

# SALES AND EXCHANGES

## CHAPTER 447

### HOUSE BILL NO. 1191

(Representatives Louser, Kasper, Motschenbacher, Ostlie, D. Ruby)  
(Senators Larsen, Paulson, Vedaa)

AN ACT to amend and reenact subsection 2 of section 12-60-24 and sections 49-07-01.1, 51-05.1-01, 51-05.1-01.2, 51-05.1-04.1, and 51-05.1-05 of the North Dakota Century Code, relating to criminal history record checks of licenses, the registration of auctioneers, and cross-references; to repeal sections 51-05.1-01.1, 51-05.1-02, 51-05.1-02.1, and 51-05.1-03 of the North Dakota Century Code, relating to auctioneers' and clerks' licenses; and to provide an effective date.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>237</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

2. The bureau of criminal investigation shall provide to each agency, official, or entity listed in this subsection who has requested a statewide and nationwide criminal history record check, the response of the federal bureau of investigation and any statewide criminal history record information that may lawfully be made available under this chapter:
  - a. The governing body of a city or a county, by ordinance or resolution, for a final applicant for a specified occupation with the city or county.
  - b. The agriculture commissioner for each applicant for a license to grow or process hemp under section 4.1-18.1-02.
  - c. The education standards and practices board for initial, re-entry, and reciprocal teacher licenses under sections 15.1-13-14 and 15.1-13-20 and school guidance and counseling services under section 15.1-13-23.
  - d. The North Dakota board of medicine for licenses or disciplinary investigations under section 43-17-07.1, except that criminal history record checks need not be made unless required by the board.
  - e. The private investigative and security board for licenses or registrations under section 43-30-06.
  - f. The department of health and human services for foster care licenses, approvals, and identified relatives under chapter 50-11, appointments of

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<sup>237</sup> Section 12-60-24 was also amended by section 1 of Senate Bill No. 2051, chapter 274, section 1 of Senate Bill No. 2076, chapter 120, and section 1 of Senate Bill No. 2102, chapter 214.

legal guardians under chapter 50-11.3, and petitions for adoptions under chapter 50-12, except that the criminal history record investigation must be conducted in accordance with those chapters. A criminal history record investigation completed under chapter 50-11, 50-11.3, or 50-12 may be used to satisfy the requirements of a criminal history record investigation under either of the other two chapters.

- g. The department of health and human services for criminal history record checks authorized under section 50-06-01.9.
- h. The chief information officer of the information technology department for certain individuals under section 54-59-20.
- i. A public peace officer training school that has been approved by the peace officer standards and training board for enrollees in the school. The school may only disclose the criminal history record information as authorized by law. The school shall pay the costs for securing the fingerprints, any criminal history record information made available under this chapter, and for the nationwide criminal history record check. This subdivision does not apply to the highway patrol law enforcement training center and enrollees who have a limited license under section 12-63-09.
- j. The North Dakota public employees retirement board for individuals first employed by the public employees retirement board after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.
- k. The executive director of the retirement and investment office for individuals first employed by the retirement and investment office after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.
- l. The Bank of North Dakota for a final applicant for a specified occupation with the Bank as designated by the president.
- m. Job service North Dakota for all employees, final applicants for employment with job service, and contractors with access to federal tax information.
- n. The department of health and human services for a final applicant for a job opening or a current employee with the department as designated by the state health officer; an individual being investigated by the department; or, when requested by the department, an applicant for registration as a designated caregiver or a compassion center agent under chapter 19-24.1.
- o. The state board of nursing for applicants, licensees, registrants, or disciplinary investigations under chapter 43-12.1, except that criminal history record checks need not be made unless required by the board.
- p. The state board of pharmacy for applicants or disciplinary investigations under chapter 43-15 and registrations, or revocation or suspension of

- registrations, under chapter 19-03.1, except that criminal history record checks need not be made unless required by the board.
- q. The state real estate commission for applicants, licensees, or investigations under chapter 43-23, except that criminal history record checks need not be made unless required by the commission.
  - r. The North Dakota board of social work examiners for applicants for initial licensure or licensees under chapter 43-41, except that criminal history record checks for licensees need not be made unless required by the board.
  - s. All agencies, departments, bureaus, boards, commissions, or institutions of the state, including the North Dakota university system, for all employees or final applicants for employment as a security guard or to otherwise provide security.
  - t. The office of management and budget for each individual who has access to personal information as designated by the director.
  - u. The department of corrections and rehabilitation for all agents and employees and a final applicant for employment designated by the director and for each agent, employee, or a final applicant for employment of a privately operated entity providing contract correctional services for the department who exercises direct authority over juveniles, inmates, probationers, or parolees.
  - v. A city, county, or combination of cities or counties that operates a correctional facility subject to chapter 12-44.1, for each agent and employee and a final applicant for employment of the correctional facility who has direct contact with or exercises direct authority over any juvenile or inmate of the correctional facility, and for each agent, employee, or a final applicant for employment of a privately operated entity providing contract correctional services for the correctional facility who exercises direct authority over juveniles, inmates, probationers, or parolees.
  - w. The North Dakota university system for a final applicant for or employee in a specified position in the university system or a university system institution or for each student applying for or admitted to a specified program of study, as designated by the chancellor.
  - x.
    - (1) The board of a school district, for employees designated by the board, provided the board is responsible for paying the costs associated with obtaining a criminal history record check;
    - (2) The board of a multidistrict special education unit, for employees designated by the board, provided the board is responsible for paying the costs associated with obtaining a criminal history record check;
    - (3) The board of an area career and technology center, for employees designated by the board, provided the board is responsible for paying the costs associated with obtaining a criminal history record check;
    - (4) The board of a regional education association, for employees designated by the board, provided the board is responsible for paying

- the costs associated with obtaining a criminal history record check;  
and
- (5) The superintendent of public instruction in the case of a nonpublic school or a state school with a superintendent appointed by or reporting to the superintendent of public instruction, for employees designated by the nonpublic or state school, provided the nonpublic or state school is responsible for paying the costs associated with obtaining a criminal history record check.
- y. (1) The board of a school district, for a final applicant seeking employment with the district or otherwise providing services to the district, if that individual has unsupervised contact with students, provided the board is responsible for paying the costs associated with obtaining a criminal history record check;
- (2) The board of a multidistrict special education unit, for a final applicant seeking employment with the unit or otherwise providing services to the unit, if that individual has unsupervised contact with students, provided the board is responsible for paying the costs associated with obtaining a criminal history record check;
  - (3) The board of an area career and technology center, for a final applicant seeking employment with the center or otherwise providing services to the center, if that individual has unsupervised contact with students, provided the board is responsible for paying the costs associated with obtaining a criminal history record check;
  - (4) The board of a regional education association, for a final applicant seeking employment with the association or otherwise providing services to the association if that individual has unsupervised contact with students, provided the board is responsible for paying the costs associated with obtaining a criminal history record check; and
  - (5) The superintendent of public instruction in the case of a nonpublic school or a state school with a superintendent appointed by or reporting to the superintendent of public instruction, for a final applicant seeking employment with the school or otherwise providing services to the school, if that individual has unsupervised contact with students, provided the board is responsible for paying the costs associated with obtaining a criminal history record check.
  - (6) For purposes of this subdivision, "unsupervised contact" with students means being in proximity to one or more students, on school grounds or at school functions, outside the presence of an individual who has been subject to a criminal history record check.
- z. The racing commission for applicants for licenses under chapter 53-06.2, except that criminal history record checks need not be made unless required by the commission.
- aa. A district court for a petition to change a name under chapter 32-28.
  - bb. The state board of pharmacy for a wholesale drug distributor seeking licensure under chapter 43-15.3.

- cc. The board of dental examiners for investigations of applicants or dentists under section 43-28-11.2, except that criminal history record checks need not be made unless required by the board.
- dd. The department of financial institutions for each applicant for a specified occupation with the department as specified by the commissioner and principal owners and managing officers of applicants for a license from the department of financial institutions.
- ee. The office of tax commissioner for all employees, final applicants for employment with the tax commissioner, and contractors with access to federal tax information.
- ff. The state board of examiners for nursing home administrators for applicants for licensure or licensees under chapter 43-34, except that criminal history record checks for licensees need not be made unless required by the board.
- gg. The marriage and family therapy licensure board for applicants, licensees, or investigations under chapter 43-53, except that criminal history record checks need not be made unless required by the board.
- hh. The state board of chiropractic examiners for applicants, licensees, certificates, or investigations under chapter 43-06, except that criminal history record checks need not be made unless required by the board.
  - ii. Workforce safety and insurance for a final applicant for a specified occupation with workforce safety and insurance as designated by the director, or for contractors who may have access to confidential information as designated by the director.
- jj. The board of counselor examiners for applicants for licensure or licensees under chapter 43-47, except that criminal history record checks for licensees need not be made unless required by the board.
- kk. The state board of respiratory care for applicants, licensees, or investigations under chapter 43-42, except that criminal history record checks need not be made unless required by the board.
  - ll. The North Dakota real estate appraiser qualifications and ethics board for applicants for permits or registration or permittees, registrants, owners, or controlling persons under chapters 43-23.3 and 43-23.5, except that criminal history record checks for permittees, registrants, owners, or controlling persons need not be made unless required by the board.
- mm. The insurance department for criminal history record checks authorized under chapters 26.1-26 and 26.1-26.8.
- nn. The office of the adjutant general for employees and volunteers working with the recruiting and retention, sexual assault, and youth programs.
- oo. The parks and recreation department for volunteers and final applicants for employment, as determined by the director of the parks and recreation department.

- pp. The North Dakota medical imaging and radiation therapy board of examiners for licensure and licensees under chapter 43-62, except that criminal history record checks for licensees need not be made unless required by the board.
- qq. The game and fish department for volunteers and final applicants for employment, as determined by the director of the game and fish department.
- rr. The North Dakota board of massage for applicants, licensees, or investigations under chapter 43-25.
- ss. The North Dakota board of physical therapy for physical therapist and physical therapist assistant applicants and for licensees under investigation, except that criminal history record checks need not be made unless required by the board.
- tt. The department of commerce for volunteers and employees providing services through eligible organizations, as determined by the commissioner of commerce.
- uu. The state court administrator for a guardian ad litem who provides direct services to youth.
- vv. The department of environmental quality for a final applicant for a job opening or a current employee with the department; an individual being investigated by the department; or, when requested by the department, an applicant for a radioactive materials license under chapter 23.1-03 or a solid waste permit under chapter 23.1-08.
- ww. The housing finance agency for criminal history record checks authorized under section 54-17-07.13.
- xx. The office of state treasurer for each individual who has access to federal tax information.
- ~~yy. The public service commission for initial applicant licenses under chapter 51-05.1, except that criminal history record checks need not be made unless required by the public service commission.~~
- zz. The department of health and human services for a criminal history record check for a children's advocacy center as authorized under section 50-25.1-11.1.
- aaa-zz. The state historical society for volunteers and final applicants for employment, except that criminal history record checks need not be made unless requested by the society.
- bbb-aaa. The department of transportation for volunteers and final applicants for employment, as determined by the director of the department of transportation.
- eee-bbb. The commission on legal counsel for indigents for a volunteer or final applicant for employment, as determined by the director of the commission on legal counsel for indigents.

~~ddd.ccc.~~ The board of dietetic practice for applications for licensure or renewal under chapter 43-44, except that criminal history record checks need not be made unless required by the board.

~~eee.ddd.~~ The secretary of state for employees with access to personally identifying information of residents or businesses of the state or with access to elections systems that are critical infrastructure under section 44-04-24.

~~fff.eee.~~ The department of health and human services for applicants for initial licensure for emergency medical services personnel, such as emergency medical technicians, advanced emergency medical technicians, and paramedics, as required by subdivision d of subsection 3 of section 23-27.1-03.

**SECTION 2. AMENDMENT.** Section 49-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**49-07-01.1. Violation of statute, commission order, or commission rule - Assessment of civil penalty.**

Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, ~~and 24-09, 32-25, and 51-05.1,~~ titles 60 and 64, and title 49 except for chapters 49-22, 49-22.1, and 49-23, in addition to any other penalty provided, is subject to a civil penalty of not to exceed five thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

**SECTION 3. AMENDMENT.** Section 51-05.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**51-05.1-01. Auctioneering or clerking ~~without a license prohibited~~ - Registration.**

~~No~~A person may ~~not~~ conduct a sale as an auctioneer or clerk unless ~~licensed by the public service commission~~ registered with the secretary of state.

**SECTION 4. AMENDMENT.** Section 51-05.1-01.2 of the North Dakota Century Code is amended and reenacted as follows:

**51-05.1-01.2. Exemptions.**

~~A license~~Registration under this chapter is not required for the following:

1. Sale of an estate by an executor or an administrator.
2. Sale by a sheriff or other person under court order.
3. Sale by a public official acting in an official capacity.
4. Sale of purebred or registered livestock.

~~A bond is not required for a federally insured financial institution to clerk a sale. Persons exempt from licensing or bonding under this section shall comply with all other provisions of this chapter.~~

**SECTION 5. AMENDMENT.** Section 51-05.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**51-05.1-04.1. Written contracts.**

An auctioneer may not sell the property of another at auction without a prior written contract with the seller which sets forth the terms and conditions upon which the auctioneer will sell the property. A similar contract governing the activities of the auction clerk is required between the auction clerk and the seller. ~~The licensee must~~ auctioneer and clerk shall retain a copy of each contract for at least two years after the auction. This section does not apply to consignment sales when the value of the seller's property is less than five hundred dollars or to livestock markets. The contract must contain:

1. ~~The licensee's~~ auctioneer's or clerk's name, trade or business name, ~~state license number,~~ business address, and business telephone number.
2. A general description of the property to be sold at auction, any restrictions, and a statement identifying whether ~~or not the licensee~~ auctioneer or clerk is authorized to purchase at the auction.
3. A description of the services to be provided and the consideration for the services. The description must state which party is responsible for advertising and other expenses.
4. The date or dates when the items will be sold at auction.
5. ~~A disclosure of the amount of bond that the licensee has on file with the commission and the commission's address and telephone number.~~

**SECTION 6. AMENDMENT.** Section 51-05.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**51-05.1-05. Handling of funds by clerk of auction sale.**

Every clerk of an auction sale, ~~at all times,~~ shall maintain in the clerk's name or firm name, a separate trust account designated as such in a federally insured bank or other federally insured depository in this state in which the clerk immediately shall deposit all funds not the clerk's own, including funds in which the clerk may have some future interest or claim. A federally insured depository located outside the state ~~but licensed as a clerk in this state~~ is not required to deposit funds in a depository in this state if auction sale funds are deposited in a separate trust account designated ~~as such in the licensee's~~ in the clerk's depository. A clerk may not commingle the clerk's personal funds or other funds in a trust account except that a clerk may deposit and keep a sum of one thousand dollars in ~~such~~ the account from the clerk's personal funds, which sum must be specifically identified and deposited to cover service charges related to the trust account. In conjunction with ~~such~~ the account, the clerk shall maintain at the clerk's usual place of business books, records, and other documents so that the adequacy of ~~such~~ the account may be determined at any time. ~~Trust accounts and other records must be open to inspection by the public service commission and its duly authorized agents at all times during regular business hours at the clerk's usual place of business.~~



**SECTION 7. REPEAL.** Sections 51-05.1-01.1, 51-05.1-02, 51-05.1-02.1, and 51-05.1-03 of the North Dakota Century Code are repealed.

**SECTION 8. EFFECTIVE DATE.** This Act becomes effective on January 1, 2024.

Approved April 11, 2023

Filed April 12, 2023

## CHAPTER 448

### HOUSE BILL NO. 1274

(Representatives Weisz, Dockter, Grueneich, Porter, M. Ruby)  
(Senators Klein, Lee)

AN ACT to create and enact two new subsections to section 51-25-02, subsections 6, 7, 8, 9, and 10 of section 51-25.1-02, and one new subsection to section 51-25.1-06 of the North Dakota Century Code, relating to assignment of escrow accounts, sell-through periods after removal of tobacco product manufacturer or brand family from directory, and placing burden on a nonparticipating manufacturer to establish an escrow deposit is not required on certain sales; to amend and reenact subsection 10 of section 51-25-01, subsection 2 of section 51-25.1-02, subsection 4 of section 51-25.1-02, section 51-25.1-05, subsection 2 of section 51-25.1-06, and section 57-36-04 of the North Dakota Century Code, relating to definition of the term "units sold" used to determine escrow to be deposited by a nonparticipating manufacturer, and the regulation of tobacco product manufacturers, distributors, and the lawful sale of cigarettes; to provide a penalty; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 10 of section 51-25-01 of the North Dakota Century Code is amended and reenacted as follows:

10. "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs or "roll-your-own" tobacco containers on which the state has authority under federal and state law to collect excise tax under chapter 57-36, notwithstanding whether the state excise tax was imposed or collected. Cigarettes exempt from state excise tax under federal law are specifically excluded from this definition. The state tax commissioner shall adopt rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of the tobacco product manufacturer for each year.

**SECTION 2.** Two new subsections to section 51-25-02 of the North Dakota Century Code are created and enacted as follows:

Notwithstanding subdivision b of subsection 2, a tobacco product manufacturer that deposits funds into escrow under subdivision a of subsection 2, or a transferee of rights therein, may make an irrevocable assignment of the tobacco manufacturer's interest in the funds to the benefit of the state. The assignment executed in accordance with this section is permanent and applies to all funds in the escrow account and which subsequently may come into the account, including funds deposited into the account before the assignment is executed, funds deposited into the account after the assignment is executed, and interest and other appreciation on the funds. The tobacco product manufacturer, the attorney general, and the financial institution that maintains the escrow account may make an amendment to the qualified escrow account agreement as necessary to

effectuate an assignment of the rights executed under this subsection or the withdrawal of funds from the escrow account under subdivision b of subsection 2. An assignment executed under this subsection must be in writing, and be signed by a duly authorized representative of the assignor and assignee and becomes effective upon delivery of the assignment to the attorney general and the financial institution at which the escrow account is maintained.

Notwithstanding subdivision b of subsection 2, escrow funds assigned to the state under subsection 3 must be withdrawn by the state on the approval of the attorney general. Funds withdrawn under this subsection must be deposited into the general fund and must be calculated on a dollar-for-dollar basis as a credit against any judgment or settlement described in subdivision b of subsection 2 which may be obtained against the tobacco product manufacturer or transferee that has assigned the funds in the escrow account to the state. This section may not be construed to relieve a tobacco product manufacturer from any past, current, or future obligation the manufacturer may have under this chapter or chapter 51-25.1.

<sup>238</sup> **SECTION 3. AMENDMENT.** Subsection 2 of section 51-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The attorney general shall develop and publish on the attorney general's website, a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection 1 and all brand families listed in the certifications, except as otherwise provided in this subsection.
  - a. The attorney general may not include or retain in the directory the name or brand family of any tobacco product manufacturer that fails to provide the required certification or whose certification the attorney general determines is not in compliance with subsection 1, unless the attorney general has determined the violation has been cured.
  - b. Neither a tobacco product manufacturer nor brand family may be included or retained in the directory if the attorney general determines:
    - (1) Cigarettes of the tobacco product manufacturer are imported into the state by a distributor not licensed under chapter 57-36.
    - (2) In the case of a nonparticipating manufacturer, the manufacturer fails to provide the commissioner and attorney general, on a monthly basis, with copies of the reports identified in the Prevent All Cigarette Trafficking Act of 2009 [Pub. L. 111-54; 15 U.S.C. 375 et seq.].
    - (3) In the case of a nonparticipating manufacturer, an escrow payment required under subsection 5 of section 51-25.1-04 or subsection 2 of section 51-25-02, for any period for any brand family, whether listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement approved by the attorney general.

<sup>238</sup> Section 51-25.1-02 was also amended by section 5 of House Bill No. 1274, chapter 448, and section 4 of House Bill No. 1274, chapter 448.

(2)(4) Any outstanding final judgment, including any interest, for a violation of chapter 51-25 has not been fully satisfied for the brand family and the tobacco product manufacturer.

- c. The attorney general shall update the directory as necessary to correct mistakes, to add or remove a tobacco product manufacturer or brand family, and to keep the directory in conformity with the requirements of this chapter.

<sup>239</sup> **SECTION 4. AMENDMENT.** Subsection 4 of section 51-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~Except as provided in subsections 8 and 10, it is unlawful for any person to sell, offer, or possess for sale in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory.~~

<sup>240</sup> **SECTION 5.** Subsections 6, 7, 8, 9, and 10 of section 51-25.1-02 of the North Dakota Century Code are created and enacted as follows:

6. Upon removal of a tobacco product manufacturer or brand family from the directory, the attorney general also shall transmit notice of the removal by electronic mail or other practicable means to each distributor that reported cigarette sales of that tobacco product manufacturer or brand family in the preceding year. No later than seven days after receiving notice of the removal, the distributor shall provide a copy of the notice to each of the distributor's customers that purchased cigarettes of the tobacco product manufacturer or brand family in the preceding year. The attorney general also shall post notice of the removal in the directory.
7. An out-of-state distributor may not sell or distribute into the state the cigarettes of the tobacco product manufacturer or brand family that has been removed from the directory until the tobacco product manufacturer or brand family is relisted in the directory.
8. An in-state distributor shall identify and set aside the cigarettes of a tobacco product manufacturer or brand family that has been removed from the directory for sale or distribution outside the borders of the state within thirty days after the date of removal from the directory of the tobacco product manufacturer or brand family. The in-state distributor shall keep for five years documentation of any cigarettes sold or distributed outside the borders of the state.
9. An in-state distributor may not purchase, or sell within the borders of this state, cigarettes of a tobacco product manufacturer or brand family that has been removed from the directory until the tobacco product manufacturer or brand family is relisted in the directory.
10. A retailer may not sell, offer, or possess for sale, for more than twenty days after the date of removal from the directory of a tobacco product manufacturer or brand family, the cigarettes of that tobacco product manufacturer or brand

<sup>239</sup> Section 51-25.1-02 was also amended by section 5 of House Bill No. 1274, chapter 448, and section 3 of House Bill No. 1274, chapter 448.

<sup>240</sup> Section 51-25.1-02 was also amended by section 3 of House Bill No. 1274, chapter 448, and section 4 of House Bill No. 1274, chapter 448.

family. Before expiration of the twenty-day period, the retailer shall send any unsold cigarettes to the tobacco product manufacturer or a distributor outside the borders of this state. The retailer shall keep for five years documentation of any cigarettes sent outside the borders of this state.

**SECTION 6. AMENDMENT.** Section 51-25.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**51-25.1-05. Penalties - Remedies.**

1. In addition to any other civil or criminal remedy provided by law, upon a determination that a distributor has violated subsection 4, 6, 7, 8, or 9 of section 51-25.1-02 or subsection 1 or 4 of section 51-25.1-04, or any rule adopted under ~~that subsection~~those subsections, the attorney general may revoke the license of a distributor in the manner provided by section 57-36-04. Each sale or offer to sell cigarettes in violation of subsection 4 of section 51-25.1-02 constitutes a separate violation. For each violation, the attorney general may impose a civil penalty in an amount not to exceed five hundred percent of the retail value of the cigarettes sold or five thousand dollars, whichever is greater, upon a determination of violation of subsection 4 of section 51-25.1-02 or any rules adopted under that subsection.
2. Any cigarettes sold, offered for sale, or possessed for sale in this state, or imported for personal consumption in this state in violation of subsection 4 of section 51-25.1-02 are deemed contraband and are subject to seizure, by a law enforcement officer, and forfeiture as follows:
  - a. Upon the seizure of the cigarettes, and within two days thereafter, the law enforcement officer making the seizure shall deliver an inventory of the cigarettes seized to the person from whom the seizure was made, if known, and shall file a copy of the inventory with the attorney general.
  - b. Within ten days after the date of service of the inventory, the person from whom the seizure was made, or any other person claiming an interest in the cigarettes seized, may file a demand with the attorney general for a judicial determination of the issues of whether the cigarettes seized were, or lawfully are, subject to seizure and forfeiture. Within thirty days of the date of a timely demand, the attorney general shall institute an action in the district court of the county in which the seizure was made for a determination of the issues. The action must be brought by the attorney general in the name of the state. The district court shall hear the action and determine the issues of fact and law.
  - c. If a judgment of forfeiture is entered, the attorney general shall destroy the forfeited cigarettes unless the judgment is stayed pending an appeal to the supreme court.
  - d. If a demand for a judicial determination is made, and in the absence of an action commenced under this section or a stipulated settlement, the attorney general shall release the seized cigarettes to the person entitled to the cigarettes.
  - e. If a demand for judicial determination is not made, the seized cigarettes must be deemed forfeited to the state by operation of law and the cigarettes must be destroyed.

3. The attorney general may seek an injunction to restrain a threatened or actual violation of subsection 4, 7, 8, 9, or 10 of section 51-25.1-02 or ~~subsections~~subsection 1 or 4 of section 51-25.1-04 by any person and to compel the person to comply with this subsection. In an action brought under this section, the state is entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees.
4. A person may not sell, distribute, acquire, hold, own, possess, transport, import, or cause to be imported cigarettes the person knows or should know are intended for distribution or sale in the state in violation of subsection 4, 7, 8, 9, or 10 of section 51-25.1-02. A violation of this subsection is a class A misdemeanor.

**241 SECTION 7. AMENDMENT.** Subsection 2 of section 51-25.1-06 of the North Dakota Century Code is amended and reenacted as follows:

2. A license or renewal of a license to act as a distributor may not be issued to a person unless the person certifies in writing the person will comply with this chapter and chapter 57-36.

**242 SECTION 8.** A new subsection to section 51-25.1-06 of the North Dakota Century Code is created and enacted as follows:

For purposes of the definition of "units sold" in this chapter and chapter 51-25, the burden of establishing a sale of cigarettes is exempt from state excise tax under federal law, such that an escrow deposit for the sale is not required under section 51-25-02 or subsection 5 of section 51-25.1-04, is on the nonparticipating manufacturer claiming the exemption. To establish a claim a transaction involving the sale of cigarettes is exempt from state excise tax by federal law, such that an escrow deposit for the sale is not required, the nonparticipating manufacturer shall submit to the attorney general supporting information contained in a form prescribed or approved by the attorney general.

**243 SECTION 9. AMENDMENT.** Section 57-36-04 of the North Dakota Century Code is amended and reenacted as follows:

**57-36-04. Revocation of license - Penalty.**

The attorney general may revoke the license of any dealer or distributor for failure to comply with any of the provisions of this chapter or chapter 51-25.1, or any of the rules or regulations prescribed by the tax commissioner or the attorney general. When a license has been legally revoked, no license may be issued again to the licensee for a period of one year thereafter. A person may not sell any cigarettes, cigarette papers, snuff, cigars, or tobacco after that person's license has been revoked as provided in this chapter.

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<sup>241</sup> Section 51-25.1-06 was also amended by section 8 of House Bill No. 1274, chapter 448.

<sup>242</sup> Section 51-25.1-06 was also amended by section 7 of House Bill No. 1274, chapter 448.

<sup>243</sup> Section 57-36-04 was also amended by section 3 of House Bill No. 1412, chapter 537.

**SECTION 10. EMERGENCY.** Sections 1 and 8 of this Act are declared to be an emergency measure.

Approved March 15, 2023

Filed March 16, 2023

## CHAPTER 449

### SENATE BILL NO. 2299

(Senators Vedaa, Hogue, Kannianen, Paulson)  
(Representative Louser)

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:

<sup>244</sup> **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

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<sup>244</sup> Section 51-35-01 was also amended by section 6 of House Bill No. 1474, chapter 66.



~~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 4-01-49,~~ 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.

Approved April 13, 2023

Filed April 14, 2023

## CHAPTER 450

### HOUSE BILL NO. 1228

(Representatives D. Ruby, Klemin, Louser, Prichard, Thomas, VanWinkle)  
(Senators Bekkedahl, Hogue, Klein, J. Roers, Wanzek)

AN ACT to amend and reenact sections 51-37-01, 51-37-02, and 51-37-04, relating to the use of certain marketing practices involving an agreement containing a provision for automatic renewal; and to provide for application.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 51-37-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **51-37-01. Definitions.**

As used in this chapter:

1. "Agreement" means a written agreement between a customer and a party acting in the usual course of business in which a customer borrows, buys, leases, or obtains merchandise, personal property, real property, or services for valuable consideration.
2. "Automatic renewal" means a plan or arrangement in which a paid subscription or purchasing agreement is automatically renewed for a period of more than one month at the end of a definite period for a subsequent period.
- ~~2-3.~~ "Clear and conspicuous" means in a larger type than the surrounding text, in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size or symbols or other marks, in a manner that clearly calls attention to the language and makes the language readily apparent, readable, and understandable to the person to which the language is disclosed. In the case of an audio disclosure, "clear and conspicuous" means in a volume and cadence sufficient to be readily audible and understandable. A statement that contradicts or is inconsistent with any other information with which the statement is presented is not clear and conspicuous.

**SECTION 2. AMENDMENT.** Section 51-37-02 of the North Dakota Century Code is amended and reenacted as follows:

##### **51-37-02. Use of automatic renewal.**

1. A person that sells or offers to sell merchandise or a service for a specified period under an agreement containing a provision for automatic renewal shall:
  - a. Present the terms of the automatic renewal offer in a clear and conspicuous manner before a subscription or purchasing agreement is fulfilled and in proximity to the offer;

- b. Provide an acknowledgment that includes the terms of the automatic renewal offer and information regarding how to cancel in a manner which is capable of being retained by the buyer; and
  - c. Provide a cost-effective, timely, and simple procedure for cancellation which must be described in the acknowledgment required by subdivision b.
2. A person that sells or offers to sell merchandise or a service for a specified period under an agreement that contains a provision for automatic renewal for a period of more than six months at the end of the time period specified in the agreement shall provide a clear and conspicuous written notice to the buyer stating the buyer may cancel the contract and avoid automatic renewal.
    - a. The written notice must be provided by:
      - (1) First-class mail;
      - (2) Electronic mail; or
      - (3) Any easily accessible form of communication, including text message or a mobile application, if the consumer specifically authorizes the person to provide notice in such form.
    - b. The written notice must include the procedure for canceling and must be given at least thirty days and not more than sixty days before the date upon which the agreement will be renewed or the expiration of the period for cancellation.
  3. If there is a material change in the terms of an agreement that contains a provision for automatic renewal, the seller shall provide the buyer with clear and conspicuous notice of the material change and provide information regarding how to cancel in a manner which is capable of being retained by the buyer.
  4. A person that sells or offers to sell merchandise or a service for a specified period under an agreement that contains a provision for automatic renewal may not make or submit any charge to a buyer's credit card, debit card, bank account, account with a third party, or other financial account, unless the person has complied with the requirements of subsection 1 and obtained the buyer's affirmative consent to the agreement containing the terms of the automatic renewal.
  5. The renewal period in a provision for automatic renewal of an agreement for ~~sale of merchandise~~ may not exceed twelve months.

**SECTION 3. AMENDMENT.** Section 51-37-04 of the North Dakota Century Code is amended and reenacted as follows:

**51-37-04. Remedies.**

An agreement for ~~sale of merchandise~~ automatic renewal provision in violation of this chapter is unenforceable and void. If a person sends merchandise or provides a service as a result of an automatic renewal of agreement without complying with the requirements of section 51-37-02 or sends merchandise or provides a service after a buyer undertook an affirmative act to cancel or otherwise avoid charges, the

merchandise or service is considered to be an unconditional gift to the buyer who may dispose of the gift in any manner the buyer sees fit without any obligation to the person.

**SECTION 4. APPLICATION.** This Act applies to contracts entered after July 31, 2023.

Approved April 7, 2023

Filed April 10, 2023