

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2268

Introduced by

Senators Krebsbach, O'Connell, Seymour

Representatives Ekstrom, Froseth, Kerzman

1 A BILL for an Act to provide for waste rubber recycling, abatement and remediation of waste
2 rubber tire stockpiles, and to recover the components of petroleum-based products.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. Definitions.** As used in this Act, unless the context or subject matter
5 otherwise requires:

6 1. "Abate and abatement" means:

- 7 a. To remove waste rubber tires from a waste rubber tire dump or waste rubber
8 tire stockpile by processing or properly disposing of the tires on an
9 enforceable schedule ensuring compliance with the prohibitions of this Act; or
10 b. Action taken pursuant to authority under a state program to process or
11 properly dispose of waste tires.

12 2. "Added value processing" means the use of technologies or processes that
13 processes waste rubber into the highest and best use.

14 3. "Beneficial use" means the use of solid waste material, which would otherwise
15 need to be placed in a landfill or disposed of through alternative means, in such a
16 manner that the nature of the use constitutes a reuse of the solid waste material or
17 its constituent components rather than disposal in a landfill. Beneficial uses
18 include:

- 19 a. Incorporation of a solid waste material which is a legitimate substitute for a
20 raw material into a product marketable to an end user.
21 b. Recovery of the constituent components in a manner that allows for the reuse
22 of the constituent components by industry.
23 c. Recovery of the oil embedded in solid waste material for the generation of
24 electricity with an emphasis on the use of oil for distributed generation.

- 1 d. Waste rubber that is reformed into another rubber-based product may be
2 considered to be beneficially used only if there is no viable technology to
3 recover the energy or material embedded in waste rubber for reuse in
4 industry.
- 5 e. Waste rubber that is burned as tire-derived fuel for the purposes of recovering
6 usable energy may be considered to be beneficially used only if there is no
7 viable technology to recover the energy or material embedded in waste
8 rubber for reuse in industry or in distributed generation.
- 9 f. Waste rubber that is used in civil engineering projects may be considered to
10 be beneficially used only if there is no viable technology to recover the energy
11 or material embedded in waste rubber for reuse in industry.
- 12 4. "Best available technology" means the use of technologies that are economical,
13 environmentally friendly, and state-of-the-art currently in use for processing
14 petroleum-based products, including waste rubber.
- 15 5. "Collection site" means a facility, installation, building, or site, including all of the
16 contiguous area under the control of a person controlled by the same person used
17 for the storage or disposal of more than four hundred waste rubber tires but not
18 including shredded rubber tire material that has been properly disposed.
- 19 6. "Commerce" means the department of commerce.
- 20 7. "Constituent components" means the raw materials used to manufacture the
21 original rubber product.
- 22 8. "Department of health" means the state department of health.
- 23 9. "Emergency response services" means those fire and ambulance services
24 provided by state, county, and city governments and by volunteer rural ambulance
25 and fire departments to the public in the commerce of life.
- 26 10. "End use" means that a product requires no further processing or manufacturing
27 and is suitable for reuse in industry or use by a consumer for the rubber-based
28 product's intended application and is not merely a means of inappropriate disposal.
- 29 11. "End user" means the ultimate customer of the recovered constituent components
30 of a rubber-based finished product.

- 1 12. "Energy cost-savings" means the estimate of dollar savings resulting from the
2 fuel-related cost reductions that are due to the use of resource recovery
3 technology.
- 4 13. "Environmental resource" means air and water used in the manufacture of
5 petroleum-based products.
- 6 14. "Highest and best use" means those technologies or processes that produce
7 products whose value either as energy or as an industrial material is greater than
8 the value of competing technologies or processes.
- 9 15. "Industrial material" means the use of the recovered constituent components from
10 rubber-based products which is suitable for use in the manufacturing industry.
- 11 16. "Life cycle outcomes" means the outcome over the lifetime of the technology for
12 recovery of the resources from waste petroleum-based products.
- 13 17. "Material" means the physical products embedded in waste petroleum-based
14 products.
- 15 18. "Monofill" means a place designed solely to receive and store waste rubber,
16 including tires.
- 17 19. "New tires" means tires that have never been placed on a motor vehicle wheel rim
18 or tires placed on a motor vehicle before its original retail sale.
- 19 20. "Net economic benefit" means the summation of energy cost-savings, nonenergy
20 cost-savings, consumer investment, consumer expenditures, and other
21 governmental expenditures for a particular year due to the use of the resource
22 recovery technology.
- 23 21. "Noncompliant waste rubber stockpile" means a facility, including a waste rubber
24 tire storage facility, parcel of property, or site designated by the department of
25 health in accordance with this Act, where four hundred or more waste rubber tires
26 or mechanically processed waste rubber tires have been accumulated, stored, or
27 buried in a manner that the state department of health or a court of competent
28 jurisdiction has determined violates any judicial administrative order, decree, law,
29 regulation, permit, or stipulation relating to waste rubber tires, waste rubber tire
30 storage facilities, or solid waste.

- 1 22. "Nonenergy cost-savings" means those dollar savings or costs related to
2 nonfuel-related operations that are due to the use of the resource recovery
3 technology. The term includes items such as extension of proven reserves of
4 natural resources and reduction in costs of pollution.
- 5 23. "Other environmental benefits" means an estimate, based upon known science, of
6 the amount of nonemission pollutants displaced annually due to the use of the
7 resource recovery technology to process waste petroleum-based products,
8 including waste rubber.
- 9 24. "Other governmental expenditures" means the anticipated expenditures by the
10 state, county, and city governments directly related to the providing of traffic
11 services, landfill operating costs, and emergency response due to fires.
- 12 25. "Other greenhouse emissions displaced" means an estimate, based upon known
13 science, of the amount of greenhouse emissions other than sulfur dioxide, nitrogen
14 oxide, carbon monoxide, carbon, particulates, and volatile organic compounds
15 displaced due to the use of the resource recovery technology to process waste
16 petroleum-based products, including waste rubber.
- 17 26. "Petroleum-based product" means products that are made out of natural rubber,
18 synthetic rubber, or other natural resources.
- 19 27. "Process" means to produce or manufacture usable materials or energy with real
20 economic value from waste petroleum-based products, including waste rubber
21 tires.
- 22 28. "Properly disposed" means the conversion of waste rubber into a rubber-based
23 product or into the constituent components for resale in industry. Placing waste
24 rubber, including whole tires, into a landfill, a monofill, or a tire stockpile containing
25 whole tires or shredded rubber tires may not be considered properly disposed.
- 26 29. "Public resource" means the traffic services, emergency response services, rural
27 ambulance and fire services, and public works services consumed by the public in
28 the commerce of life.
- 29 30. "Real economic value" means the highest and best use of the recovered
30 constituent components from petroleum-based products.

- 1 31. "Recyclables" means solid waste materials that exhibit the potential to be used to
2 make marketable products for end users.
- 3 32. "Recycle" means to use recyclables in manufacturing a rubber-based product for
4 an end use other than burning the actual waste rubber for recovery of usable
5 energy in a civil engineering application, tire-derived fuels, or shredded tire
6 material.
- 7 33. "Recycling fee" means that fee charged consumers for the costs of disposal of
8 waste rubber, including fee collection, transportation, and processing.
- 9 34. "Removed from service" means removed within this state from the service for
10 which the tires were intended to be used when the tires and tire casings were
11 separated for retreading.
- 12 35. "Resource" means the environmental, natural, and public resources consumed or
13 used in the manufacture of petroleum-based products and in the commerce of life.
- 14 36. "Resource conservation" means the use of the recovered energy and material from
15 petroleum-based products by industry so that the need to use natural and
16 environmental resources is decreased.
- 17 37. "Resource recovery" means the recovery of the energy and material contained in
18 waste petroleum-based products in a manner that allows for reuse in industry.
- 19 38. "Resource recovery funds" means those funds collected by a tire retailer and used
20 to recover the resources embedded in waste rubber and to offset the moneys used
21 by the state, counties, and cities to provide traffic services, emergency response
22 services, and other governmental expenditures.
- 23 39. "Resource recovery technology" means the use of a technology or process that
24 allows for the recovery of the constituent components of waste petroleum-based
25 products for beneficial uses in an economical and environmental manner.
- 26 40. "Retail sale" means the sale to any person in the state for any purpose other than
27 resale.
- 28 41. "Shredded tire material" means tire material resulting from tire shredding that
29 produces pieces four square inches or less in size that do not hold water when
30 stored in piles.

- 1 d. Recycle the waste, including waste rubber into value-added products that
- 2 provide the maximum environmental, fiscal, and natural resource benefits to
- 3 the state;
- 4 e. Encourage the development and use of technologies that beneficially use
- 5 waste rubber in an environmentally acceptable manner; and
- 6 f. Encourage the use of technologies that can recover the constituent
- 7 components required to manufacture petroleum-based products that
- 8 presently cannot be economically recycled or otherwise beneficially used.
- 9 2. State government must make an essential contribution to the development and
- 10 implementation of environmentally, economically, and technically viable waste
- 11 rubber management programs and technologies.

12 **SECTION 4. Acceptance of waste rubber.** Any tire service or tire retailer shall:

- 13 1. Until December 31, 2020, accept from a customer waste rubber, including waste
- 14 tires of approximately the same size and in a quantity equal to the number of new
- 15 tires purchased or installed by the customer; and
- 16 2. Until December 31, 2020, post written notice in a prominent location, which must
- 17 be at least eight and one-half inches by fourteen inches in size and contain the
- 18 following language:

19 "The legislative assembly in the interest of national energy security, public

20 health, safety, and welfare and in order to conserve natural resources and prevent

21 pollution has established this Act which requires us to accept and manage waste

22 rubber such as tires, belts, and hoses from vehicles in exchange for an equal

23 number of new rubber-based products such as tires, belts, and hoses that we sell

24 or install.

25 We are required to charge a separate and distinct waste rubber management

26 and recycling fee for each new tire we sell. This fee is established by the state

27 department of health.

28 Any additional tire management and recycling costs are included in the

29 advertised price of the new tire."

30 **SECTION 5. Duties of state department of health.**

- 31 1. Abatement of the daily waste rubber flow.

- 1 a. By September 1, 2005, the state department of health shall prepare a plan to
2 handle the waste rubber generated daily, including waste rubber tires;
- 3 b. The state department of health shall notify all tire retailers that they will be
4 required to collect all waste rubber, including waste rubber tires, beginning
5 November 1, 2005;
- 6 c. The state department of health shall notify all registered tire collectors and
7 transporters of the requirements of this Act;
- 8 d. The state department of health shall establish criteria for collecting,
9 transporting, and disposal of waste rubber;
- 10 e. The state department of health shall have authority to enter all sites where
11 waste rubber tire stockpiles are located for the purpose of investigation and
12 abatement;
- 13 f. The state department of health shall establish standards for collecting,
14 storing, transporting, shredding, and added value processing of waste rubber;
- 15 g. The state department of health shall establish a process for paying fees for
16 collecting, storing, transporting, shredding, and processing of waste rubber;
17 and
- 18 h. The state department of health shall establish fees for all waste rubber
19 products based upon their weight, category, and the base fees established in
20 section 7 of this Act.
- 21 2. Abatement of waste rubber stockpiles.
 - 22 a. Not later than one year after the effective date of this Act, the state
23 department of health shall prepare and submit to the governor and the
24 legislative assembly a comprehensive plan designed to abate all waste tire
25 stockpiles by December 31, 2020.
 - 26 b. The plan must establish a waste rubber tire stockpile abatement priority list
27 and schedule for abatement of each waste rubber tire stockpile based on
28 potential adverse impacts upon public health, safety or welfare, the
29 environment, or natural resources.
 - 30 c. The plan must include a description of how the state department of health
31 intends to manage the abatement funds collected to assure that abatement

- 1 funds are used to economically and systematically remove aboveground tire
2 piles with the goal of achieving total removal by July 1, 2020.
- 3 d. The plan should include the state department of health's estimated census of
4 the number of waste rubber tire stockpiles, where they are located in the
5 state, the individual or entity who owns the waste rubber tire stockpile, and
6 the number of waste rubber tires believed to be stored at each site.
- 7 e. The plan must also include a proposed amnesty period for owners of the
8 waste rubber stockpile to work with the state department of health to develop
9 a plan to remediate the waste rubber tires located on their premises.
- 10 (1) If the owners of the waste rubber stockpile comply, they must be
11 allowed to be considered a permitted collection site and are entitled to
12 receive financial assistance from the state department of health for the
13 remediation of the waste rubber tire stockpile on their property.
- 14 (2) If the owner of the waste rubber stockpile fails to comply, then the state
15 department of health may declare the waste rubber tire stockpile to be
16 illegal and shall proceed to remediate the waste rubber tire stockpile
17 under the provisions of subsection 4.
- 18 f. The owner or operator of a permitted waste rubber tire stockpile shall, at the
19 state department of health's request, submit to and cooperate with any and all
20 remedial measures necessary for the abatement of waste rubber tire
21 stockpiles with funds from the state department of health.
- 22 3. Assist tire service or tire retailers to abate waste rubber located on their premises.
- 23 a. Not later than one year after the effective date of this Act, the state
24 department of health shall prepare and submit to the governor and the
25 legislative assembly a comprehensive plan designed to abate all waste
26 rubber tire stockpiles located on the premises of tire retailers by
27 December 31, 2015.
- 28 b. This plan must establish a waste rubber tire stockpile abatement priority list
29 and schedule for abatement of each waste rubber tire stockpile based on
30 potential adverse impacts upon public health, safety or welfare, the
31 environment, or natural resources.

- 1 c. The plan must also include a census of the number of waste rubber tire
2 stockpiles, where they are located in the state, the individual or entity who
3 owns the waste rubber tire stockpile, and the number of waste rubber tires
4 believed to be stored at each site.
- 5 d. The plan must also include a proposed amnesty period for tire retailers to
6 work with the state department of health to develop a plan to remediate the
7 waste rubber tires located on their premises.
- 8 (1) If the tire retailer complies, they must be allowed to be considered a
9 permitted collection site and are entitled to receive financial assistance
10 from the state department of health for the remediation of the waste
11 rubber tire stockpiles on their property.
- 12 (2) If the tire retailer fails to comply, then the state department of health
13 may declare the tire retailer or owner of the waste rubber tire stockpile
14 to be illegal and shall proceed to remediate the waste rubber tire
15 stockpile under the provisions of subsection 4.
- 16 (3) The tire retailer shall, at the state department of health's request,
17 submit to and cooperate with any and all remedial measures necessary
18 for the abatement of waste rubber tire stockpiles with funds from the
19 state department of health.
- 20 4. Prepare requests for proposals. Not later than one year from the effective date of
21 this Act, the state department of health shall publish requests for proposals to seek
22 contractors to prepare whole and mechanically processed waste tires situated at
23 noncompliant waste tire stockpiles for arrangement in accordance with fire safety
24 requirements and for removal for appropriate processing, recycling, or beneficial
25 use. Disposal may be considered only as a last option.
- 26 5. Illegal waste rubber stockpiles.
- 27 a. In the case of illegal waste tire stockpiles, the expenses of remedial and fire
28 safety activities at a noncompliant waste tire stockpile must be paid by the
29 person who owned, operated, or maintained the noncompliant waste tire
30 stockpile, or from the waste tire management and recycling fund and is a debt
31 recoverable by the state from all persons who owned, operated, or

1 maintained the noncompliant waste tire stockpile, and a lien and charge may
2 be placed on the premises upon which the noncompliant waste tire stockpile
3 is maintained and upon any real or personal property, equipment, vehicles,
4 and inventory controlled by that person.

5 b. Moneys recovered must be paid to the state department of health for use for
6 further abatement.

7 c. If execution upon a judgment for the recovery of the expenses of any such
8 remedial and fire safety activities at a noncompliant waste tire stockpile is
9 returned wholly or partially unsatisfied, such judgment, if docketed in the
10 place and manner required by law to make a judgment of a court of record, a
11 lien upon real property, is a first lien upon the premises, and has preference
12 over all other liens and encumbrances whatever. Notwithstanding the
13 foregoing, the lien does not have preference over any mortgage or other
14 encumbrance for the benefit of the state or a public benefit corporation
15 thereof.

16 d. The state department of health shall make all reasonable efforts to recover
17 the full amount of any funds expended from the waste tire management and
18 recycling fund for abatement or remediation of illegal or noncompliant waste
19 rubber tire stockpiles through litigation or cooperative agreements.

20 e. All moneys recovered, repaid, or reimbursed pursuant to this section must be
21 deposited with the state treasurer and credited to the fund.

22 **SECTION 6. Prohibition on land burial.**

23 1. A person may not knowingly dispose of waste rubber tires in a landfill except as
24 provided in subsection 2.

25 2. Moneys from the fund may not be used to dispose of waste tires in a landfill unless
26 the state department of health has determined that it is not feasible to convert the
27 waste tires to a beneficial use. Department-approved beneficial uses of scrap
28 tire-derived material for leachate collection systems or gas collection systems in
29 the construction or operation of a landfill are not considered proper disposal.

30 **SECTION 7. Resource recovery and conservation fee.**

- 1 1. Until December 31, 2010, a resource recovery and conservation fee of twenty-five
2 cents per pound must be charged on each new rubber-based product sold for
3 automobile, industry, and agricultural use. The fee must be paid by the purchaser
4 to the tire service at the time the new tire is purchased. The resource recovery fee
5 does not apply to:
 - 6 a. Recapped or resold tires;
 - 7 b. Mail-order sales;
 - 8 c. The sale of new motor vehicle tires to a person solely for the purpose of
9 resale provided the subsequent retail sale in this state is subject to the fee; or
 - 10 d. Tires, belts, and hoses on new motor vehicles, pickup trucks, trucks,
11 agricultural machinery, and other industrial equipment.
- 12 2. Until December 31, 2020, the retailer of tires, belts, and hoses shall collect on
13 behalf of the state various fees from the purchaser of the new rubber-based
14 products at the time of the sale and shall remit such fees to the tax commissioner
15 with the quarterly report filed pursuant to subsection 3:
 - 16 a. The fees imposed must be stated as an invoice item separate and distinct
17 from the selling price of the tire.
 - 18 b. The fee must be based upon the weight and category of the petroleum-based
19 product sold and in the case of rubber tires must be uniform for the rim size
20 and category of tire.
 - 21 c. Any additional management and recycling costs of the retailer must be
22 included in the published selling price of the new tire.
- 23 3. Until March 31, 2020, each tire service maintaining a place of business in this state
24 shall make a return to the tax commissioner on a quarterly basis, with the return for
25 December, January, and February being due on or before the immediately
26 following March thirty-first; the return for March, April, and May being due on or
27 before the immediately following June thirtieth; the return for June, July, and
28 August being due on or before the immediately following September thirtieth; and
29 the return for September, October, and November being due on or before the
30 immediately following December thirty-first.
 - 31 a. Each return must include:

- 1 (1) The name of the tire service;
- 2 (2) The address of the tire service's principal place of business and the
3 address of the principal place of business, if that is a different address,
4 from which the tire service engages in the business of making retail
5 sales of tires;
- 6 (3) The name and signature of the person preparing the return;
- 7 (4) The total number of new tires sold at retail for the preceding quarter
8 and the total number of new tires placed on motor vehicles before
9 original retail sale;
- 10 (5) The amount of waste tire management and recycling fees due; and
- 11 (6) Such other reasonable information as the tax commissioner may
12 require.
- 13 b. Copies of each report must be retained by the tire service for three years. If a
14 tire service ceases business, it shall file a final return and remit all fees due
15 under this Act with the tax commissioner not more than one month after
16 discontinuing that business.
- 17 4. All waste tire management and recycling fees collected by the tax commissioner
18 must be transferred to the appropriate state agencies as prescribed in section 8 of
19 this Act.

20 **SECTION 8. Use of resource recovery fees.** Funds from the resource recovery fund
21 established in section 7 of this Act must be made available to the following departments for the
22 following purposes:

- 23 1. The state department of health must receive seventeen cents per pound for
24 collection, transportation, shredding, and added value processing and abatement.
 - 25 a. Tire retailers must receive five cents per pound for collecting the waste
26 rubber, including waste rubber tires and the resource recovery and
27 conservation fee.
 - 28 b. Transporters must receive three cents per pound for transportation.
 - 29 c. Shredders must receive four cents per pound for shredding.
 - 30 d. Three cents per pound must be collected for financial incentives for added
31 value processing the waste rubber into the highest and best use, including

- 1 avoidance of pollution, savings of natural resources, potential for reducing
2 governmental expenditures and benefit to the state's economy.
- 3 (1) The state department of health may pay up to three cents per pound for
4 the added value processing that rubber into the highest and best use,
5 including avoidance of pollution, savings of natural resources, potential
6 for reducing governmental expenditures, and benefit to the state's
7 economy.
- 8 (2) Those companies or persons seeking to receive the financial incentive
9 for added value processing shall have the burden of demonstrating to
10 the state department of health how their process converts waste rubber
11 into the highest and best use, including avoidance of pollution, savings
12 of natural resources, potential for reducing governmental expenditures,
13 and benefit to the state's economy.
- 14 e. The state department of health must receive three cents per pound for
15 abatement. This fee shall expire upon completion of the abatement of waste
16 rubber stockpiles as prescribed in section 5 of this Act.
- 17 2. The North Dakota peace officer standards and training board must receive two
18 cents per pound for training purposes. The tax commissioner shall disburse the
19 money to the North Dakota peace officer standards and training board.
- 20 3. The North Dakota emergency services association trust must receive two cents
21 per pound for training purposes. The tax commissioner shall disburse the money
22 to the North Dakota emergency services association trust.
- 23 4. There is an administrative fee of four cents per pound for state administrative
24 expenses. The agencies affected by this Act must devise a formula for sharing the
25 administrative expenses based upon the requirements of the agency.