

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED 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 noncredit-sale claimants and to pay the costs incurred by
15 the commission in the administration of the insolvency. The trust fund must consist of the
16 following:

- 17 1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the
18 proceeds obtained from the conversion of such grain.
- 19 2. The proceeds, including accounts receivable, from any grain sold from the time of
20 the filing of the claim that precipitated an insolvency until the commission is
21 appointed trustee must be remitted to the commission and included in the trust
22 fund.
- 23 3. The proceeds of insurance policies on destroyed grain.

4. The claims for relief, and proceeds therefrom, for damages upon bond given by the 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 noncredit-sale 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.

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

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

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

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

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

- 1 1. After August 1, 2003, the person sold grain to a licensed warehouse or a grain
2 buyer in this state under the provisions of a credit-sale contract;
- 3 2. The licensed warehouse to which the person sold grain or the grain buyer to whom
4 the person sold grain becomes insolvent; and
- 5 3. The licensed warehouse or the grain buyer, as a result of the insolvency, does not
6 fully compensate the person in accordance with the credit-sale contract.

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

13 **Credit-sale contract indemnity fund - Reimbursement limit.** The amount payable to
14 any eligible person from the credit-sale contract indemnity fund may not exceed the lesser of
15 eighty percent of the amount owed to that eligible person in accordance with all of that person's
16 unsatisfied credit-sale contracts or two hundred fifty thousand dollars.

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

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

27 **Credit-sale contract indemnity fund - Reimbursement for administrative**
28 **expenses.** Any expense incurred by the public service commission in administering the
29 credit-sale contract indemnity fund is reimbursable from the fund before any other claim for
30 indemnity is paid.

Credit-sale contract indemnity fund assessment - Failure to collect assessment -

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

Revocation and suspension. The commission may suspend or revoke the license of any licensee for cause upon notice and hearing for violation of this chapter.

Cease and desist. If a person engages in an activity or practice that is contrary to this chapter or rules adopted by the commission, the commission, upon its own motion without complaint and with or without a hearing, may order the person to cease and desist from the activity until further order of the commission. The order may include any corrective action up to and including license suspension. A cease and desist order must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

Claims. A claim concerning a grain buyer must be administered in a manner consistent with chapter 60-02.1. A claim concerning a state licensed grain warehouse must be administered in a manner consistent with chapter 60-04. A payment may not be made from the credit-sale contract indemnity fund for a claim based on losses resulting from the sale of grain to a person not licensed under chapter 60-02, chapter 60-02.1, or the United States Warehouse Act [Pub. L. 106-472; 114 Stat. 2061; 7 U.S.C. 241 et seq.].

Subrogation. Money paid from the credit-sale contract indemnity fund in satisfaction of a valid claim constitutes a debt obligation of the person against whom the claim was made. The commission may take action on behalf of the fund against a person to recover the amount of payment made, plus costs and attorney's fees. Any recovery for reimbursement to the fund must include interest computed at the weight average prime rate charged by the Bank of North Dakota. Upon payment of a claim from the credit-sale contract indemnity fund, the claimant shall subrogate its interest, if any, to the commission in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the fund.

Unlicensed facility-based grain buyer. This chapter also applies to a facility-based grain buyer, as defined in section 60-02.1-01, which is licensed under the United States Warehouse Act but which does not possess a state grain buyer license. The commission has the duty and power to examine and inspect, during regular business hours, all books,

Fifty-eighth
Legislative Assembly

- 1 documents, and records related to collections and remittances pertaining to the credit-sale
- 2 contract indemnity fund. In the case of insolvency, credit-sale contract payments to valid
- 3 claimants must be reduced by an amount equal to the credit-sale contract indemnity payments
- 4 received from payments administered by the United States department of agriculture.