

PROPOSED AMENDMENTS TO SENATE BILL NO. 2268

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for waste rubber recycling, abatement and remediation of waste rubber tire stockpiles, and to recover the components of petroleum-based products.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

1. "Abate and abatement" means:
 - a. To remove waste rubber tires from a waste rubber tire dump or waste rubber tire stockpile by processing or properly disposing of the tires on an enforceable schedule ensuring compliance with the prohibitions of this Act; or
 - b. Action taken pursuant to authority under a state program to process or properly dispose of waste tires.
2. "Added value processing" means the use of technologies or processes that processes waste rubber into the highest and best use.
3. "Beneficial use" means the use of solid waste material, which would otherwise need to be placed in a landfill or disposed of through alternative means, in such a manner that the nature of the use constitutes a reuse of the solid waste material or its constituent components rather than disposal in a landfill. Beneficial uses include:
 - a. Incorporation of a solid waste material which is a legitimate substitute for a raw material into a product marketable to an end user.
 - b. Recovery of the constituent components in a manner that allows for the reuse of the constituent components by industry.
 - c. Recovery of the oil embedded in solid waste material for the generation of electricity with an emphasis on the use of oil for distributed generation.
 - d. Waste rubber that is reformed into another rubber-based product may be considered to be beneficially used only if there is no viable technology to recover the energy or material embedded in waste rubber for reuse in industry.
 - e. Waste rubber that is burned as tire-derived fuel for the purposes of recovering usable energy may be considered to be beneficially used only if there is no viable technology to recover the energy or material embedded in waste rubber for reuse in industry or in distributed generation.
 - f. Waste rubber that is used in civil engineering projects may be considered to be beneficially used only if there is no viable technology

to recover the energy or material embedded in waste rubber for reuse in industry.

4. "Best available technology" means the use of technologies that are economical, environmentally friendly, and state-of-the-art currently in use for processing petroleum-based products, including waste rubber.
5. "Collection site" means a facility, installation, building, or site, including all of the contiguous area under the control of a person controlled by the same person used for the storage or disposal of more than four hundred waste rubber tires but not including shredded rubber tire material that has been properly disposed.
6. "Commerce" means the department of commerce.
7. "Constituent components" means the raw materials used to manufacture the original rubber product.
8. "Department of health" means the state department of health.
9. "Emergency response services" means those fire and ambulance services provided by state, county, and city governments and by volunteer rural ambulance and fire departments to the public in the commerce of life.
10. "End use" means that a product requires no further processing or manufacturing and is suitable for reuse in industry or use by a consumer for the rubber-based product's intended application and is not merely a means of inappropriate disposal.
11. "End user" means the ultimate customer of the recovered constituent components of a rubber-based finished product.
12. "Energy cost-savings" means the estimate of dollar savings resulting from the fuel-related cost reductions that are due to the use of resource recovery technology.
13. "Environmental resource" means air and water used in the manufacture of petroleum-based products.
14. "Highest and best use" means those technologies or processes that produce products whose value either as energy or as an industrial material is greater than the value of competing technologies or processes.
15. "Industrial material" means the use of the recovered constituent components from rubber-based products which is suitable for use in the manufacturing industry.
16. "Life cycle outcomes" means the outcome over the lifetime of the technology for recovery of the resources from waste petroleum-based products.
17. "Material" means the physical products embedded in waste petroleum-based products.
18. "Monofill" means a place designed solely to receive and store waste rubber, including tires.
19. "New tires" means tires that have never been placed on a motor vehicle wheel rim or tires placed on a motor vehicle before its original retail sale.

20. "Net economic benefit" means the summation of energy cost-savings, nonenergy cost-savings, consumer investment, consumer expenditures, and other governmental expenditures for a particular year due to the use of the resource recovery technology.
21. "Noncompliant waste rubber stockpile" means a facility, including a waste rubber tire storage facility, parcel of property, or site designated by the department of health in accordance with this Act, where four hundred or more waste rubber tires or mechanically processed waste rubber tires have been accumulated, stored, or buried in a manner that the state department of health or a court of competent jurisdiction has determined violates any judicial administrative order, decree, law, regulation, permit, or stipulation relating to waste rubber tires, waste rubber tire storage facilities, or solid waste.
22. "Nonenergy cost-savings" means those dollar savings or costs related to nonfuel-related operations that are due to the use of the resource recovery technology. The term includes items such as extension of proven reserves of natural resources and reduction in costs of pollution.
23. "Other environmental benefits" means an estimate, based upon known science, of the amount of nonemission pollutants displaced annually due to the use of the resource recovery technology to process waste petroleum-based products, including waste rubber.
24. "Other governmental expenditures" means the anticipated expenditures by the state, county, and city governments directly related to the providing of traffic services, landfill operating costs, and emergency response due to fires.
25. "Other greenhouse emissions displaced" means an estimate, based upon known science, of the amount of greenhouse emissions other than sulfur dioxide, nitrogen oxide, carbon monoxide, carbon, particulates, and volatile organic compounds displaced due to the use of the resource recovery technology to process waste petroleum-based products, including waste rubber.
26. "Petroleum-based product" means products that are made out of natural rubber, synthetic rubber, or other natural resources.
27. "Process" means to produce or manufacture usable materials or energy with real economic value from waste petroleum-based products, including waste rubber tires.
28. "Properly disposed" means the conversion of waste rubber into a rubber-based product or into the constituent components for resale in industry. Placing waste rubber, including whole tires, into a landfill, a monofill, or a tire stockpile containing whole tires or shredded rubber tires may not be considered properly disposed.
29. "Public resource" means the traffic services, emergency response services, rural ambulance and fire services, and public works services consumed by the public in the commerce of life.
30. "Real economic value" means the highest and best use of the recovered constituent components from petroleum-based products.
31. "Recyclables" means solid waste materials that exhibit the potential to be used to make marketable products for end users.

32. "Recycle" means to use recyclables in manufacturing a rubber-based product for an end use other than burning the actual waste rubber for recovery of usable energy in a civil engineering application, tire-derived fuels, or shredded tire material.
33. "Recycling fee" means that fee charged consumers for the costs of disposal of waste rubber, including fee collection, transportation, and processing.
34. "Removed from service" means removed within this state from the service for which the tires were intended to be used when the tires and tire casings were separated for retreading.
35. "Resource" means the environmental, natural, and public resources consumed or used in the manufacture of petroleum-based products and in the commerce of life.
36. "Resource conservation" means the use of the recovered energy and material from petroleum-based products by industry so that the need to use natural and environmental resources is decreased.
37. "Resource recovery" means the recovery of the energy and material contained in waste petroleum-based products in a manner that allows for reuse in industry.
38. "Resource recovery funds" means those funds collected by a tire retailer and used to recover the resources embedded in waste rubber and to offset the moneys used by the state, counties, and cities to provide traffic services, emergency response services, and other governmental expenditures.
39. "Resource recovery technology" means the use of a technology or process that allows for the recovery of the constituent components of waste petroleum-based products for beneficial uses in an economical and environmental manner.
40. "Retail sale" means the sale to any person in the state for any purpose other than resale.
41. "Shredded tire material" means tire material resulting from tire shredding that produces pieces four square inches or less in size that do not hold water when stored in piles.
42. "Solid waste material" means solid waste composed of petroleum-based products, including plastic and rubber.
43. "Tire" means any pneumatic or solid tire, including a tire manufactured for use on any type of motor vehicle, construction, farm implement, tractor tires or other offroad equipment, aircraft, or industrial machinery.
44. "Tire collector" means a person that owns or operates a collection site.
45. "Tire dump" means a tire collection site without a collector or processor permit that is maintained, operated, used, or allowed to be used for the disposal, storing, or depositing of waste rubber tires.
46. "Tire hauler" means a person engaged in picking up or transporting waste tires to a storage or disposal facility.

47. "Tire processor" means a person that processes waste tires to produce or manufacture usable materials or to recover energy.
48. "Tire service or tire retailer" means any person or business in this state that either sells or installs new tires, hoses, or belts for use on any vehicle and any person or business that engages in the retail sale of new motor vehicles. A person who is not the end point of sale, any governmental agency, and a political subdivision are excluded from this term.
49. "Tire stockpile" means a waste rubber tire storage facility operating pursuant to a permit issued by the state department of health at which either shredded rubber tire material from fifty or more waste tires or whole rubber tires are stored for future processing or disposal.
50. "Traffic services" means policing, emergency response, planning, courts, street lighting, parking enforcement, and driver training.
51. "Waste rubber" means any solid waste that consists of a petroleum-based product, such as belts, hoses, or tires.
52. "Waste rubber tire" means any solid waste that consists of whole tires or portions of tires. Tire casings separated for retreading and tires with sufficient tread for resale are included under this term; however, crumb rubber is not considered a solid waste.
53. "Waste rubber tire storage facility" means a facility at which waste tires are stored and for which a permit or registration has been issued.

SECTION 2. Purpose. The purpose of this Act is:

1. To further the common good through the responsible stewardship of resources, including environmental, natural, and public resources;
2. To assure that the life cycle of all petroleum-based products, including rubber-based tires, hoses, and belts, used in this state is managed in a manner that is environmentally sound and which maximizes the economic value of recovered energy and material to the citizens of the state and our nation by permitting reuse of the constituent components of petroleum-based products in industry; and
3. To assure that the end users of traffic services, emergency response services, public resources, and rural ambulance and fire departments pay for part of the cost of the unreimbursed traffic and emergency response services so as to reduce the burden on property and income taxpayers.

SECTION 3. Waste management priorities for petroleum-based products.

In the interest of public health, safety, and welfare, to conserve natural resources, to promote recovery of the constituent components of waste petroleum-based products, to encourage recycling and market development for the recovered components of petroleum-based products, and to support the national agenda for reducing our dependence on foreign oil, the state establishes a policy on the management of waste petroleum-based products, based upon known science, that states:

1. The waste management priorities for petroleum-based products in this state are to:
 - a. Reduce the amount of waste generated in the most beneficial manner, yearly, through the collection of waste products at the time of origination;

- b. Remediate that waste in the most beneficial manner according to a plan established and published by the state department of health;
 - c. Remediate waste rubber tire stockpiles located in city and county landfills, at illegal or noncompliant waste rubber piles, or located at the location of tire retailers;
 - d. Recycle the waste, including waste rubber into value-added products that provide the maximum environmental, fiscal, and natural resource benefits to the state;
 - e. Encourage the development and use of technologies that beneficially use waste rubber in an environmentally acceptable manner; and
 - f. Encourage the use of technologies that can recover the constituent components required to manufacture petroleum-based products that presently cannot be economically recycled or otherwise beneficially used.
2. State government must make an essential contribution to the development and implementation of environmentally, economically, and technically viable waste rubber management programs and technologies.

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

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

"The legislative assembly in the interest of national energy security, public health, safety, and welfare and in order to conserve natural resources and prevent pollution has established this Act which requires us to accept and manage waste rubber such as tires, belts, and hoses from vehicles in exchange for an equal number of new rubber-based products such as tires, belts, and hoses that we sell or install.

We are required to charge a separate and distinct waste rubber management and recycling fee for each new tire we sell. This fee is established by the state department of health.

Any additional tire management and recycling costs are included in the advertised price of the new tire."

SECTION 5. Duties of state department of health.

- 1. Abatement of the daily waste rubber flow.
 - a. By September 1, 2005, the state department of health shall prepare a plan to handle the waste rubber generated daily, including waste rubber tires;
 - b. The state department of health shall notify all tire retailers that they will be required to collect all waste rubber, including waste rubber tires, beginning November 1, 2005;

- c. The state department of health shall notify all registered tire collectors and transporters of the requirements of this Act;
 - d. The state department of health shall establish criteria for collecting, transporting, and disposal of waste rubber;
 - e. The state department of health shall have authority to enter all sites where waste rubber tire stockpiles are located for the purpose of investigation and abatement;
 - f. The state department of health shall establish standards for collecting, storing, transporting, shredding, and added value processing of waste rubber;
 - g. The state department of health shall establish a process for paying fees for collecting, storing, transporting, shredding, and processing of waste rubber; and
 - h. The state department of health shall establish fees for all waste rubber products based upon their weight, category, and the base fees established in section 7 of this Act.
2. Abatement of waste rubber stockpiles.
- a. Not later than one year after the effective date of this Act, the state department of health shall prepare and submit to the governor and the legislative assembly a comprehensive plan designed to abate all waste tire stockpiles by December 31, 2020.
 - b. The plan must establish a waste rubber tire stockpile abatement priority list and schedule for abatement of each waste rubber tire stockpile based on potential adverse impacts upon public health, safety or welfare, the environment, or natural resources.
 - c. The plan must include a description of how the state department of health intends to manage the abatement funds collected to assure that abatement funds are used to economically and systematically remove aboveground tire piles with the goal of achieving total removal by July 1, 2020.
 - d. The plan should include the state department of health's estimated census of the number of waste rubber tire stockpiles, where they are located in the state, the individual or entity who owns the waste rubber tire stockpile, and the number of waste rubber tires believed to be stored at each site.
 - e. The plan must also include a proposed amnesty period for owners of the waste rubber stockpile to work with the state department of health to develop a plan to remediate the waste rubber tires located on their premises.
 - (1) If the owners of the waste rubber stockpile comply, they must be allowed to be considered a permitted collection site and are entitled to receive financial assistance from the state department of health for the remediation of the waste rubber tire stockpile on their property.
 - (2) If the owner of the waste rubber stockpile fails to comply, then the state department of health may declare the waste rubber

tire stockpile to be illegal and shall proceed to remediate the waste rubber tire stockpile under the provisions of subsection 4.

- f. The owner or operator of a permitted waste rubber tire stockpile shall, at the state department of health's request, submit to and cooperate with any and all remedial measures necessary for the abatement of waste rubber tire stockpiles with funds from the state department of health.
3. Assist tire service or tire retailers to abate waste rubber located on their premises.
 - a. Not later than one year after the effective date of this Act, the state department of health shall prepare and submit to the governor and the legislative assembly a comprehensive plan designed to abate all waste rubber tire stockpiles located on the premises of tire retailers by December 31, 2015.
 - b. This plan must establish a waste rubber tire stockpile abatement priority list and schedule for abatement of each waste rubber tire stockpile based on potential adverse impacts upon public health, safety or welfare, the environment, or natural resources.
 - c. The plan must also include a census of the number of waste rubber tire stockpiles, where they are located in the state, the individual or entity who owns the waste rubber tire stockpile, and the number of waste rubber tires believed to be stored at each site.
 - d. The plan must also include a proposed amnesty period for tire retailers to work with the state department of health to develop a plan to remediate the waste rubber tires located on their premises.
 - (1) If the tire retailer complies, they must be allowed to be considered a permitted collection site and are entitled to receive financial assistance from the state department of health for the remediation of the waste rubber tire stockpiles on their property.
 - (2) If the tire retailer fails to comply, then the state department of health may declare the tire retailer or owner of the waste rubber tire stockpile to be illegal and shall proceed to remediate the waste rubber tire stockpile under the provisions of subsection 4.
 - (3) The tire retailer shall, at the state department of health's request, submit to and cooperate with any and all remedial measures necessary for the abatement of waste rubber tire stockpiles with funds from the state department of health.
 4. Prepare requests for proposals. Not later than one year from the effective date of this Act, the state department of health shall publish requests for proposals to seek contractors to prepare whole and mechanically processed waste tires situated at noncompliant waste tire stockpiles for arrangement in accordance with fire safety requirements and for removal for appropriate processing, recycling, or beneficial use. Disposal may be considered only as a last option.
 5. Illegal waste rubber stockpiles.
 - a. In the case of illegal waste tire stockpiles, the expenses of remedial and fire safety activities at a noncompliant waste tire stockpile must be paid by the person who owned, operated, or maintained the

noncompliant waste tire stockpile, or from the waste tire management and recycling fund and is a debt recoverable by the state from all persons who owned, operated, or maintained the noncompliant waste tire stockpile, and a lien and charge may be placed on the premises upon which the noncompliant waste tire stockpile is maintained and upon any real or personal property, equipment, vehicles, and inventory controlled by that person.

- b. Moneys recovered must be paid to the state department of health for use for further abatement.
- c. If execution upon a judgment for the recovery of the expenses of any such remedial and fire safety activities at a noncompliant waste tire stockpile is returned wholly or partially unsatisfied, such judgment, if docketed in the place and manner required by law to make a judgment of a court of record, a lien upon real property, is a first lien upon the premises, and has preference over all other liens and encumbrances whatever. Notwithstanding the foregoing, the lien does not have preference over any mortgage or other encumbrance for the benefit of the state or a public benefit corporation thereof.
- d. The state department of health shall make all reasonable efforts to recover the full amount of any funds expended from the waste tire management and recycling fund for abatement or remediation of illegal or noncompliant waste rubber tire stockpiles through litigation or cooperative agreements.
- e. All moneys recovered, repaid, or reimbursed pursuant to this section must be deposited with the state treasurer and credited to the fund.

SECTION 6. Prohibition on land burial.

1. A person may not knowingly dispose of waste rubber tires in a landfill except as provided in subsection 2.
2. Moneys from the fund may not be used to dispose of waste tires in a landfill unless the state department of health has determined that it is not feasible to convert the waste tires to a beneficial use. Department-approved beneficial uses of scrap tire-derived material for leachate collection systems or gas collection systems in the construction or operation of a landfill are not considered proper disposal.

SECTION 7. Resource recovery and conservation fee.

1. Until December 31, 2010, a resource recovery and conservation fee of twenty-five cents per pound must be charged on each new rubber-based product sold for automobile, industry, and agricultural use. The fee must be paid by the purchaser to the tire service at the time the new tire is purchased. The resource recovery fee does not apply to:
 - a. Recapped or resold tires;
 - b. Mail-order sales;
 - c. The sale of new motor vehicle tires to a person solely for the purpose of resale provided the subsequent retail sale in this state is subject to the fee; or
 - d. Tires, belts, and hoses on new motor vehicles, pickup trucks, trucks, agricultural machinery, and other industrial equipment.

2. Until December 31, 2020, the retailer of tires, belts, and hoses shall collect on behalf of the state various fees from the purchaser of the new rubber-based products at the time of the sale and shall remit such fees to the tax commissioner with the quarterly report filed pursuant to subsection 3:
 - a. The fees imposed must be stated as an invoice item separate and distinct from the selling price of the tire.
 - b. The fee must be based upon the weight and category of the petroleum-based product sold and in the case of rubber tires must be uniform for the rim size and category of tire.
 - c. Any additional management and recycling costs of the retailer must be included in the published selling price of the new tire.
3. Until March 31, 2020, each tire service maintaining a place of business in this state shall make a return to the tax commissioner on a quarterly basis, with the return for December, January, and February being due on or before the immediately following March thirty-first; the return for March, April, and May being due on or before the immediately following June thirtieth; the return for June, July, and August being due on or before the immediately following September thirtieth; and the return for September, October, and November being due on or before the immediately following December thirty-first.
 - a. Each return must include:
 - (1) The name of the tire service;
 - (2) The address of the tire service's principal place of business and the address of the principal place of business, if that is a different address, from which the tire service engages in the business of making retail sales of tires;
 - (3) The name and signature of the person preparing the return;
 - (4) The total number of new tires sold at retail for the preceding quarter and the total number of new tires placed on motor vehicles before original retail sale;
 - (5) The amount of waste tire management and recycling fees due; and
 - (6) Such other reasonable information as the tax commissioner may require.
 - b. Copies of each report must be retained by the tire service for three years. If a tire service ceases business, it shall file a final return and remit all fees due under this Act with the tax commissioner not more than one month after discontinuing that business.
4. All waste tire management and recycling fees collected by the tax commissioner must be transferred to the appropriate state agencies as prescribed in section 8 of this Act.

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

1. The state department of health must receive seventeen cents per pound for collection, transportation, shredding, and added value processing and abatement.
 - a. Tire retailers must receive five cents per pound for collecting the waste rubber, including waste rubber tires and the resource recovery and conservation fee.
 - b. Transporters must receive three cents per pound for transportation.
 - c. Shredders must receive four cents per pound for shredding.
 - d. Three cents per pound must be collected for financial incentives for added value processing the waste rubber into the highest and best use, including avoidance of pollution, savings of natural resources, potential for reducing governmental expenditures and benefit to the state's economy.
 - (1) The state department of health may pay up to three cents per pound for the added value processing that rubber into the highest and best use, including avoidance of pollution, savings of natural resources, potential for reducing governmental expenditures, and benefit to the state's economy.
 - (2) Those companies or persons seeking to receive the financial incentive for added value processing shall have the burden of demonstrating to the state department of health how their process converts waste rubber into the highest and best use, including avoidance of pollution, savings of natural resources, potential for reducing governmental expenditures, and benefit to the state's economy.
 - e. The state department of health must receive three cents per pound for abatement. This fee shall expire upon completion of the abatement of waste rubber stockpiles as prescribed in section 5 of this Act.
2. The North Dakota peace officer standards and training board must receive two cents per pound for training purposes. The tax commissioner shall disburse the money to the North Dakota peace officer standards and training board.
3. The North Dakota emergency services association trust must receive two cents per pound for training purposes. The tax commissioner shall disburse the money to the North Dakota emergency services association trust.
4. There is an administrative fee of four cents per pound for state administrative expenses. The agencies affected by this Act must devise a formula for sharing the administrative expenses based upon the requirements of the agency."

Renumber accordingly