

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine**

HOUSE BILL NO. 1156  
(Agriculture Committee)  
(At the request of the Public Service Commission)

AN ACT to create and enact three new subsections to section 60-04-03.1 of the North Dakota Century Code, relating to warehousemen; to amend and reenact subsections 3 and 5 of section 60-02-01, subsection 1 of section 60-02-05, sections 60-02-07, 60-02-17, subsection 1 of section 60-02-24, sections 60-02-27, and 60-02-37 of the North Dakota Century Code, relating to warehouseman disputes, warehouse storage contracts, and hay buyers; and to repeal section 60-02-17.1 of the North Dakota Century Code, relating to warehouse charges for grain owned by the United States.

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

**SECTION 1. AMENDMENT.** Subsections 3 and 5 of section 60-02-01 of the North Dakota Century Code are amended and reenacted as follows:

3. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown ~~domestic~~ grain or grass seed. "Grain" as defined in this chapter shall not include grain or grass seeds owned by or in the possession of the warehouseman that have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.
5. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility not licensed under the United States Warehouse Act [7 U.S.C. 241-273] in which grain is received for storing, buying, selling, ~~or shipping, or processing~~ for compensation. Provided, however, that nothing in this chapter shall be construed to require a ~~warehouseman doing manufacturing business only, processor~~ to receive, store, or purchase any lot or kind of grain at said ~~mill~~ facility.

**SECTION 2. AMENDMENT.** Subsection 1 of section 60-02-05 of the North Dakota Century Code is amended and reenacted as follows:

1. If any dispute or disagreement arises between the person receiving and the person delivering grain at any public warehouse in this state as to the proper grade, dockage, vomitoxin level, moisture content, or protein content of any grain, an average sample of at least three pints of the grain in dispute may be taken together by both parties interested. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was delivered. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties for inspection by a federal licensed inspector, or a mutually agreed upon third party, who will examine the grain and adjudge what grade, dockage, vomitoxin level, moisture content, or protein content the sample of grain is entitled to under the inspection rules and grades adopted by the secretary of agriculture of the United States. The person requesting the inspection service shall pay for the inspection. If the grain in question is damp, otherwise out of condition, or if moisture content is in dispute, the sample must be placed in an airtight container. Payment for the grain involved in the dispute must be made and accepted on the basis of the determination made by the federal licensed inspector or third party. However, all other quality factors may also be considered in determining the price of the grain. An appeal of the determination made by a third party other than a federal licensed inspector may be made to a federal licensed inspector. An appeal of the

determination made by a federal licensed inspector may be made as provided under the United States Grain Standards Act [Pub. L. ~~90-487~~ 103-354; ~~82~~ 108 Stat. ~~764~~ 3237; 7 U.S.C. 79(c) and (d)] and under 7 CFR 800.125-800.140. A person not abiding by a final determination is liable for damage resulting from not abiding by the determination.

**SECTION 3. AMENDMENT.** Section 60-02-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**60-02-07. Public warehouse license - How obtained - Fee - Financial statement.**

An annual license must be obtained from the commission for each public warehouse in operation in this state. The license expires on July thirty-first of each year. No license may describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described. The annual license fee for a public warehouse is two hundred fifty dollars for a warehouse of a bushel capacity of two hundred thousand [7047.8 cubic meters] or less, four hundred dollars for a warehouse of a bushel capacity of more than two hundred thousand and not more than five hundred thousand [7047.8 to not more than 17619.54 cubic meters], and five hundred dollars for a warehouse of a bushel capacity of more than five hundred thousand [17619.54 cubic meters]. If a public warehouseman operates two or more warehouses in the same city or siding, in conjunction with each other and with the same working force, and keeps one set of books and records for all such warehouses, and issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts for the grain stored and purchased therein, only one license is required for the operation of all such warehouses. Where two or more warehouses are operated under one license, the license fee is based upon the combined bushel capacity of the warehouses. If the commission employs fewer than two full-time equivalent warehouse inspectors, each annual fee under this section is reduced by one hundred dollars.

If required to obtain United States department of agriculture approval of the commission's warehouse inspection program, the commission may require that the applicant submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this section is a confidential trade secret and is not a public record.

**SECTION 4. AMENDMENT.** Section 60-02-17 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery.** A warehouse receipt must contain, either on its face or reverse side, the following warehouse and storage contract:

~~"This grain is received, insured, and stored subject to the following charges: one-tenth of one cent per net bushel [35.24 liters] per day, except for dry edible beans which are subject to a daily storage rate fixed at the time of delivery no greater than one-half of one cent per net hundredweight [45.36 kilograms] per day, provided, however, that no storage may be charged for grain so stored for fifteen days from date of delivery if such grain is sold within such fifteen day period; however, if such grain is not sold within the fifteen days, storage charges commence from the date a warehouse receipt was issued. All grain received for storage is subject to a charge of seven cents per net bushel [35.24 liters], except for flax which is subject to a charge of seven cents per gross bushel [35.24 liters] and dry edible beans which are subject to a charge of ten cents per net hundredweight [45.36 kilograms]. Grain purchased by the warehouseman is exempt from the receiving and redelivery charges. Except for dry edible beans, upon laws and rules of the state of North Dakota, the terms of this contract and the charges and conditions stated herein and as filed with the North Dakota public service commission. Upon surrender of this receipt and payment or tender of a delivery charge per gross bushel [35.24 liters] of five cents on flax and five cents per net bushel [35.24 liters] on all other grains and all other stated lawful charges accrued up to the time of surrender of this receipt, the above all applicable charges, the amount, kind, and grade of grain identified in this receipt will be delivered to the person named above or the person's order as rapidly as due diligence, care, and prudence will permit. At the option of the holder of this receipt, the amount, kind, and grade of grain for which this receipt is issued, upon demand, must be delivered back to the holder at any terminal point customarily shipped to, or at the place where received, upon~~

the payment of ~~the above~~ any charges for receiving, handling, storage, and insurance and in case of terminal delivery, the payment in addition to the above of the regular freight charges on the gross amount called for by this ticket or in lieu thereof, a receipt issued by a bonded warehouse or elevator company doing business at the terminal point. Nothing in this receipt requires the delivery of the identical grain specified herein, but an equal amount of grain of the same kind and grade must be delivered. ~~Dry edible beans will be delivered to the holder in accordance with the warehouseman's delivery policy upon the surrender of this receipt and payment or tender of all lawful charges accrued up to the time of surrender including the charge for delivery contained in the delivery policy."~~

~~A warehouseman may charge a different storage rate for grain stored for the United States government under the Food Security Wheat Reserve Act, Pub. L. 101-624, as amended, if the rate is filed with the commission and identified on the warehouse receipt. A warehouseman shall publish and post, in a conspicuous place in its warehouse, the fees that will be assessed for receiving, storing, processing, or redelivering grain. This fee schedule must be filed with the commission as a part of its warehouse license application or annual renewal. These fees must be stated on the warehouse receipt issued for the grain. The fees may be changed upon filing a revised schedule with the commission.~~

**SECTION 5. AMENDMENT.** Subsection 1 of section 60-02-24 of the North Dakota Century Code is amended and reenacted as follows:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the commission, ~~which~~. The report ~~shall~~ must contain or be verified by a written declaration that it is made under the penalties of perjury. ~~Such~~ The report may be called for more frequently if the commission deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The commission may make the information available for use by other governmental entities, but the commission may not release the information in a manner that jeopardizes the confidentiality of individual licensees.

**SECTION 6. AMENDMENT.** Section 60-02-27 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-27. Federal grades to control - Grades to be posted.** All public warehousemen shall purchase and store grain except dry edible beans in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in rules and regulations applicable thereto adopted by federal officials pursuant to law. They shall post in a conspicuous place in their warehouse the official grades so established and also any change that may be made from time to time. Warehousemen of dry edible beans shall purchase, store, and deliver beans in accordance with their policy which must be filed with the commission and posted in a conspicuous place in their warehouse. Other grading standards may be used if mutually agreed to in writing by the warehouseman and the owner of the grain. However, the owner may demand the use of federal grading standards. The commission, after hearing, may prohibit the use of nonfederal grades.

**SECTION 7. AMENDMENT.** Section 60-02-37 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-37. Destruction of warehouse - Duty to notify commission.** In case of the destruction by fire or other cause of any licensed public warehouse, the licensee thereof shall notify the commission ~~by telephone and registered or certified mail~~ within twenty-four hours after such loss.

**SECTION 8.** Three new subsections to section 60-04-03.1 of the North Dakota Century Code are created and enacted as follows:

Unencumbered accounts receivable for grain sold at the time or following the filing of a claim that precipitates an insolvency.

Unencumbered equity in grain hedging accounts.

Unencumbered grain product assets.

**SECTION 9. REPEAL.** Section 60-02-17.1 of the North Dakota Century Code is repealed.

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Speaker of the House

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President of the Senate

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Chief Clerk of the House

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Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1156.

House Vote:      Yeas    77      Nays    21      Absent    0

Senate Vote:    Yeas    48      Nays    0      Absent    1

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 1999.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 1999.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 1999,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State