1. and 921.0022(3)(b), F.S. A third degree felony is generally punishable by not more than five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S. *But see* ss. 775.082(10) and 921.00241, F.S. (prison diversion).

¹³ Sections 812.014(2)(c)2. and 921.0022(3)(c), F.S.

¹⁴ Sections 812.014(2)(c)3. and 921.0022(3)(d), F.S.

- \$20,000 or more, but less than \$100,000, it is grand theft of the second degree and a Level 6 second degree felony;¹⁵ and
- \$100,000 or more, it is grand theft of the first degree and a Level 7 first degree felony.¹⁶

It is also grand theft of the third degree, a third degree felony, to commit theft of any item specified in s. 812.014(1)(c)1.-13., F.S. (e.g., theft of a will, firearm, fire extinguisher, or stop sign).¹⁷

A catalytic converter is not an item specified in s. 812.014(1)(c)1.-13., F.S., so theft of a catalytic converter would be punished as either petit theft or grand theft based on the value of the device. For example, if the value of the catalytic converter stolen is \$1,000, the theft of this device is a grand theft of the third degree, which is a Level 2 third degree felony. The offender who commits this offense is unlikely to receive a prison sentence absent the commission of an additional offense, prior criminal history, or other factors that score enough sentence points to make the offender eligible for a prison sentence.¹⁸

Tampering with a Catalytic Converter and Related Offenses

Section 316.2935, F.S., addresses a motor vehicle's air pollution control device or system and tampering with that device. This section defines "tampering" as the dismantling, removal, or rendering ineffective of any air pollution control device or system which has been installed on a motor vehicle by the vehicle manufacturer except to replace such device or system with a device or system equivalent in design and function to the part that was originally installed on the motor vehicle.¹⁹

At the time of sale, lease, or transfer of title of a motor vehicle, the seller, lessor, or transferor must certify in writing to the purchaser, lessee, or transferee that the air pollution control equipment of the motor vehicle has not been tampered with by the seller, lessor, or transferor or their agents, employees, or other representatives.²⁰ A licensed motor vehicle dealer must also visually observe those air pollution control devices listed by rule of the Florida Department of

¹⁵ Sections 812.014(2)(b)1. and 921.0022(3)(f), F.S. A second degree felony is punishable by not more than 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

¹⁶ Sections 812.014(2)(a)1. and 921.0022(3)(g), F.S. A first degree felony is generally punishable by not more than 30 years in state prison and a fine not exceeding \$10,000.

¹⁷ Section s. 812.014(1)(c)4., 5., 8., and 11., F.S.

¹⁸ A Level 2 offense alone would not score more than 22 sentence points. See s. 921.0024(1)(a), F.S. Section 775.082(10), F.S., provides that a defendant must be sentenced to a nonstate prison sanction, which could include jail, if the defendant's offense was committed on or after July 1, 2009, is a third degree felony but not a forcible felony as defined in s. 776.08, F.S., and excluding any third degree felony violation under chapter 810, F.S., and if the total sentence points pursuant to s. 921.0024, F.S., are 22 points or fewer. Theft is not a forcible felony. Although subsection (10) provides that "the court" may impose a prison sentence if it makes written findings that a nonstate prison sanction could present a danger to the public, the Florida Supreme Court has held that this finding must be made by a jury. See *Brown v. State*, 260 So. 3d 147, 150–51 (Fla. 2018).

¹⁹ Section 316.2935(1)(a), F.S.

²⁰ Section 316.2935(1)(b), F.S.

Environmental Protection (DEP),²¹ and certify that they are in place, and appear properly connected and undamaged.²²

It is a second degree misdemeanor²³ (first violation) or first degree misdemeanor²⁴ (second or subsequent violation) for any person or motor vehicle dealer to knowingly and willfully offer or display for retail sale or lease, sell, lease, or transfer title to, a motor vehicle in Florida that has been subject to tampering.²⁵

It is a noncriminal traffic infraction for a person to operate any gasoline-powered motor vehicle, except a motorcycle, moped, scooter, or an imported nonconforming motor vehicle which has received a one-time exemption from federal emission control requirements under 40 C.F.R. 85, subpart P,²⁶ on the public roads and streets of this state which emits visible emissions from the exhaust pipe for more than a continuous period of 5 seconds. Further, a person may not operate on the public roads or streets of this state any motor vehicle that has been subject to tampering.²⁷

Salvage Motor Vehicle Dealer Requirements Relating to Major Component Parts

Section 319.30(j), F.S., defines a “major component part.” Relevant to motor vehicles and trucks, this definition includes a catalytic converter.²⁸ Section 319.30, F.S., in part, requires a salvage motor vehicle dealer to record the date of purchase of a major component part and the name, address, and personal identification card number of the person selling such part, as well as the vehicle identification number, if available. The dealer must also obtain such documentation as may be required by s. 319.30(2), F.S., which, in part, requires the dealer to notify the National Motor Vehicle Title Information System and provide certain information when a motor vehicle is sold, transported, delivered to, or received by a salvage motor vehicle dealer or a derelict motor vehicle is sold, transported, or delivered to a licensed salvage motor vehicle dealer.²⁹

Recordkeeping Requirements for Secondary Metals Recyclers

Section 538.19, F.S., requires a secondary metals recycler to maintain a legible paper record and to maintain and transmit an electronic record³⁰ of all purchase transactions to which such secondary metals recycler is a party. This section specifies when the electronic record must be

²¹ Rule 62-243.500, F.A.C. (“Certification”).

²² Section 316.2935(1)(b), F.S.

²³ A second degree misdemeanor is punishable by a term of not more than 60 days in county jail and a fine not exceeding \$500. Sections 775.082 and 775.083, F.S.

²⁴ A first degree misdemeanor is punishable by a term of not more than one year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

²⁵ Section 316.2935(1)(a) and (5)(a) and (b), F.S. Motor vehicles sold, reassigned, or traded to a licensed motor vehicle dealer are exempt from this paragraph. Section 316.2935(1)(a), F.S.

²⁶ This federal regulation involves imported motor vehicles and motor vehicle engines.

²⁷ Section 316.2935(2), F.S. Additionally, it is a noncriminal traffic infraction for a person to operate on the public roads or streets of this state any diesel-powered motor vehicle which emits visible emissions from the exhaust pipe for more than a continuous period of 5 seconds, except during engine acceleration, engine lugging, or engine deceleration. Section 316.2935(3), F.S.

²⁸ Section 319.30(j)1. and 2., F.S.

²⁹ Section 319.30(6)(a), F.S. Any person who violates subsection (6) commits a third degree felony. Section 319.30(6)(b), F.S.

³⁰ Section 538.19(1), F.S. The electronic record format must be approved by the Florida Department of Law Enforcement. *Id.*

submitted to the appropriate law enforcement official. This electronic record does not contain the price paid for the items; the original transaction form must include the price paid for the items.³¹

The following information must be maintained on the form approved by the Florida Department of Law Enforcement for each purchase transaction:

- The name and address of the secondary metals recycler.
- The name, initials, or other identification of the individual entering the information on the ticket.
- The date and time of the transaction.
- The weight, quantity, or volume, and a description of the type of regulated metals property purchased in a purchase transaction.
- The amount of consideration given in a purchase transaction for the regulated metals property.
- A signed statement from the person delivering the regulated metals property stating that she or he is the rightful owner of, or is entitled to sell, the regulated metals property being sold.
- The distinctive number from the personal identification card of the person delivering the regulated metals property to the secondary metals recycler.
- A description of the person from whom the regulated metals property was acquired, including:
 - Full name, current residential address, workplace, and home and work phone numbers.
 - Height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks.
 - The right thumbprint, free of smudges and smears.
 - Vehicle description to include the make, model, and tag number of the vehicle and trailer of the person selling the regulated metals property.
 - Any other information required by the form approved by the Florida Department of Law Enforcement.
- A photograph, videotape, or digital image of the regulated metals being sold.
- A photograph, videotape, or similar likeness of the person receiving consideration in which such person's facial features are clearly visible.³²

A secondary metals recycler complies with the informational requirements of this section if it maintains an electronic database containing the information previously described as long as that information, along with an electronic oath of ownership with an electronic signature of the seller of the secondary metals being purchased by the secondary metals recyclers and an electronic image of the seller's right thumbprint that has no smudges and smears, can be downloaded onto a paper form in the image of the form approved by the Florida Department of Law Enforcement.³³

A secondary metals recycler must maintain or cause to be maintained the information required by this section for not less than 3 years from the date of the purchase transaction.³⁴

³¹ *Id.*

³² Section 538.19(2), F.S.

³³ Section 538.22, F.S., provides that part II of ch. 538, F.S., relating to secondary metals recyclers, does not apply to purchase of regulated metals property from certain persons like a law enforcement officer performing the officer's official duties. Section 538.19(3), F.S.

³⁴ Section 538.19(4), F.S.

Unlawful Acts by a Secondary Metal Recycler That May Involve Catalytic Converter Theft

Section 538.26, F.S., addresses unlawful acts by a secondary metal recycler. A secondary metal recycler is a person who:

- Is engaged, from a fixed location, in the business of purchase transactions or gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or
- Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof.

With some exclusions, “regulated metals property” is any item composed primarily of any nonferrous metals.³⁵ “Restricted regulated metals property” are any regulated metals property listed in s. 538.26(5)(b), F.S., the sale of which is restricted as provided in s. 538.26(5)(a), F.S.³⁶

Among the regulated metals property listed in s. 538.26(5)(b), F.S., as restricted regulated metals property is a catalytic converter or any nonferrous part of a catalytic converter unless purchased as part of a motor vehicle.³⁷ It is a first degree misdemeanor for a secondary metals recycler to purchase or allow the purchase of this device unless the recycler obtains reasonable proof that the seller:

- Owns such property. Reasonable proof of ownership may include, but is not limited to, a receipt or bill of sale; or
- Is an employee, agent, or contractor of the property’s owner who is authorized to sell the property on behalf of the owner. Reasonable proof of authorization to sell the property includes, but is not limited to, a signed letter on the owner’s letterhead, dated no later than 90 days before the sale, authorizing the seller to sell the property.³⁸

It is a third degree felony or second degree felony (third or subsequent violation) for a secondary metals recycler to knowingly and intentionally:

- Violate s. 538.20, F.S., relating to law enforcement inspection of regulated property and records, or s. 538.21, F.S., relating to law enforcement’s issuance of a hold notice to a secondary metals recycler on regulated metals property in the recycler’s possession that law enforcement reasonably believes is stolen;

³⁵ Section 538.18(9), F.S. “Ferrous metals” are metals containing significant quantities of iron and steel. Section 538.18(3), F.S.

³⁶ Section 538.18(10), F.S.

³⁷ Section 538.26(5)(b)13., F.S.

³⁸ Sections 538.26(5) and 538.15, F.S.

- Purchase restricted regulated metals property from any seller who presents such property for sale at the registered location of the secondary metals recycler when such property was not transported in a motor vehicle; or
- Accept cash in any amount for the purchase of restricted regulated metals property or in a manner other than specified in s. 538.235(3), F.S.³⁹

Any person who knowingly gives false verification of ownership or who gives a false or altered identification and who receives money or other consideration from a secondary metals recycler in return for regulated metals property commits:

- A third degree felony if the value of the money or other consideration received is less than \$300; or
- A second degree felony if the value of the money or other consideration received is \$300 or more.⁴⁰

III. Effect of Proposed Changes:

The bill creates s. 860.142, F.S., the title of which is the “Catalytic Converter Antitheft Act.” The bill addresses tampering with and theft of a catalytic converter, a device the bill defines as an emission control device that is designed to be installed and operate in a motor vehicle to convert toxic gases and pollutants in the motor vehicle’s exhaust system into less toxic substances via chemical reaction.

The bill provides that a person may not knowingly purchase a detached catalytic converter⁴¹ unless he or she is a registered secondary metals recycler.

The bill requires a registered secondary metals recycler who purchases a detached catalytic converter to comply with recordkeeping requirements in s. 538.19, F.S., and other requirements in s. 538.26, F.S.⁴² The recycler is subject to first degree misdemeanor, third degree felony, or second degree felony penalties for noncompliance, depending on the requirement or number of violations.⁴³

The bill provides that it is a third degree felony for a person to knowingly possess, purchase, sell, or install a:

- Stolen catalytic converter;
- Catalytic converter that has been removed from a stolen motor vehicle;
- New or detached catalytic converter from which the manufacturer’s part identification number, aftermarket identification number, or owner-applied number has been removed, altered, or defaced; or

³⁹ Section 538.23(1), F.S.

⁴⁰ Section 538.23(3), F.S.

⁴¹ The bill defines “detached catalytic converter” as a catalytic converter that has been removed from a motor vehicle.

⁴² See “Present Situation” section of this analysis for details on those requirements.

⁴³ See ss. 538.07, 538.23, and 538.26, F.S.

- Detached catalytic converter without proof of ownership, unless the person is a registered secondary metals recycler, a salvage motor vehicle dealer, or meets the criteria for exemption provided in s. 538.22, F.S.⁴⁴

The bill provides that proof that a person was in possession of two or more detached catalytic converters, unless satisfactorily explained, gives rise to an inference that the person in possession of the catalytic converters knew or should have known that the catalytic converters may have been stolen or fraudulently obtained.⁴⁵

The bill also creates s. 860.142, F.S., which provides that it is a second degree felony for a person to knowingly import, manufacture, purchase for the purpose of reselling or installing, sell, offer for sale, or install, or reinstall in a motor vehicle a counterfeit,⁴⁶ fake,⁴⁷ or nonfunctional catalytic converter.⁴⁸

The bill also amends s. 538.26, F.S., to prohibit a secondary metals recycler from processing or removing from the recycler's place of business a detached catalytic converter the recycler has purchased for a period of 10 business days after the date of purchase. This prohibition does not apply to a purchase from another secondary metals recycler, a salvage motor vehicle dealer, or a person or entity exempt under s. 538.22, F.S.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Art. VII, s. 18, of the Florida Constitution.

⁴⁴ Section 538.22, F.S., provides that part II of ch. 538, F.S., relating to secondary metals recyclers, does not apply to purchases of regulated metals property from a list of persons and entities including a law enforcement officer acting in an official capacity.

⁴⁵ In criminal law, a "permissive inference" is legally permissible if it "allows, but does not require, the trier of fact to infer the elemental fact from proof of a basic fact and does not place any burden on the defendant. In this situation, the basic fact may constitute prima facie evidence of the elemental fact." *State v. Rygwelski*, 899 So.2d 498, 501 (Fla. 2d DCA 2005) (citations omitted).

⁴⁶ The bill defines "counterfeit catalytic converter" as a catalytic converter displaying a mark identical or similar to the genuine mark of a catalytic converter manufacturer or motor vehicle manufacturer without authorization from such manufacturer.

⁴⁷ The bill defines "fake catalytic converter" as an item, other than a catalytic converter designed in accordance with United States Environmental Protection Agency regulations for a given make, model, and year of motor vehicle as part of a motor vehicle emission control system, including a counterfeit or nonfunctional catalytic converter, which is used to replace a legitimate, functional catalytic converter. A "nonfunctional catalytic converter" is a replacement catalytic converter that: was previously recalled or damaged; or includes a part or object, including, but not limited to, a counterfeit or repaired catalytic converter, installed in a motor vehicle to mislead the owner or operator of such motor vehicle to believe that a functional catalytic converter has been installed.

⁴⁸ The bill defines "nonfunctional catalytic converter" as a replacement catalytic converter that: was previously recalled or damaged; or includes a part or object, including, but not limited to, a counterfeit or repaired catalytic converter, installed in a motor vehicle to mislead the owner or operator of such motor vehicle to believe that a functional catalytic converter has been installed.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimated that the original bill would have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds).⁴⁹ According to the EDR, there is no data on how many stolen catalytic converters have been sold in the manner described in the newly-created felonies created by the bill, "nor is there data available on the sales of counterfeit, detached, fake, or junk-filled catalytic converters."⁵⁰

VI. Technical Deficiencies:

None.

⁴⁹ *HB 185 – Catalytic Converters (Similar SB 306)*, Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).

⁵⁰ *Id.*

VII. Related Issues:

According to the Insurance Information Institute, 26 states proposed bills in 2021 to help curb theft of catalytic converters.⁵¹

VIII. Statutes Affected:

This bill substantially amends section 538.26 of the Florida Statutes.

This bill creates sections 860.142 and 860.147 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Appropriations Committee on Criminal and Civil Justice on March 14, 2023:**

The committee substitute:

- Limits purchase of a detached catalytic converter to a registered secondary metals recycler and requires that this recycler comply with statutory recordkeeping and other requirements;
- Provides that it is a third degree felony to knowingly possess, purchase, sell, or install a stolen catalytic converter, a catalytic converter removed from a stolen vehicle, a new or detached catalytic converter from which specified information has been removed, or a detached catalytic converter without proof of ownership (with exceptions);
- Provides that it is a second degree felony to knowingly import, manufacture, purchase for the purpose of reselling, etc., a counterfeit, fake, or nonfunctional catalytic converter;
- Provides that proof that a person was in possession of two or more detached catalytic converters, unless satisfactorily explained, gives rise to an inference that the person in possession of the catalytic converters knew or should have known that the catalytic converters may have been stolen or fraudulently obtained; and
- Prohibits a secondary metals recycler from processing or removing from the recycler's place of business a catalytic converter the recycler has purchased for a period of 10 business days after the date of purchase. This prohibition does not apply to a purchase from another secondary metals recycler, a salvage motor vehicle dealer, or a person or entity exempt under s. 538.22, F.S.

CS by Criminal Justice on February 14, 2023:

The CS prohibits a secondary metals recycler from processing or removing from the recycler's place of business a catalytic converter the recycler has purchased for a period

⁵¹ Jeff Dunsavage. *Catalytic Converter Thefts Up, Spurring Lawmakers to Act* (Jan. 9, 2023), Insurance Information Institute, available at <https://www.iii.org/insuranceindustryblog/catalytic-converter-thefts-up-spurring-action-from-lawmakers/> (last visited on March 13, 2023).

of 10 business days after the date of purchase. This prohibition does not apply to a purchase from a salvage motor vehicle dealer.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
