

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

HOUSE BILL NO. 1352

(Representatives M. Johnson, Rick C. Becker, Dockter, Kading, B. Koppelman, Lefor, Owens, Steiner)
(Senators Campbell, Casper, Clemens)

AN ACT to amend and reenact sections 24-03-23, 39-26-02, 39-26-04, 39-26-06, 39-26-07, and 39-26-08 of the North Dakota Century Code, relating to custody and disposition of abandoned motor vehicles; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-03-23 of the North Dakota Century Code is amended and reenacted as follows:

24-03-23. Encroachments on state highways.

No part of the right of way for state highways may be encroached upon by erection thereon of ~~any~~ structure, or placing thereon any personal property, other than a temporary parking of a motor vehicle, without a written permit from the director. ~~Any~~An encroachment may be caused to be removed, obliterated, or corrected by order of the director and the total cost thereof must be paid by the person responsible for the encroachment. Property other than motor vehicles left upon highway right of way for a period exceeding seventy-two hours, the ownership of which cannot be determined after reasonable effort has been made to do so, must be deemed abandoned and may be removed from the right of way and stored at the nearest site available for thirty days and if it is not claimed by the owner during such period, and the cost of removal and storage paid, it may be disposed of in the manner prescribed by the director. Abandoned motor vehicles are subject to the provisions of sections 39-26-01 through 39-26-11. If such property is disposed of it must, except as otherwise provided by this section, be sold or disposed of in the manner provided in sections 39-26-05 through 39-26-09. The receipts therefrom must be deposited in the state treasury as provided in section 1 of article IX of the Constitution of North Dakota and credited to the ~~permanent school~~common schools trust fund unless a commercial towing service lawfully disposes of the abandoned motor vehicle.

SECTION 2. AMENDMENT. Section 39-26-02 of the North Dakota Century Code is amended and reenacted as follows:

39-26-02. Definitions.

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

1. "Abandoned motor vehicle" means a motor vehicle, as defined in section 39-01-01, that has remained for a period of more than forty-eight hours on public property illegally or lacking vital component parts, or ~~has remained for a period of more than forty-eight hours~~ is located on private property without consent of the person in control of such property or in an inoperable condition such that it has no substantial potential further use consistent with its usual functions unless it is kept in an enclosed garage or storage building. It also means a motor vehicle voluntarily surrendered by its owner to a person duly licensed under section 39-26-10. An antique automobile, as defined in section 39-04-10.4, and other motor vehicles to include parts car and special interest vehicles, may not be considered an abandoned motor vehicle within the meaning of this chapter.
2. "Collector" means the owner of one or more special interest vehicles who collects, purchases, acquires, trades, or disposes of special interest vehicles or parts thereof for the person's own use in order to restore, preserve, and maintain a special interest vehicle or antique vehicle.

3. "Commercial towing service" means a registered business in North Dakota that tows motor vehicles.
4. "Department" means the state department of health.
- 4-5. "Parts car" means a motor vehicle generally in nonoperable condition which is owned by the collector to furnish parts to restore, preserve, and maintain a special interest vehicle or antique vehicle.
- 5-6. "Special interest vehicle" means a motor vehicle which is at least twenty years old and which has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.
- 6-7. "Unit of government" includes a state department or agency, a county, city, township, or other political subdivision.
- 7-8. "Vital component parts" means those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle, including, but not limited to, the motor, drive train, and wheels.

SECTION 3. AMENDMENT. Section 39-26-04 of the North Dakota Century Code is amended and reenacted as follows:

39-26-04. Custody of abandoned vehicle.

Units of government may take into custody and impound ~~any~~ an abandoned motor vehicle. If requested by an owner, lessee, tenant, or occupant of private property, a commercial towing service may remove and take into custody an abandoned motor vehicle located on the private property.

SECTION 4. AMENDMENT. Section 39-26-06 of the North Dakota Century Code is amended and reenacted as follows:

39-26-06. Notice to owner of abandoned vehicle.

1. When an abandoned motor vehicle does not fall within the provisions of section 39-26-05, the unit of government or commercial towing service taking it into custody shall give notice of the taking within ten days. The notice must set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle and the place where the vehicle is being held, must inform the owner and any lienholders or secured parties of their right to reclaim the vehicle under section 39-26-07, and must state that failure of the owner or lienholders or secured parties to exercise their right to reclaim the vehicle is deemed a waiver by them of all right, title, and interest in the vehicle and a consent to the sale ~~disposal~~ of the vehicle ~~at a public auction~~ pursuant to section 39-26-08.
2. The notice must be sent by certified mail, return receipt requested, to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy.

SECTION 5. AMENDMENT. Section 39-26-07 of the North Dakota Century Code is amended and reenacted as follows:

39-26-07. Right of owner to reclaim abandoned vehicle.

1. The owner, secured parties, or ~~any~~ any lienholder of an abandoned motor vehicle has a right to reclaim such vehicle from the unit of government taking ~~the motor vehicle~~ it into custody upon

payment of all towing and storage charges resulting from taking the vehicle into custody within ~~fifteen~~thirty days after the date of the notice required by section 39-26-06.

2. The owner, secured parties, or a lienholder of an abandoned motor vehicle has a right to reclaim such vehicle from a commercial towing service taking the motor vehicle into custody upon payment of all towing and storage charges resulting from taking the vehicle into custody within thirty days after receipt of the notice required by section 39-26-06.
- 2-3. Storage charges under subsection 2 may not exceed fifty dollars per day for an abandoned passenger vehicle, pickup, van, or truck that does not exceed twenty thousand registered gross weight pounds [9071.85 kilograms].
4. Nothing in this chapter may be construed to impair any lien of a garagekeeper under the laws of this state or the right of a lienholder or secured parties to foreclose. For the purposes of this section, "garagekeeper" is an operator of a parking place or establishment, an operator of a motor vehicle storage facility, or an operator of an establishment for the servicing, repair, or maintenance of motor vehicles.

SECTION 6. AMENDMENT. Section 39-26-08 of the North Dakota Century Code is amended and reenacted as follows:

39-26-08. Public saleDisposal of vehicle - Disposition of proceeds.

1. An abandoned motor vehicle not more than seven model years of age taken into custody by a unit of government and not reclaimed under section 39-26-07 must be sold to the highest bidder at public auction or sale, following reasonable published notice thereof. The purchaser must be given a receipt in a form prescribed by the department which shall be sufficient title to dispose of the vehicle. The receipt also entitles the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. The license plates displayed on an abandoned vehicle must be removed and destroyed prior to the purchaser taking possession of the vehicle.
2. ~~From the proceeds of the sale of an abandoned motor vehicle, the unit of government shall reimburse itself for the cost of towing, preserving, and storing the vehicle, and all notice and publication costs incurred pursuant to this chapter. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder or secured parties for ninety days and then must be deposited in the state treasury as provided in section 1 of article IX of the Constitution of North Dakota and credited to the permanent school fund.~~If a commercial towing service takes custody of an abandoned motor vehicle and the vehicle is not reclaimed under section 39-26-07, the commercial towing service may obtain a release from the department of transportation which is sufficient title to dispose of the vehicle. The release entitles the commercial towing service to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. The license plates displayed on the abandoned vehicle must be removed and destroyed upon receipt of the new title.
3. From the proceeds of the sale of an abandoned motor vehicle, the unit of government or the commercial towing service may reimburse itself for the cost of towing, preserving, and storing the vehicle, and for all notice and publication costs incurred under this chapter. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder or secured parties for ninety days and then must be delivered to the administrator of the state abandoned property office in accordance with chapter 47-30.1.

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1352 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 87 Nays 1 Absent 6

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 47 Nays 0 Absent 0

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,
at _____ o'clock _____ M.

Secretary of State