

HOUSE BILL NO. 1197

Introduced by

Representatives Pollert, Mueller, Weisz

Senators Erbele, Nichols, Urlacher

1 A BILL for an Act to create and enact a new chapter to title 60 of the North Dakota Century
2 Code, relating to the creation of a credit-sale contract indemnity fund; to amend and reenact
3 sections 60-02.1-28, 60-02.1-30, 60-04-02, and 60-04-03.1 of the North Dakota Century Code,
4 relating to insolvencies of grain buyers and warehousemen; and to provide a penalty.

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

6 **SECTION 1. AMENDMENT.** Section 60-02.1-28 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **60-02.1-28. Insolvency of grain buyer.** A licensee is insolvent when the licensee
9 ~~defaults in~~ refuses, neglects, or is unable upon proper demand to make payment for grain
10 purchased or marketed by the licensee.

11 **SECTION 2. AMENDMENT.** Section 60-02.1-30 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **60-02.1-30. Trust fund established.** Upon the insolvency of any licensee, a trust fund
14 must be established for the benefit of cash sale claimants and to pay the costs incurred by the
15 commission in the administration of the insolvency. The trust fund must consist of the following:

- 16 1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the
17 proceeds obtained from the conversion of such grain.
- 18 2. The proceeds, including accounts receivable, from any grain sold from the time of
19 the filing of the claim that precipitated an insolvency until the commission is
20 appointed trustee must be remitted to the commission and included in the trust
21 fund.
- 22 3. The proceeds of insurance policies on destroyed grain.
- 23 4. The claims for relief, and proceeds therefrom, for damages upon bond given by the
24 licensee to ensure faithful performance of the duties of a licensee.

5. The claim for relief, and proceeds therefrom, for the conversion of any grain stored in the warehouse.
6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency.
7. Unencumbered equity in grain hedging accounts.
8. Unencumbered grain product assets.

SECTION 3. AMENDMENT. Section 60-04-02 of the North Dakota Century Code is amended and reenacted as follows:

60-04-02. Insolvency of warehouseman. ~~Whenever any warehouseman, by reason of the destruction of the person's warehouse or for any other cause, shall refuse, neglect, or be~~
A licensee is insolvent when the licensee refuses, neglects, or is unable, upon proper demand, to redeem any receipt issued by the warehouseman, through redelivery or cash payment, such warehouseman shall be deemed to be insolvent within the meaning of this chapter make payment for grain purchased or marketed by the licensee or to make redelivery or payment for grain stored.

SECTION 4. AMENDMENT. Section 60-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.1. Trust fund established. Upon the insolvency of any warehouseman, a trust fund shall be established for the benefit of cash sale and storage receiptholders of the insolvent warehouseman and to pay the costs incurred by the commission in the administration of this chapter. The trust fund must consist of the following:

1. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of such grain.
2. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the commission is appointed trustee must be remitted to the commission and included in the trust fund.
3. The proceeds of insurance policies upon grain destroyed in the elevator.
4. The claims for relief, and proceeds therefrom, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman.

- 1 5. The claim for relief, and proceeds therefrom, for the conversion of any grain stored
- 2 in the warehouse.
- 3 6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that
- 4 precipitated an insolvency.
- 5 7. Unencumbered equity in grain hedging accounts.
- 6 8. Unencumbered grain product assets.

7 **SECTION 5.** A new chapter to title 60 of the North Dakota Century Code is created and
8 enacted as follows:

9 **Credit-sale contracts - Assessment on grain - Submission of assessment.** An
10 assessment at the rate of two-tenths of one percent is placed on the value of all grain sold in
11 this state under a credit-sale contract, as provided for in sections 60-02-19.1 and 60-02.1-14.
12 The warehouseman purchasing the grain shall note the assessment on the contract required
13 under sections 60-02-19.1 and 60-02.1-14 and shall deduct the assessment from the purchase
14 price payable to the seller. The warehouseman shall submit any assessment collected under
15 this section to the public service commission no later than thirty days after each calendar
16 quarter. The commission shall deposit the assessments received under this section in the
17 credit-sale contract indemnity fund.

18 **Credit-sale contract indemnity fund - Creation - Continuing appropriation.** There
19 is created in the state treasury the credit-sale contract indemnity fund. The fund and interest
20 earned on the fund are appropriated to the public service commission on a continuing basis to
21 be used exclusively to carry out the intent and purpose of this Act.

22 **Credit-sale contract indemnity fund - Suspension of assessment.** When the
23 credit-sale contract indemnity fund reaches a level of ten million dollars, the public service
24 commission may suspend collection of the assessment required by section 1 of this Act. If after
25 suspension of collection the balance in the fund is less than five million dollars, the public
26 service commission shall require collection of the assessment.

27 **Credit-sale contract indemnity fund - Eligibility for reimbursement.** A person is
28 eligible to receive indemnity payments from the credit-sale contract indemnity fund if:

- 29 1. After August 1, 2003, the person sold grain to a warehouse in this state under the
30 provisions of a credit-sale contract;
- 31 2. The warehouse to which the person sold grain becomes insolvent; and

1 3. The warehouse, as a result of the insolvency, does not fully compensate the
2 person in accordance with the credit-sale contract.

3 **Credit-sale contract indemnity fund - Availability of money.** Upon the insolvency of
4 a warehouse and a declaration that the public service commission serve as the trustee, the
5 public service commission shall make the proceeds of the credit-sale contract indemnity fund
6 available for use in meeting the warehouse's obligations with respect to the reimbursement of
7 any person who sold grain to the warehouse under a credit-sale contract and who was not fully
8 compensated in accordance with the contract.

9 **Credit-sale contract indemnity fund - Reimbursement limit.** The amount payable to
10 any eligible person from the credit-sale contract indemnity fund may not exceed the lesser of
11 eighty percent of the amount owed to that eligible person in accordance with the credit-sale
12 contract or one hundred thousand dollars.

13 **Credit-sale contract indemnity fund - Prorated claims.** If claims for indemnity
14 payments from the credit-sale contract indemnity fund exceed the amount in the fund, the public
15 service commission shall prorate the claims and pay the prorated amounts. As future
16 assessments are collected, the public service commission shall continue to forward indemnity
17 payments to each eligible person until the person receives the maximum amount payable in
18 accordance with section 6 of this Act.

19 **Reimbursement for later insolvencies.** The public service commission shall ensure
20 that all persons eligible for payment from the indemnity fund as a result of an insolvency are
21 fully compensated to the extent permitted by this Act before any payments from the indemnity
22 fund are initiated as a result of a later insolvency.

23 **Credit-sale contract indemnity fund - Reimbursement for administrative**
24 **expenses.** Any expense incurred by the public service commission in administering the
25 credit-sale contract indemnity fund is reimbursable from the fund before any other claim for
26 indemnity is paid.

27 **Credit-sale contract indemnity fund assessment - Failure to collect assessment -**
28 **Penalty.** Any person who knowingly or intentionally refuses or fails to collect the assessment
29 required under section 1 of this Act from producers or to submit any assessment collected from
30 producers to the public service commission for deposit in the credit-sale contract indemnity fund
31 is guilty of a class A misdemeanor.