23.0909.03000

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2299
with House Amendments
SENATE BILL NO. 2299

Introduced by

Senators Vedaa, Hogue, Kannianen, Paulson

Representative Louser

A BILL for an Act to create and enact three new sections to chapter 51-35 of the North Dakota Century Code, relating to scrap metal dealer registration, catalytic converters, and catalytic converter theft; to amend and reenact sections 51-35-01, 51-35-02, 51-35-03, and 51-35-04 of the North Dakota Century Code, relating to purchases by scrap metal dealers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-35-01 of the North Dakota Century Code is amended and reenacted as follows:

51-35-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Alloy" means a combination of a metal and carbon or other metals.
2. "Business records" means records of any purchase or transaction that involves the receipt of scrap metals made in the ordinary course of business and includes written receipts, books or similar records, or electronically stored records, but does not include correspondence, tax returns, or financial statements.
3. "Catalytic converter" means a motor vehicle exhaust system component attached to the motor vehicle which reduces vehicle emissions by breaking down harmful exhaust emissions.
4. "Detached used catalytic converter" means a catalytic converter previously removed from a motor vehicle, or any nonferrous part of a catalytic converter previously removed from a motor vehicle. The term does not include a catalytic converter incidentally included in a mixed load of ferrous or nonferrous scrap metal.
5. "Ferrous metals" means those metals that will attract a magnet, and includes alloys of those metals.

~~4.~~6. "Law enforcement officer" or "peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.

~~5.~~7. "Nonferrous metals" means those metals that will not normally attract a magnet, including copper, brass, aluminum, bronze, lead, zinc, platinum, and nickel ~~and includes~~; alloys of those metals; and metals contained within detached used catalytic converters.

~~6.~~8. "Scrap metal" means ferrous or nonferrous metals purchased primarily for reuse or recycling, including metals combined with other materials at the time of purchase or acquisition~~, and including~~; insulated and uninsulated wire and cable; and detached used catalytic converters. Scrap metal does not include automobiles, automobile hulks, or any aluminum food or beverage containers.

~~7.~~9. "Scrap metal dealer" means a person~~, as defined in subsection 8 of section 1-01-49,~~ engaged in the business of purchasing, ~~selling,~~ trading, or bartering scrap metal, and includes all employees of the scrap metal dealer. A scrap metal dealer must have a fixed business premises, shall obtain a sales and use tax permit from the tax commissioner, and shall register with the attorney general as a scrap metal dealer under section 5 of this Act.

SECTION 2. AMENDMENT. Section 51-35-02 of the North Dakota Century Code is amended and reenacted as follows:

51-35-02. Records of purchase, trade, barter, or transaction required.

1. Every scrap metal dealer shall keep business records of any purchase, trade, barter, or other transaction that involves the receipt of scrap metals worth over ~~twenty-five~~fifty dollars. The business records must include the following information:
   a. The date, time, and place of each purchase or transaction;
   b. A description of the scrap metal received and the weight and type of scrap metal received;
   c. The amount paid to the person selling or delivering the scrap metal and the manner of payment, including check or electronic transfer;
   d. The name and address of the person selling or delivering the scrap metal; and

e. A photocopy of a valid government-issued identification card or driver's license and which must include the seller's or deliverer's full name, photograph, date of birth, and signature.

f. For a detached used catalytic converter, either:

(1) Written evidence of ownership of the catalytic converter purchased from the person, including a bill of sale, a receipt for repair of the vehicle the catalytic converter was removed from, or the title, registration, or other ownership documentation for the vehicle from which the catalytic converter was removed; or

(2) A signed statement of ownership by the seller.

2. Every scrap metal dealer shall keep the business records required under this section at the business premises of the scrap metal dealer or other reasonably available location within this state for seven years after the date of each purchase or transaction for which business records are required under this section.

3. A scrap metal dealer may not pay cash for scrap metal purchases or transactions over one thousand dollars or for any purchase or transaction over one hundred dollars for a detached used catalytic converter, but may only pay by check or electronic transfer.

4. Each scrap metal dealer's premises must be kept open during regular business hours for inspection by a law enforcement officer and each scrap metal dealer's business records and business inventory must be made available for inspection by a law enforcement officer at all times during reasonable business hours or at reasonable times if ordinary hours of business are not kept. All business records required under this section for transactions involving a detached used catalytic converter must be made available for inspection by a law enforcement officer upon request.

5. Before a law enforcement officer may conduct an inspection under this section, the law enforcement officer shall inform the scrap metal dealer that the individual is a law enforcement officer and shall inform the scrap metal dealer of the purpose of the inspection. The law enforcement officer shall comply with all reasonable and customary safety requirements of the scrap metal dealer on the business premises.

6. The scrap metal dealer may require a law enforcement officer to sign an inspection log that includes the officer's name and serial or badge number and the date, time, and purpose for the inspection.

7. The provisions of this chapter shall take precedence over and supersede any local ordinance adopted by a political subdivision that regulates scrap metal transactions.

SECTION 3. AMENDMENT. Section 51-35-03 of the North Dakota Century Code is amended and reenacted as follows:

51-35-03. Exemptions.

1. Section 51-35-02 does not apply to:

~~1.~~ a. Purchases from another scrap metal dealer who regularly conducts scrap metal business in this state.

~~2.~~ b. Purchases from government agencies.

~~3.~~ c. Purchases of scrap metal, excluding detached used catalytic converters, from persons regularly engaged in the business of manufacturing metals or regularly engaged in the business of generating and selling metals at ~~retail or~~ wholesale, including scrap processing or manufacturing that produces byproducts for scrap.

~~4.~~ d. Purchases from a person with a business registered with the secretary of state which is regularly engaged in the business of manufacturing catalytic converters or vehicles, or regularly engaged in the business of generating detached used catalytic converters in the ordinary course of the seller's business.

e. Purchases of scrap metal, excluding detached used catalytic converters, from persons regularly engaged in the generation or transmission of electricity, or in telephone, telegraph, or cable communications, if the person provides the scrap metal dealer with a bill of sale or other written evidence of ownership of the scrap metal purchased from the person.

2. Excluding a detached used catalytic converter, section 51-35-02 and section 5 of this Act do not apply to the purchase, trade, or barter of scrap metal, between an owner or agent of a residential, commercial, or agricultural property and another person, for the purpose of removing scrap metal, from the owner or agent's residential, commercial, or agricultural property. This subsection applies only to the initial transaction between

the owner or agent and the person removing the scrap metal, and does not apply to a subsequent sale of the same scrap metal.

SECTION 4. AMENDMENT. Section 51-35-04 of the North Dakota Century Code is amended and reenacted as follows:

51-35-04. Penalty.

1. A scrap metal dealer ~~who~~that willfully fails to comply with recordkeeping under section 51-35-02 is guilty of a class B misdemeanor.
2. A scrap metal dealer ~~who~~that willfully buys, receives, possesses, or conceals stolen scrap metal, and the scrap metal is less than five hundred dollars in value is guilty of a class A misdemeanor.
3. A scrap metal dealer ~~who~~that willfully buys, receives, possesses, or conceals stolen scrap metal, and the scrap metal exceeds five hundred dollars in value or the scrap metal includes a detached used catalytic converter that is subject to the requirements of this chapter without exemption, is guilty of a class C felony.
4. A person that willfully fails to comply with section 6 of this Act is guilty of a class B misdemeanor.

SECTION 5. A new section to chapter 51-35 of the North Dakota Century Code is created and enacted as follows:

Registration.

1. A person may not act as a scrap metal dealer or represent to the public the person is a scrap metal dealer unless the person is registered under this chapter.
2. The attorney general shall issue a certificate of registration to an applicant that:
   a. Applies as directed by the attorney general;
   b. Presents any relevant evidence relating to the applicant's qualifications as required by the attorney general; and
   c. Has a fixed business premises that is properly zoned according to local ordinances for the business conducted.
3. The attorney general may establish qualifications, requirements, and penalties for noncompliance with registration requirements for the holder of a certificate of registration under this chapter.

SECTION 6. A new section to chapter 51-35 of the North Dakota Century Code is created and enacted as follows:

Catalytic converters.

1. Unless the person is registered with the attorney general as a scrap metal dealer under section 5 of this Act, a person may not purchase, trade for, or pledge to buy a detached used catalytic converter, or offer or advertise to purchase, trade for, or pledge to buy a detached used catalytic converter.
2. Unless the seller is exempt under subdivision d of subsection 1 of section 51-35-03, a person wishing to sell a detached used catalytic converter shall do so in person at the fixed business premises of a scrap metal dealer registered with the attorney general.

SECTION 7. A new section to chapter 51-35 of the North Dakota Century Code is created and enacted as follows:

Catalytic converter theft - Penalty.

1. A person commits the offense of theft of a catalytic converter if the person willfully takes possession of, carries away, or exercises control over a catalytic converter with intent to deprive the rightful owner of the catalytic converter.
2. Except as provided under subsection 3, an offense under this section is a:
   a. Class B misdemeanor if the replacement value of the catalytic converter unlawfully obtained including any repair costs is less than two hundred dollars.
   b. Class A misdemeanor if the replacement value of the catalytic converter unlawfully obtained including any repair costs is two hundred dollars or more but less than one thousand dollars.
   c. Class C felony if the replacement value of the catalytic converter unlawfully obtained including any repair costs is one thousand dollars or more.
3. An offense under this section is a class C felony if the offense is a third or subsequent offense, regardless of the replacement value of the catalytic converter. For purposes of this subsection, a first and second offense include a conviction, acceptance of, or other form of preliminary disposition before the sentencing on the present violation for an offense under this section.