

Fifty-ninth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2279**

Introduced by

Senators Klein, Flakoll, Krauter

Representatives Brandenburg, Schmidt, Weisz

1 A BILL for an Act to amend and reenact section 51-05.1-01.1, 60-02-03, 60-02-09, 60-02-09.1,  
2 and 60-04-06 of the North Dakota Century Code, relating to a bonding fund for auctioneers and  
3 grain warehousemen; to repeal section 60-04-03.3 of the North Dakota Century Code, relating  
4 to joinder of a surety; and to provide a continuing appropriation.

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

6 **SECTION 1. AMENDMENT.** Section 51-05.1-01.1 of the North Dakota Century Code  
7 is amended and reenacted as follows:

8 **51-05.1-01.1. Auctioneer's license - Clerk's license - Fees - ~~Bonds~~ Bonding fund -**  
9 **Continuing appropriation.**

- 10 1. The initial application for an annual auctioneer's or clerk's license must be in  
11 writing, verified, and must show the name, residence, and address of the applicant.  
12 An application must be filed at least ten days ~~prior to~~ before the first auction sale  
13 the applicant is to conduct or clerk. Application for renewal of an annual license  
14 must be on forms designated by the commission. The fee for the annual license or  
15 renewal is thirty-five dollars and must accompany the application. The name and  
16 license number must appear on all advertising of sales conducted by an auctioneer  
17 or clerk. Renewals that are not received by January thirty-first must be assessed  
18 an additional twenty-five dollar fee.
- 19 2. Before a license is issued to an auctioneer or auction clerk, the applicant must ~~file~~  
20 purchase a ~~corporate surety~~ bond ~~with~~ from the commission. This bond must  
21 provide annual coverage of not less than five thousand dollars for an auctioneer or  
22 ten thousand dollars for an auction clerk, ~~must run to the state of North Dakota,~~  
23 and must be for the benefit of any person injured by the licensee's improper  
24 conduct. ~~Bonds may not be canceled on less than sixty days' written notice to the~~

~~commission.~~ The size of the licensee's bond must be clearly and prominently stated in all contracts with sellers.

3. There is created in the state treasury the auctioneer bonding fund. The commission shall set premiums and otherwise administer the fund. Moneys in the fund and the interest earned on the fund are appropriated on a continuing basis to the commission to carry out the purposes of this chapter. Upon the request of the commission, the state investment board shall invest the moneys in the fund in accordance with chapter 21-10.

**SECTION 2. AMENDMENT.** Section 60-02-03 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-03. Duties and powers of the commission.** The commission ~~shall have~~ has the duty and power to:

1. Exercise general supervision of the public warehouses of this state, including the handling, weighing, and storing of grain, and the management of public warehouses.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any licensed warehouse, including all books, documents, and records.
4. Require the filing of reports pertaining to the operation of the warehouse.
5. Set premiums and otherwise administer a bonding fund for public warehousemen.
6. Make all proper rules for carrying out and enforcing any law in this state regarding public warehouses.

**SECTION 3. AMENDMENT.** Section 60-02-09 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-09. Bond ~~filed by~~ of public warehouseman - Bonding fund - Continuing appropriation.**

1. Before ~~any~~ a license is issued to any public warehouseman under this chapter, the applicant for ~~such~~ the license shall ~~file~~ purchase a bond ~~with~~ from the commission which ~~shall~~ must:
- 4- a. Be in a sum not less than five thousand dollars for any one warehouse.

- 1        ~~2-~~ b. Be continuous, unless the ~~corporate surety~~ commission by certified mail
- 2                    notifies the licensee and the commission that the surety bond will be canceled
- 3                    ninety days after receipt of the notice of cancellation.
- 4        ~~3-~~ c. ~~Run to the state of North Dakota~~ Be for the benefit of all persons storing or
- 5                    selling grain in ~~such~~ the warehouse.
- 6        ~~4-~~ d. Be conditioned:
- 7            ~~a-~~ (1) For the faithful performance of the licensee's duties as a public
- 8                    warehouseman.
- 9            ~~b-~~ (2) For compliance with the provisions of law and the rules of the
- 10                    commission relating to the storage and purchase of grain by ~~such~~
- 11                    warehouseman.
- 12        ~~5-~~ e. Specify the location of each public warehouse intended to be covered by ~~such~~
- 13                    the bond.
- 14        ~~6-~~ f. Be for the specific purpose of:
- 15            ~~a-~~ (1) Protecting the holders of outstanding receipts.
- 16            ~~b-~~ (2) Covering the costs incurred by the commission in the administration of
- 17                    chapter 60-04 in the event of the licensee's insolvency.
- 18        ~~7-~~ g. Not accrue to the benefit of any person entering ~~into~~ a credit-sale contract
- 19                    with a public warehouseman.
- 20        ~~8-~~ 2. ~~In no event shall the~~ The aggregate liability ~~of the surety~~ under a bond may not
- 21                    accumulate for each successive annual license renewal period during which ~~such~~
- 22                    the bond is in force, but, for losses during any annual license renewal period, ~~shall~~
- 23                    be is limited in the aggregate to the bond amount stated or changed by appropriate
- 24                    endorsement or rider.
- 25        3. The commission shall set the amount of the bond and may require an increase in
- 26                    the amount of any bond, ~~from time to time, as it shall, in its discretion, deem~~
- 27                    ~~necessary~~ to accomplish the purposes of this section. ~~The surety on such a bond~~
- 28                    ~~must be a corporate surety company, approved by the commission, and authorized~~
- 29                    ~~to do business within the state.~~ The commission may accept cash, a negotiable
- 30                    instrument, or a bond executed by personal sureties in lieu of ~~a surety~~ the
- 31                    commission's bond ~~when, in its judgment, such~~ if the commission determines the

cash, negotiable instrument, or personal surety bond ~~properly~~ will protect the holders of outstanding receipts. One bond only ~~shall~~ may be given for any line of elevators, mills, or warehouses, owned, controlled, or operated by one individual, firm, corporation, or limited liability company, and ~~such the bond shall be construed to cover such~~ covers the elevators, mills, or warehouses, as a whole and not a specific amount for each.

4. There is created in the state treasury the grain warehousemen bonding fund. Moneys in the fund and interest on the fund are appropriated on a continuing basis to the commission to carry out the purposes of this chapter. Upon request of the commission, the state investment board shall invest the moneys in the fund in accordance with chapter 21-10.

**SECTION 4. AMENDMENT.** Section 60-02-09.1 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-09.1. Bond cancellation - Release of surety.** ~~The surety on a bond bonding fund~~ is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the commission of notice of cancellation by the surety or on a later date specified by the surety commission. This provision does not operate to relieve, release, or discharge the ~~surety bonding fund~~ from any liability already accrued or which accrues before the expiration of the ninety-day period. Unless the warehouseman files a new bond suitable substitute for a bond at least thirty days before liability ceases, the commission, without hearing, ~~shall~~ shall immediately suspend the warehouseman's license and the suspension may not be removed until a ~~new bond suitable substitute for a bond~~ has been filed and approved by the commission. When a license is so suspended, the warehouseman shall give notice of ~~such the~~ suspension to each receipt holder having grain stored in the warehouse. The warehouseman shall further notify each receipt holder having grain stored in the warehouse that the grain must be removed from the warehouse or it will be priced and redeemed in cash in accordance with section 60-02-41.

**SECTION 5. AMENDMENT.** Section 60-04-06 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-06. Commission to marshall trust assets.**

1       1. Upon its appointment by the district court, the commission may maintain ~~suits at~~  
2       ~~law or in equity,~~ actions or use any special proceeding; in the name of the state of  
3       North Dakota, ~~upon its own relation,~~ but for the benefit of all ~~such~~ receiptholders  
4       against:

5       1. ~~The~~ the insurers of grain;

6       2. ~~The~~ warehouseman's bond;

7       3. ~~Any,~~ the person who may have converted any grain; or

8       4. ~~Any~~ the receiptholder who ~~shall have~~ received more than ~~its~~ the just and pro rata  
9       share of grain;

10      2. The commission shall bring these actions for the purpose of marshalling all of the  
11      trust fund assets and distributing the ~~same~~ assets among the receiptholders. The  
12      commission shall seek possession of any grain in the warehouse before recourse  
13      is had against the insurers of grain, and the remedy against the insurers of grain  
14      shall be exhausted before recourse is had against the bond, and against the bond  
15      before recourse is had against the person honestly converting grain, unless the  
16      commission shall deem it necessary to the redemption of the receipts that all the  
17      above remedies be pursued at the same time.

18      **SECTION 6. REPEAL.** Section 60-04-03.3 of the North Dakota Century Code is

19      repealed.