

**FIRST ENGROSSMENT
with Senate Amendments**

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, 60-02.1-34, 60-04-02, and 60-04-03.1 of the North Dakota
4 Century Code, relating to insolvencies of grain buyers and warehousemen; and to provide a
5 penalty.

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

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

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

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

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

- 18 1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the
19 proceeds obtained from the conversion of such grain.
- 20 2. The proceeds, including accounts receivable, from any grain sold from the time of
21 the filing of the claim that precipitated an insolvency until the commission is
22 appointed trustee must be remitted to the commission and included in the trust
23 fund.
- 24 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 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-34. Commission to marshal trust assets. Upon its appointment, the commission shall marshal all of the trust fund assets. The commission may maintain suits in the name of the state of North Dakota for the benefit of all noncredit-sale claimants against the licensee's bonds, insurers of grain, any person who may have converted any grain, and any person who may have received preferential treatment by being paid by the insolvent licensee after the first default.

SECTION 4. 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 5. 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 1. The grain in the warehouse of the insolvent warehouseman or the proceeds as
- 2 obtained through the sale of such grain.
- 3 2. The proceeds, including accounts receivable, from any grain sold from the time of
- 4 the filing of the claim that precipitated an insolvency until the commission is
- 5 appointed trustee must be remitted to the commission and included in the trust
- 6 fund.
- 7 3. The proceeds of insurance policies upon grain destroyed in the elevator.
- 8 4. The claims for relief, and proceeds therefrom, for damages upon any bond given
- 9 by the warehouseman to ensure faithful performance of the duties of a
- 10 warehouseman.
- 11 5. The claim for relief, and proceeds therefrom, for the conversion of any grain stored
- 12 in the warehouse.
- 13 6. Unencumbered accounts receivable for grain sold prior to the filing of the claim
- 14 that precipitated an insolvency.
- 15 7. Unencumbered equity in grain hedging accounts.
- 16 8. Unencumbered grain product assets.

17 **SECTION 6.** A new chapter to title 60 of the North Dakota Century Code is created and
18 enacted as follows:

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

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

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

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

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

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

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

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

30 **Reimbursement for later insolvencies.** The public service commission shall ensure
31 that all persons eligible for payment from the indemnity fund as a result of an insolvency are

1 fully compensated to the extent permitted by this Act before any payments from the indemnity
2 fund are initiated as a result of a later insolvency.

3 **Credit-sale contract indemnity fund - Reimbursement for administrative**
4 **expenses.** Any expense incurred by the public service commission in administrating the
5 credit-sale contract indemnity fund is reimbursable from the fund before any other claim for
6 indemnity is paid.

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

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

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

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

26 **Subrogation.** Money paid from the credit-sale contract indemnity fund in satisfaction of
27 a valid claim constitutes a debt obligation of the person against whom the claim was made.
28 The commission may take action on behalf of the fund against a person to recover the amount
29 of payment made, plus costs and attorney's fees. Any recovery for reimbursement to the fund
30 must include interest computed at the weight average prime rate charged by the Bank of North
31 Dakota. Upon payment of a claim from the credit-sale contract indemnity fund, the claimant

1 shall subrogate its interest, if any, to the commission in a cause of action against all parties, to
2 the amount of the loss that the claimant was reimbursed by the fund.

3 **Unlicensed facility-based grain buyer.** This chapter also applies to a facility-based
4 grain buyer, as defined in section 60-02.1-01, which is licensed under the United States
5 Warehouse Act but which does not possess a state grain buyer license. The commission has
6 the duty and power to examine and inspect, during regular business hours, all books,
7 documents, and records related to collections and remittances pertaining to the credit-sale
8 contract indemnity fund. In the case of insolvency, credit-sale contract payments to valid
9 claimants must be reduced by an amount equal to the credit-sale contract indemnity payments
10 received from payments administered by the United States department of agriculture.