



## Delaware Metals Theft Statute

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*This document is provided as background information for ReMA members. It does not constitute legal advice. Recyclers should consult their attorneys / legal advisors regarding the application of each state's statutes and regulations to each company's individual circumstances. Other state laws governing precious metals, secondhand materials, vehicles, and other materials may apply.*

*Current as of September 18, 2023*

### *Overview of Provisions (use the links to travel directly to that section)*

- [Materials Covered and Other Definitions](#)
- [Recordkeeping](#)
- [Catalytic Converters - Additional Recordkeeping](#)
- [Retention](#)
- [Inspection](#)
- [Reporting](#)
- [Hold](#)
- [Seizure of Stolen Goods by Processors](#)
- [Purchase Restrictions](#)
  - [Catalytic Converters](#)
  - [Restricted Items](#)
- [Catalytic Converters - Payment Restriction](#)
- [License](#)
- [Penalties](#)
- [Preemption](#)
- [State Police Annual Report](#)
- [References and Recent Amendments](#)

*Please Note:* Amendments by [2023 Delaware HB 78](#), effective September 11, 2023, are included and noted in this summary.

[Title 21, Ch. 75](#) requires automotive recyclers purchasing or selling a catalytic converter to comply with the requirements for Scrap Metal Processors and includes catalytic converters in the recordkeeping requirements for automotive recyclers.

### *Materials Covered and Other Definitions (edited for clarity and conciseness)*

Scrap Metal, as used in this summary, refers to the following items listed in § 2302.(b)(1) as requiring reporting:

- Copper;
- Silver;
- Gold;
- Brass;
- Platinum;
- Bronze;
- Automobiles or automobile parts displaying a VIN;
- Lead-acid batteries;
- Catalytic converters.

Restricted Items, as used in this summary, refers to the following items listed in § 2307.(d) as requiring the Seller provide authorization:

- Metal bleachers;
- Hard-drawn copper;
- Metal beer kegs;
- Cemetery urns;
- Grave markers;
- Materials related to railroad infrastructure; and
- Any other used articles owned by a public utility including: guardrails; manhole covers; metal light poles; tree grates; water meters; and street signs.

*(Added by HB 78)* "Catalytic Converter" means a used, detached catalytic converter that is used for controlling the exhaust emissions from motor vehicles and that contains a catalyst

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metal, but does not include a catalytic converter that has been tested, certified, and labeled for reuse in accordance with U.S. EPA regulations.

"Scrap Metal Processor" means any person, company, corporation, or member or members of a partnership or firm engaged in the business of selling or receiving any worn out or discarded metal, old iron, used plumbing fixtures, other metals, automobiles, automobile parts, chain, copper, lead, brass, or other parts of machinery.

[back to top](#)

### *Recordkeeping (italicized text added by HB 78)*

Processors shall create a record and provide information for transactions involving articles listed as Scrap Metal. Records shall be kept electronically in a format to be determined by the Secretary of Safety and Homeland Security, and include the following information:

- The date and time of purchase;
- The type and grade of Scrap Metal, *where applicable*;
- If payment is based on weight, the weight of each type and grade;
- The amount or other consideration for the Scrap Metal *or other items*;
- The registration plate number, make, and model of the delivery vehicle;
- The Seller's name and address;
- The Seller's signature;
- The Processor's signature;
- For each Seller, either:
  - The date of birth and driver's license; or
  - Identification information from a valid state-issued photo ID card that provides a physical description of the individual, including the sex, race, distinguishing features, and approximate age, height and weight.
- A copy of the identification provided by the Seller;
- A photo of the Seller;
- The name of the person making the record entry;
- An electronic photo or video image of the articles.

[back to top](#)

### *Catalytic Converters - Additional Recordkeeping (added by HB 78)*

For the purchase or acquisition of a catalytic converter, a Processor or other authorized purchaser must also record all of the following:

- The business license number of the Seller.
- The name or identification of the employee responsible for making the purchase.
- A description of the catalytic converter including any obvious markings such as paint, labels, or engravings that would aid in the identification of the catalytic converter.
- The VIN of the vehicle the catalytic converter was removed from.
- A signed statement from the individual receiving consideration for the purchase stating that he or she is the rightful owner of the converter and authorized to sell it.
- A photocopy or scanned copy of the driver's license or state-issued photo ID card of the individual selling or transferring the converter to the Processor, which includes the type of card and any distinctive number on the card.
- A digital photo or video recording with the date and time of the purchase digitally recorded, of:
  - The individual delivering or receiving consideration for the converter with the individual's facial features clearly visible; and of
  - The catalytic converter as delivered or sold with the type of metal property identifiable.

[back to top](#)

### *Retention*

Records shall be retained for 1 year from the date the transaction was recorded, except electronic images of the articles acquired need only be retained for 30 days.

[back to top](#)

## *Inspection*

Records and inventory on the premises shall be subject to inspection during regular business hours by a law-enforcement officer of Delaware, or by the Attorney General or any Deputy AG, to determine if they are being maintained as required. Records shall be provided to police immediately upon request.

[back to top](#)

## *Reporting*

Records shall be reported electronically by the close of business the next business day to the law enforcement agency with primary jurisdiction over the Processor's location. The Secretary of the Department of Safety and Homeland Security may determine the format of reports and promulgate rules and regulations that allow for their completion and filing. A copy of the electronic images of the articles acquired must be supplied to a law enforcement agency within 24 hours of a specific request.

[back to top](#)

## *Hold*

Processors must hold platinum, gold, and silver articles for 18 days. Law enforcement officers may extend a hold on such items for an additional 30 days if they know or have reason to believe the property is missing or stolen.

Processors must hold all copper and brass articles for 72 hours from the date and time the item was electronically reported, not including holidays or weekends, unless all of the following apply:

- Articles are purchased or received from a commercially licensed entity;
- Articles are of the type commonly received from commercial entities; and
- Payment is made directly to the commercial entity and not the Deliverer.

Processors who take in a scrapped or dismantled vehicle without a title must hold the vehicle until it is cleared by a State Police auto theft technician.

*(added by HB 78)* Catalytic converters: 48 hour tag and hold, not including holidays or weekends. An individual authorized to purchase a catalytic converter must keep the converter intact and safe from alteration, damage, or commingling and must place an identifying tag or other suitable identification on the converter.

[back to top](#)

## *Seizure of Stolen Goods by Processors*

Processors may seize any goods offered to them for sale when they have reason to believe the goods have been stolen. The Processor shall immediately notify the law enforcement agency with jurisdiction over the premises where the transaction took place or where the goods are currently located. Any person acting in compliance with this section shall be immune from civil or criminal penalties if that person acts in good faith.

[back to top](#)

## *Purchase Restrictions (italicized text added by HB 78)*

Processors may not knowingly purchase or acquire any article:

- From persons under 18 years old unless that person is:
  - Recycling aluminum cans; or
  - Accompanied by a parent, grandparent, or guardian *and is not selling a catalytic converter*;
- From persons under the influence of any intoxicating liquor or drug when such is visible or apparent; or
- That has an altered, obliterated, or otherwise tampered with serial number or identifying marking.

[back to top](#)

### *Catalytic Converters - Purchase Restriction (italicized text added by HB 78)*

*No individual may purchase or sell a catalytic converter from an individual unless the individual, at the time of purchase or sale, provides identification that shows the individual as:*

- A licensed Processor;*
- A licensed automotive recycler under Title 21, Ch. 75; or*
- An agent or employee of a scrap metal processor or automotive recycler.*

*(HB 78 removes licensed commercial enterprises as permitted sellers)*

*An entity or individual authorized to sell a converter may not provide false, fraudulent, altered, or counterfeit information or documentation to the purchaser of a catalytic converter.*

*The purchase and sale of a catalytic converter must occur between 6 AM and 9 PM.*

*The sale of a catalytic converter must occur at a fixed business address of an individual authorized to purchase the converter.*

[back to top](#)

### *Restricted Items - Purchase Restriction*

A processor may only purchase Restricted Items if the Seller provides appropriate authorization from a relevant business or unit of federal, State, or local government specifically authorizing the Seller to conduct the transaction.

[back to top](#)

### *Catalytic Converters - Payment Restriction (added by HB 78)*

No cash; payment must be by check payable to the licensed individual or licensed entity selling the catalytic converter. An individual authorized to purchase a catalytic converter must withhold payment to the Seller for 48 hours, not including holidays or weekends.

[back to top](#)

### *License*

Persons must obtain a license before carrying on business as a Processor. Applicants shall pay a \$50 fee to the State Police to go to the State's General Fund. Every person receiving a license shall pay an annual subscription fee, not to exceed \$300, to the electronic reporting system designated.

Licenses granted by the State Police shall expire annually on December 31st, and shall designate the address in which the Processor shall carry on its business. Aside from the acquisition of goods, no business may be engaged in any other building than the one designated in the license. The Director of the Professional Licensing Section of the State Police may suspend or revoke a license or issue an emergency suspension for a violation of the chapter or regulations. Anyone licensed must notify the Licensing Section within 5 days of being arrested for any misdemeanor or felony crime.

An applicant must be at least 18 years old; submit a current valid Delaware business license issued by the Dept. of Revenue; and notify the Licensing Section within 10 days of any change of address, phone, email, or contact person. An applicant must not have any pending criminal charges; have been convicted of a felony within 5 years of the application date, or have been convicted of a misdemeanor involving a theft related offense or moral turpitude within 3 years of the application date.

The Professional Licensing Section must keep a register of all applications and complete records, changes and additions to rules and regulations, hearings and other such matters as determined by the Secretary of Safety and Homeland Security. The Licensing Section may adopt and revised rules and regulations as may be necessary, deny or withdraw approval from applicants, oversee renewals and fees, conduct hearings upon request for denial, suspension, or revocation of licenses, have the power to issue subpoenas, compel witnesses, and

administer oaths, and have all duties, powers, and authority necessary to the enforcement of the chapter and granted by the Secretary.

[back to top](#)

### *Penalties*

Except where another penalty is provided, any violator shall be guilty of a misdemeanor and subject to up to a \$10,000 fine.

The Director of the Professional Licensing Section of the State Police may suspend or revoke a license or issue an emergency suspension for a violation of the chapter or regulations. Anyone licensed must notify the Professional Licensing Section within 5 days of being arrested for any misdemeanor or felony crime.

Assessment of a civil or administrative penalty shall be determined by the nature of the violations and other listed factors. In the event of nonpayment, the Superintendent of the Delaware State Police or their designee may bring civil action for collection of the penalty, interest, attorney fees, and costs, and the validity and appropriateness of the penalty shall not be subject to review.

The Director of the Professional Licensing Section may impose any of the following on a licensee found guilty of violating any provision of this chapter or rule or regulation by the Secretary of Safety and Homeland Security. After receipt of a written notice, the applicant or license holder shall be afforded a hearing as outlined in the chapter.

- Suspend, refuse to issue or renew, or permanently revoke a license;
- Issue an emergency suspension;
- Issue a letter of reprimand;
- "Or otherwise discipline".

The Director may request that the Attorney General apply for a permanent or temporary injunction, restraining order, or other order against a Processor that the Director judges to have engaged in a violation of the chapter or its rules.

[back to top](#)

### *Preemption*

Political subdivisions and municipalities may enact laws more restrictive than the state law, but they "shall be in addition to, not in lieu of, the regulations set forth in this chapter."

[back to top](#)

### *State Police Annual Report*

The State Police shall maintain an annual report setting forth the list of licensed Processors in Delaware and their respective addresses and contact information.

[back to top](#)

### *References and Recent Amendments*

- [Del. Code Title 24, Ch. 23](#), Pawnbrokers, Secondhand Dealers and Scrap Metal Processors; 24 § 2301 to 24 § 2317
- [Del. Code Title 21, Ch. 75](#), Automotive Recyclers (requires automotive recyclers purchasing or selling catalytic converters comply with Scrap Metal Processor requirements and includes catalytic converters in automotive recycler recordkeeping)

#### Recent Amendments

- [2013 Delaware SB 63](#) (effective July 31, 2013)
- [2014 Delaware SB 194](#) (effective July 15, 2014)
- [2017 Delaware SB 73](#) (effective July 21, 2017)
- [2022 Delaware HB 296](#) (effective April 28, 2022)
- [2023 Delaware HB 78](#) (effective September 11, 2023)

[back to top](#)