

Sixty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1126

Introduced by

Agriculture Committee

(At the request of the Public Service Commission)

A BILL for an Act to amend and reenact sections ~~60-02-03~~, 60-02-09, 60-02-17, ~~60-02-25~~,
60-02-35, 60-02-38, 60-02-40, ~~60-02-44~~, ~~60-02.1-03~~, 60-02.1-08, 60-02.1-26, 60-02.1-28,
~~60-02.1-29~~, ~~60-02.1-30~~, ~~60-02.1-31~~, 60-02.1-32, ~~60-02.1-33~~, ~~60-02.1-34~~, 60-02.1-35,
~~60-02.1-36~~, 60-02.1-37, 60-02.1-38, 60-04-02, ~~60-04-03~~, ~~60-04-03.1~~, ~~60-04-03.3~~, ~~60-04-03~~,
60-04-04, ~~60-04-05~~, ~~60-04-06~~, 60-04-07, ~~60-04-08~~, 60-04-09, 60-04-10, ~~60-10-01~~, ~~60-10-02~~,
~~60-10-04~~, ~~60-10-05~~, ~~60-10-06~~, ~~60-10-07~~, ~~60-10-08~~, and 60-10-09, ~~60-10-10~~, ~~60-10-13~~,
~~60-10-14~~, and ~~60-10-15~~ of the North Dakota Century Code, relating to public warehouse and
grain buyer licensing, ~~conditions and attributes of licensure and accepting delivery of grain~~
~~when a licensee is insolvent, the insolvency process, the credit-sale contract indemnity fund~~
~~and the grain indemnity fund~~ and insolvencies of public warehouses and grain buyers; to repeal
sections ~~60-02-02~~, ~~60-02-25.1~~, 60-02-39, ~~60-02.1-02~~, and 60-02.1-25, ~~60-04-03.2~~, and
~~60-10-03~~ of the North Dakota Century Code, relating to ~~duties of the commission~~,
~~receiptholders' lien~~, warehouse ~~closure~~, ~~grain of insolvent warehouseman as trust asset~~, and
~~suspension of indemnity fund assessments~~; and to provide for a transfer closures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

~~SECTION 1. 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 the duty and power to may:~~

~~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.~~

~~3.2. Examine and inspect, during ordinary business hours, any licensed warehouse,
including all books, documents, and records.~~

~~4.3. Require the filing of reports pertaining to the operation of the warehouse.~~

~~5.4. Make all proper rules for carrying out and enforcing any law in this state regarding
public warehouses.~~

SECTION 1. AMENDMENT. Section 60-02-09 of the North Dakota Century Code is
amended and reenacted as follows:

60-02-09. Bond filed by public warehouseman.

Before any license is ~~issued to~~effective for any public warehouseman under this chapter,
the applicant for such ~~the~~ license shall file a bond with the commission which ~~shall~~must:

1. Be in a sum not less than five thousand dollars for any one warehouse.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commission that the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons storing or selling grain in ~~such~~that warehouse.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a public warehouseman.
 - b. For compliance with the provisions of law and the rules of the commission relating to the storage and purchase of grain by such warehouseman.
5. Specify the location of each public warehouse intended to be covered by such bond.
6. Be for the specific purpose of:
 - a. Protecting the holders of outstanding receipts.
 - b. Covering the costs incurred by the commission in the administration of chapter 60-04 in the event of the licensee's insolvency.
7. Not accrue to the benefit of any person entering into a credit-sale contract with a public warehouseman.
8. ~~In no event shall the~~The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which ~~such~~the bond is in force but, for losses during any annual license renewal period, ~~shall be~~is

1 limited in the aggregate to the bond amount stated or changed by appropriate
2 endorsement or rider.

3 The commission shall set the amount of the bond and may require an increase in the amount of
4 any bond, from time to time, as ~~it shall, in its discretion, deem~~the commission deems necessary
5 to accomplish the purposes of this section. The surety on ~~such a~~the bond must be a corporate
6 surety company, approved by the commission, and authorized to do business within the state.
7 The commission may accept cash, a negotiable instrument, or a bond executed by personal
8 sureties in lieu of a surety bond when, in its judgment, ~~such~~the cash, negotiable instrument, or
9 personal surety bond properly will protect the holders of outstanding receipts. One bond only
10 ~~shall~~may be given for any line of elevators, mills, or warehouses, owned, controlled, or operated
11 by one individual, firm, corporation, or limited liability company, and ~~such~~the bond ~~shall~~must be
12 construed to cover such elevators, mills, or warehouses, as a whole and not a specific amount
13 for each.

14 **SECTION 2. AMENDMENT.** Section 60-02-17 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery.**

17 A warehouse receipt must contain, either on its face or reverse side, the following
18 warehouse and storage contract:

19 This grain is received, insured, and stored subject to the laws and rules of the state of North
20 Dakota, the terms of this contract, and the charges and conditions stated herein and as filed
21 with the North Dakota public service commission. Upon surrender of this receipt and
22 payment or tender of all applicable charges, the amount, kind, and grade of grain identified
23 in this receipt will be delivered to the person named above or the person's order as rapidly
24 as due diligence, care, and prudence will permit. At the option of the holder of this receipt,
25 the amount, kind, and grade of grain for which this receipt is issued, upon demand, must be
26 delivered back to the holder at any terminal point customarily shipped to, or at the place
27 where received, upon the payment of any charges for receiving, handling, storage, and
28 insurance and in case of terminal delivery, the payment in addition to the above of the
29 regular freight charges on the gross amount called for by this ticket or in lieu thereof, a
30 receipt issued by a bonded warehouse or elevator company doing business at the terminal
31 point. ~~Nothing in this~~This receipt requires~~does not require~~ the delivery of the identical grain

1 specified herein, but an equal amount of grain of the same kind and grade must be
2 delivered.

3 A warehouseman shall publish and post, in a conspicuous place in its warehouse, the fees that
4 will be assessed for receiving, storing, processing, or redelivering grain and the termination date
5 of its warehouse receipts. This publication must be filed with the commission as a part of the
6 warehouse license ~~application~~process or annual renewal. The fees and termination date must
7 be stated on the warehouse receipt issued for the grain. The fees or termination date may be
8 changed upon filing a revised publication with the commission.

9 ~~— **SECTION 3. AMENDMENT.** Section 60-02-25 of the North Dakota Century Code is~~
10 ~~amended and reenacted as follows:~~

11 ~~— **60-02-25. Bailment not a sale.**~~

12 ~~— Whenever any grain shall be is delivered to any public warehouse and an unconverted scale~~
13 ~~ticket or a warehouse receipt is issued therefor, such the delivery shall be is a bailment and not a~~
14 ~~sale of the grain so delivered. In no case shall the The delivered grain so delivered be liable is~~
15 ~~not subject to seizure upon process of any court in any action against such the bailee, except in~~
16 ~~an action by an owner of such an unconverted scale ticket or warehouse receipt to enforce the~~
17 ~~terms thereof or obtain redelivery of such the delivered grain. In the event of the failure or~~
18 ~~insolvency of the warehouseman, all the grain in the warehouse, whether the same is stored or~~
19 ~~not, first shall be applied at all times to the satisfaction of receipts issued by the warehouseman.~~

20 **SECTION 3. AMENDMENT.** Section 60-02-35 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **60-02-35. Grain to be kept insured for benefit of owner by warehouseman.**

23 ~~No~~A public warehouseman license may be issued to a public warehouseman ~~is not effective~~
24 unless all grain in storage or on deposit in the warehouse is kept fully insured at the expense of
25 the warehouseman for the benefit of the owner at the current market value of the grain against
26 loss by fire, lightning, internal explosion, windstorm, cyclone, tornado, and such other risks of
27 direct physical loss as provided by the insurer in a policy approved by the insurance
28 commissioner. ~~No~~An insurance policy covering grain in a public warehouse may not be
29 transferred or assigned to any person for any purpose, except for grain that is not on
30 warehouse receipt or deposit. The insurance policy must be continuous and may only be
31 canceled in accordance with section 60-02-35.1.

1 **SECTION 4. AMENDMENT.** Section 60-02-38 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **60-02-38. Refund of license fee by commission.**

4 When requested in writing, the commission shall refund the license fee of a public
5 warehouse, or so much as in its judgment is just and reasonable, when satisfactory proof is
6 furnished that the warehouse has been transferred to some other person, and the new owner
7 has ~~applied for~~obtained a license for the same warehouse for the unexpired period for which the
8 original license was issued. When a warehouse is destroyed by fire or other cause, the license
9 fee may be prorated as the commission may determine.

10 **SECTION 5. AMENDMENT.** Section 60-02-40 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **60-02-40. Transfer of warehouse - Redemption of receipts.**

13 Whenever a public warehouseman desires to transfer a warehouse, either by sale or lease
14 to any other individual, firm, or corporation, the warehouseman shall:

- 15 1. Notify the commission first of its intention to transfer the warehouse, giving the name
16 and address of the proposed lessee or purchaser.
- 17 2. Furnish a statement of all proper claims that may be filed or pending against the
18 warehouseman pertaining to the storage, inspection, and marketing of grain, together
19 with a statement of:
 - 20 a. The number of bushels [cubic meters] of grain of each kind and grade in store in
21 the warehouse;
 - 22 b. The number and amount of receipts outstanding; and
 - 23 c. The names and addresses of the receiptholders.
- 24 3. Serve notice by registered or certified mail, at least thirty days before the transfer,
25 upon all receiptholders having claims against the warehouse to call for delivery of the
26 grain covered by the receipts, and to pay all storage charges due, the warehouseman
27 in such case to make no charge for redelivery. The commission may waive the
28 thirty-day notice period upon receipt of written consent of all receiptholders.
- 29 4. Transfer all stored grain undelivered at the expiration of such thirty-day period to its
30 successor, if licensed, or to the nearest licensed warehouse for restorage, taking
31 receipts for the same in favor of the owner of the grain so transferred.

1 5. Surrender to the commission its license for cancellation and at such time the proposed
2 lessee or purchaser shall ~~apply~~file in due form for a new license and tender a new
3 bond for ~~approval~~review by the commission, whereupon, it first being duly satisfied
4 that all the outstanding receipts have been redeemed, or that the redemption thereof
5 has been provided for, the commission may ~~issue~~permit a new license to become
6 effective for the lessee or purchaser.

7 No sale, lease, or transfer of any warehouse will be recognized ~~or permitted~~ by the commission
8 except when made in accordance with the provisions of this section.

9 ~~— **SECTION 7. AMENDMENT.** Section 60-02-44 of the North Dakota Century Code is~~
10 ~~amended and reenacted as follows:~~

11 ~~— **60-02-44. Licensed warehouse capacity and condominium storage.**~~

12 ~~— Unless an entire warehouse facility is used for nonpublic purposes, all physically connected~~
13 ~~portions of the facility must be licensed in accordance with this chapter. The warehouseman~~
14 ~~shall issue receipt memoranda for all grain received. Facilities that are physically connected to~~
15 ~~the licensed warehouse may be sold under a condominium arrangement or leased to other~~
16 ~~entities for nonpublic use and sales and lease agreements must be based on the capacity of the~~
17 ~~bins involved and not on the number of bushels held in the space. The licensee shall provide~~
18 ~~contents insurance and bond coverage for the space. In case of licensee insolvency, the~~
19 ~~contents of the space must be considered an asset to the trust fund established under~~
20 ~~chapter 60-04 and owners and lessees are entitled to trust fund protection in a manner equal to~~
21 ~~all other valid grain receipt holders.~~

22 ~~— **SECTION 9. AMENDMENT.** Section 60-02.1-03 of the North Dakota Century Code is~~
23 ~~amended and reenacted as follows:~~

24 ~~— **60-02.1-03. Duties and powers of the commission.**~~

25 ~~— The commission has the duty and power to:~~

26 ~~— 1. Exercise general supervision of grain buyers of this state.~~

27 ~~— 2. Investigate all complaints of fraud and injustice, unfair practices, and unfair~~
28 ~~discrimination.~~

29 ~~— 3.2. Examine and inspect, during ordinary business hours, any books, documents, and~~
30 ~~records.~~

~~4.3. Make all proper rules for carrying out and enforcing any law in this state regarding grain buyers.~~

SECTION 6. AMENDMENT. Section 60-02.1-08 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-08. Bond filed by grain buyer.

Before any license is ~~issued to~~effective for any grain buyer under this chapter, the applicant for ~~such~~the license shall file a bond with the commission which must:

1. Be in a sum not less than five thousand dollars.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commission that the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons selling grain to or through the grain buyer.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a grain buyer.
 - b. For compliance with the provisions of law and the rules of the commission relating to the purchase of grain by such grain buyer.
5. For facility-based grain buyers, specify the location of each facility intended to be covered by ~~such~~the bond.
6. Be for the specific purpose of:
 - a. Protecting the sellers of grain.
 - b. Covering the costs incurred by the commission in the administration of the licensee's insolvency.
7. Not accrue to the benefit of any person entering into a credit-sale contract with a grain buyer.
8. ~~In no event shall the~~The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which ~~such~~the bond is in force but, for losses during any annual license renewal period, ~~shall be~~is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

1 The commission may require an increase in the amount of any bond, from time to time, as it
2 deems necessary to accomplish the purposes of this section. The surety on ~~such a~~the bond
3 must be a corporate surety company, approved by the commission, and authorized to do
4 business within the state. The commission may accept cash, a negotiable instrument, or a bond
5 executed by personal sureties in lieu of a surety bond when, in its judgment, ~~such~~ cash, a
6 negotiable instrument, or a personal surety bond properly will protect the holders of outstanding
7 receipts. Only one bond may be required for any series of facilities operated by a facility-based
8 grain buyer, and ~~such~~the bond must be construed to cover ~~such~~those facilities as a whole and
9 not a specific amount for each.

10 **SECTION 7. AMENDMENT.** Section 60-02.1-26 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **60-02.1-26. Transfer of facility - Redemption of receipts.**

13 Whenever a facility-based grain buyer desires to transfer a facility, either by sale or lease to
14 any other individual, firm, or corporation, the grain buyer shall:

- 15 1. Notify the commission first of its intention to transfer the facility, giving the name and
16 address of the proposed lessee or purchaser.
- 17 2. Provide related information as may be required by the commission.
- 18 3. Surrender to the commission ~~its~~the grain buyer's license for cancellation and at
19 ~~such~~that time the proposed lessee or purchaser shall ~~apply~~file in due form for a new
20 license and tender a new bond for ~~approval~~review by the commission, whereupon, it
21 first being duly satisfied that all the outstanding receipts have been redeemed, or that
22 the redemption thereof has been provided for, the commission may ~~issue~~permit a new
23 license to become effective for the lessee or purchaser.

24 No sale, lease, or transfer of any facility will be recognized ~~or permitted~~ by the commission
25 except when made in accordance with the provisions of this section.

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

28 **60-02.1-28. Insolvency of grain buyer.**

29 A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper written
30 demand, including electronic communications, to make payment for grain purchased or
31 marketed by the licensee or is unable to make redelivery upon proper written demand, including

electronic communications. The licensee may not assess receiving or redelivery fees on grain that is redelivered during a suspension, following a revocation, or when the owner of the grain is taking redelivery because the licensee is unable to pay for the grain.

~~— **SECTION 13. AMENDMENT.** Section 60-02.1-29 of the North Dakota Century Code is amended and reenacted as follows:~~

~~— **60-02.1-29. Appointment of commission**Commission insolvency proceeding.~~

~~— Upon the insolvency of any roving grain buyer, the commission, on its own motion, shall apply to the district court of Burleigh County for authority to take all action necessary to act as trustee of the trust fund described in section 60-02.1-30. If the insolvency involves a facility-based grain buyer, application must be to the district court of a county in which the licensee operates a licensed facility. Upon notice to the licensee as the court prescribes, but not exceeding twenty days, or upon waiver of notice in writing by the licensee, the court shall hear and determine the application in a summary manner. If the court determines that the licensee is insolvent within the meaning of this chapter and that it would be in the best interests of the receiptholders that the commission secure and execute the trust, the court shall issue an order granting the application, without bond, and the commission shall proceed to exercise its authority without further direction from the court.~~

~~— Upon the filing of the commission's application, the court may issue ex parte a temporary order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the applicationcommence an administrative insolvency proceeding under chapter 28-32 to secure the bond proceeds, identify potential receiptholder and credit-sale claimants, determine the amount of each claim, determine the recommended payment on each claim from the insolvency fund and the grain indemnity fund, make payments on claims, and take any action necessary and appropriate to accomplish the purposes of this chapter.~~

~~— **SECTION 14. AMENDMENT.** Section 60-02.1-30 of the North Dakota Century Code is amended and reenacted as follows:~~

~~— **60-02.1-30. Trust**Insolvency fund established.~~

~~— Upon the insolvency of any licensee, a trustan insolvency fund must be established for the benefit of noncredit-sale receiptholders and to pay the costs incurred by the commission in the administration of the insolvency. The trustinsolvency fund must consist of the following:~~

1 ~~1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds~~
2 ~~obtained from the conversion of such grain.~~

3 ~~2. The proceeds, including accounts receivable, from any grain sold from the time of the~~
4 ~~filing of the claim that precipitated an insolvency until the commission is appointed~~
5 ~~trustee must be remitted to the commission and included in the trust fund.~~

6 ~~3. The proceeds of insurance policies on destroyed grain.~~

7 ~~4. The claims for relief, and proceeds therefrom, for damages upon bond given by the~~
8 ~~licensee to ensure faithful performance of the duties of a licensee.~~

9 ~~5. The claim for relief, and proceeds therefrom, for the conversion of any grain stored in~~
10 ~~the warehouse.~~

11 ~~6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that~~
12 ~~precipitated an insolvency.~~

13 ~~7. Unencumbered equity in grain hedging accounts.~~

14 ~~8. Unencumbered grain product assets.~~

15 ~~**SECTION 15. AMENDMENT.** Section 60-02.1-31 of the North Dakota Century Code is~~
16 ~~amended and reenacted as follows:~~

17 ~~**60-02.1-31. Joinder of and notice to surety -- Deposit of proceeds.**~~

18 ~~Each~~~~The commission shall join each surety on the insolvent licensee's bonds must be~~
19 ~~joined as a party to the insolvency proceeding. If it is in the best interests of the receiptholders,~~
20 ~~the court~~~~commission may order a surety to deposit some or all of the penal sum of the bond into~~
21 ~~the trustee's trust~~~~insolvency account pending determination of the surety's liability under the~~
22 ~~bond.~~

23 **SECTION 9. AMENDMENT.** Section 60-02.1-32 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **60-02.1-32. Notice to receiptholders and credit-sale contract claimants.**

26 Upon ~~its appointment~~~~an insolvency~~, the commission may take possession of relevant books
27 and records of the licensee. If the insolvency involves a roving grain buyer, the commission
28 shall publish a notice of ~~its appointment~~~~the insolvency and the commencement of the~~
29 ~~insolvency proceeding~~ once each week for two consecutive weeks in all daily newspapers in the
30 state and may notify, by ordinary mail, the holders of record of outstanding receipts and those
31 who are potential credit-sale contract claimants, disclosed by the licensee's records. If the

1 insolvency involves a facility-based grain buyer, the notice must be published once each week
2 for two consecutive weeks in a newspaper in the county in which the warehouse is located. The
3 notice must require outstanding receiptholders and credit-sale contract claimants to file their
4 claims with the commission along with the receipts, contracts, or other evidence of the claims
5 required by the commission. If an outstanding receiptholder or credit-sale contract claimant fails
6 to submit a claim within forty-five days after the last publication of the notice or a longer time set
7 by the commission, the commission is relieved of further duty in the administration of the
8 insolvency on behalf of the receiptholder or credit-sale contract claimant and the receiptholder
9 ~~or credit-sale contract claimant~~ may be barred from participation in the trust fund ~~payment for~~
10 ~~any amount due, and the credit-sale contract claimant may be barred from payment for any~~
11 ~~amount due~~. Outstanding receiptholders and credit-sale contract claimants are not parties to the
12 insolvency action unless admitted by the ~~court~~commission upon a motion for intervention.

13 ~~—SECTION 17. AMENDMENT. Section 60-02.1-33 of the North Dakota Century Code is~~
14 ~~amended and reenacted as follows:~~

15 ~~—60-02.1-33. Remedy of receiptholders.~~

16 ~~—No receiptholder has a separate claim for relief upon any insolvent licensee's bond, nor for~~
17 ~~insurance, nor against any person converting grain, nor against any other receiptholder, except~~
18 ~~through the trustee~~commission, ~~unless, upon demand of five or more receiptholders, the~~
19 ~~commission fails or refuses to apply for its own appointment or unless the district court denies~~
20 ~~the application~~commence an insolvency proceeding and join the surety. This chapter does not
21 prohibit any receiptholder, either individually or in conjunction with other receiptholders, from
22 pursuing concurrently any other remedy against the person or property of the licensee.

23 ~~—SECTION 18. AMENDMENT. Section 60-02.1-34 of the North Dakota Century Code is~~
24 ~~amended and reenacted as follows:~~

25 ~~—60-02.1-34. Commission to marshal trust assets~~may maintain suit.

26 ~~—Upon its appointment, the commission shall marshal all of the trust fund assets. The~~
27 ~~commission may maintain suits in the name of the state of North Dakota for the benefit of all~~
28 ~~receiptholders against the licensee's bonds, insurers of grain, any person who may have~~
29 ~~converted any grain, and any person who may have received preferential treatment by being~~
30 ~~paid by the insolvent licensee after the first default.~~

SECTION 10. AMENDMENT. Section 60-02.1-35 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-35. Power of commission to prosecute or compromise claims.

The commission may:

1. Prosecute any action provided in sections 60-02.1-28 through 60-02.1-38 in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action when it will be in the best interests of the receiptholders ~~and credit-sale contract claimants.~~
4. Settle and compromise any action when it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of any settlement or of the full amount of any bond, exonerate the person so paying from further liability growing out of the action.

~~5. Take any other action necessary and appropriate to accomplish the purposes of this chapter.~~

~~**SECTION 20. AMENDMENT.** Section 60-02.1-36 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**60-02.1-36. Money received by trustee -- Deposited in Bank of North Dakota.**~~

~~All funds received by the commission as trustee under this chapter must be deposited in the Bank of North Dakota.~~

SECTION 11. AMENDMENT. Section 60-02.1-37 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-37. Report of trustee to court - Approval and order of commission - Distribution.

1. Upon the receipt and evaluation of claims, the commission shall file with the court ~~issue a notice consistent with chapter 28-32, together with~~ a report showing the amount and validity of each claim after recognizing:
 - a. Relevant liens or pledges.
 - b. Relevant assignments.
 - c. Relevant deductions due to advances or offsets accrued in favor of the licensee.

d. In case of relevant cash claims or checks, the amount of the claim, ~~with interest from the date of default at the weighted average prime rate charged by the Bank of North Dakota.~~

e. In case of a relevant credit-sale contract or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.

2. The report must also contain the proposed reimbursement to the commission for the expenses of administering the insolvency, the proposed distribution of the ~~trust~~insolvency fund assets to receiptholders, less expenses incurred by the commission in the administration of the insolvency, and the proposed credit-sale contract indemnity fund payments to receiptholder and credit-sale contract claimants.

If the ~~trust~~insolvency fund is insufficient to redeem all receiptholder claims in full, the report should list the funds as prorated.

3. The ~~court~~commission shall set a hearing and ~~issue~~ the appropriate notice ~~at least forty-five days before the hearing,~~ for interested persons to show cause why the commission's report should not ~~be approved~~become final, and ~~grain indemnity fund payments and~~ distribution of the ~~insolvency~~trust fund be made as proposed. Copies of the report and notice of hearing must be served by the commission by certified mail upon the licensee and the surety and by ordinary mail upon all persons having claims filed with the commission.

4. Any aggrieved person having an objection to the commission's report shall file the objection with the ~~court~~commission and serve copies on ~~the commission,~~ the licensee, and the surety at least ~~ten~~twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.

5. Following the hearing, the ~~court~~commission shall ~~approve~~adopt or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the ~~trust~~insolvency fund, payments from the credit-sale contract indemnity fund, and discharge of the commission from its trust~~payments from the grain indemnity fund.~~

SECTION 12. AMENDMENT. Section 60-02.1-38 of the North Dakota Century Code is amended and reenacted as follows:

1 **60-02.1-38. Filing fees and court costs - Expenses.**

2 The commission may not be required to pay any filing fee or other court costs or
3 disbursements. The attorney general may appoint outside legal counsel to assist the
4 commission in the prosecution of ~~the action~~any proceeding and the cost of employing outside
5 counsel ~~may~~must be paid from the ~~trust~~insolvency fund and the ~~grain credit-sale contract~~
6 indemnity fund as appropriate. All other necessary expenses incurred by the commission in
7 carrying out the provisions of this chapter, including adequate insurance to protect the
8 commission, its employees, and others engaged in carrying out the provisions of sections
9 60-02.1-28 through 60-02.1-38, ~~may~~must be paidreimbursed to the commission from the ~~trust~~
10 ~~fund~~insolvency and ~~grain credit-sale contract~~ indemnity funds as appropriate.

11 **SECTION 13. AMENDMENT.** Section 60-04-02 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **60-04-02. Insolvency of warehouseman.**

14 A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper written
15 demand, including electronic communication, to make payment for grain purchased or marketed
16 by the licensee or to make redelivery or payment for grain stored.

17 ~~**SECTION 24. AMENDMENT.** Section 60-04-03 of the North Dakota Century Code is~~
18 ~~amended and reenacted as follows:~~

19 ~~**60-04-03. Appointment of commission**Commission insolvency proceeding.~~

20 ~~Upon the insolvency of any warehouseman, the commission, on its own motion, shall apply~~
21 ~~to the district court of a county in which the warehouseman operates a licensed warehouse for~~
22 ~~authority to take all action necessary and appropriate to secure and act as trustee of the trust~~
23 ~~fund described in section 60-04-03.1. Upon such notice to the warehouseman as the court shall~~
24 ~~prescribe, but not exceeding twenty days, or upon waiver of such notice in writing by the~~
25 ~~warehouseman, the court shall proceed to hear and determine such application in a summary~~
26 ~~manner. If it shall appear to the court that such warehouseman is insolvent within the meaning~~
27 ~~of this chapter and that it would be for the best interests of the receipt holders that the~~
28 ~~commission secure and execute such trust, the court shall issue an order granting the~~
29 ~~application, without bond, whereupon the commission shall proceed to exercise its authority~~
30 ~~without further direction from the court.~~

1 — Upon the filing of the commission's application, the court may issue ex parte such
2 temporary order as may be necessary to preserve or protect the assets of the trust fund, or the
3 value thereof, until the court issues its order granting or denying the application commence an
4 administrative insolvency proceeding under chapter 28-32 to secure the bond proceeds, identify
5 potential receipt holder and credit-sale claimants, determine the amount of each claim,
6 determine the recommended payment on each claim from the insolvency fund and the grain
7 indemnity fund, make payments on claims, and take any action necessary and appropriate to
8 accomplish the purposes of this chapter.

9 — **SECTION 25. AMENDMENT.** Section 60-04-03.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 — **60-04-03.1. Trust insolvency fund established.**

12 — 1. Upon the insolvency of any warehouseman, a trust an insolvency fund shall must be
13 established:

14 — a. For the benefit of noncredit-sale receipt holders of the insolvent warehouseman,
15 other than those who have waived their rights as beneficiaries of the trust fund in
16 accordance with section 60-02-11; and

17 — b. To pay the costs incurred by the commission in the administration of this chapter.

18 — 2. The trust insolvency fund consists of the following:

19 — a. The grain in the warehouse of the insolvent warehouseman or the proceeds as
20 obtained through the sale of such grain;

21 — b. The proceeds, including accounts receivable, from any grain sold from the time of
22 the filing of the claim that precipitated an insolvency until the commission is
23 appointed trustee;

24 — c. The proceeds of insurance policies upon grain destroyed in the elevator;

25 — d. The claims for relief, and proceeds therefrom, for damages upon any bond given
26 by the warehouseman to ensure faithful performance of the duties of a
27 warehouseman;

28 — e. The claims for relief, and proceeds therefrom, for the conversion of any grain
29 stored in the warehouse;

30 — f. Unencumbered accounts receivable for grain sold prior to the filing of the claim
31 that precipitated an insolvency;

1 ~~g. Unencumbered equity in grain hedging accounts; and~~

2 ~~h. Unencumbered grain product assets.~~

3 ~~**SECTION 16. AMENDMENT.** Section 60-04-03.3 of the North Dakota Century Code is~~
4 ~~amended and reenacted as follows:~~

5 ~~**60-04-03.3. Joinder of and notice to surety -- Deposit of proceeds.**~~

6 ~~The commission shall join the surety on the warehouseman's bond must be joined as a~~
7 ~~party to the insolvency proceeding upon a motion by the commission when the commission~~
8 ~~believes that proceeds from the warehouseman's bond may be needed to redeem outstanding~~
9 ~~receipts issued by the warehouseman. When it appears in the best interests of the~~
10 ~~receiptholders, the courtcommission may order the surety to deposit the penal sum of the bond,~~
11 ~~or so much thereof as may be deemed necessary, into the trustee's trustinsolvency account~~
12 ~~pending a final determination of the surety's liability under the bond.~~

13 **SECTION 14. AMENDMENT.** Section 60-04-04 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **60-04-04. Notice to receiptholders and credit-sale contract claimants.**

16 Upon ~~its~~ appointment by the district court~~an insolvency~~, the commission may take
17 possession of relevant books and records of the warehouseman. The commission shall cause a
18 notice of ~~its appointment~~the insolvency and the commencement of the insolvency proceeding to
19 be published once each week for two consecutive weeks in a newspaper in the county in which
20 the warehouse is located and may notify by ordinary mail the holders of record of outstanding
21 receipts and those who are potential credit-sale contract claimants, as shown by the
22 warehouseman's records. The notices must require outstanding receiptholders and credit-sale
23 contract claimants to file their claims against the warehouseman with the commission along with
24 the receipts, contracts, or ~~such~~any other evidence of the claims as required by the commission.
25 If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within
26 forty-five days after the last publication of the notice or ~~such~~a longer time as prescribed by the
27 commission, the commission is relieved of further duty or action under this chapter on behalf of
28 the receiptholder or credit-sale contract claimant and the receiptholder or credit-sale contract
29 claimant may be barred from ~~participation in the trust fund~~payment for any amount due.
30 Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency
31 action unless admitted by the ~~court~~commission upon a motion for intervention.

1 — **SECTION 18. AMENDMENT.** Section 60-04-05 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 — **60-04-05. Remedy of receiptholders.**

4 — No receiptholder has a separate claim for relief upon the warehouseman's bond, nor for
5 insurance, nor against any person converting grain, nor against any other receiptholder, except
6 through the trustee commission, unless, upon demand of five or more receiptholders, the
7 commission fails or refuses to apply for its own appointment from the district court or unless the
8 district court denies the application for appointment commence an insolvency proceeding and
9 join the surety. This chapter does not prohibit or prevent any receiptholder, either individually or
10 in conjunction with other receiptholders, from pursuing concurrently such any other remedy
11 against the person or property of such the warehouseman, for the whole, or any deficiency
12 occurring in the redemption, of the receipts.

13 — **SECTION 29. AMENDMENT.** Section 60-04-06 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 — **60-04-06. Commission to marshal trust assets may maintain suit.**

16 — Upon its appointment by the district court, the ~~The~~ commission may maintain suits at law or
17 in equity, or any special proceeding, in the name of the state of North Dakota, upon its own
18 relation, but for the benefit of all such receiptholders against:

19 — 1. — The insurers of grain;

20 — 2. — The warehouseman's bond;

21 — 3. — Any person who may have converted any grain; or

22 — 4. — Any receiptholder who shall have received more than its just and pro rata share of
23 grain,

24 for the purpose of marshalling all of the trust fund assets and distributing the same among the
25 receiptholders. The commission shall seek possession of any grain in the warehouse before
26 recourse is had against the insurers of grain, and the remedy against the insurers of grain shall
27 be exhausted before recourse is had against the bond, and against the bond before recourse is
28 had against the person honestly converting grain, unless the commission shall deem it
29 necessary to the redemption of the receipts that all the above remedies be pursued at the same
30 time.

SECTION 15. AMENDMENT. Section 60-04-07 of the North Dakota Century Code is amended and reenacted as follows:

60-04-07. Power of commission to prosecute or compromise claims.

The commission ~~shall have power~~ may:

1. ~~To prosecute~~ Prosecute any action provided in this chapter in any court in this state or in any other state.
2. ~~To appeal~~ Appeal from any adverse judgment to the courts of last resort.
3. ~~To settle~~ Settle and compromise any action whenever, in its judgment, this will be for it is in the best interests of the receipt holders ~~and credit sale contract claimants~~.
4. Settle and compromise any action when it is in the best interests of the credit-sale contract claimants.

5. Upon payment of the amount of such the compromise or of the full amount of any insurance policy, bond, or conversion claim, to exonerate the person so compromising or paying in full from further liability growing out of the action.

~~5. Take any other action necessary and appropriate to accomplish the purposes of this chapter.~~

~~**SECTION 31. AMENDMENT.** Section 60-04-08 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**60-04-08. Money received by trustee -- Deposited in Bank of North Dakota.**~~

~~All moneys collected and received by the commission as trustee under this chapter, pending the marshalling of the fund, shall must be deposited in the Bank of North Dakota.~~

SECTION 16. AMENDMENT. Section 60-04-09 of the North Dakota Century Code is amended and reenacted as follows:

60-04-09. Report of trustee to court - Approval and order of commission - Distribution.

Upon the receipt and evaluation of claims filed with it, the commission shall file with the court issue a notice consistent with chapter 28-32, together with a report showing the amount and validity of each claim after recognizing:

1. Any proper liens or pledges thereon.
2. Assignments thereof.
3. Deductions therefrom by reason of advances or offsets accrued in favor of the warehouseman.

1 4. In case of cash claims or checks, the amount thereof, ~~with interest at the weighted-~~
2 average prime rate charged by the Bank of North Dakota since the date of the
3 insolvency.

4 5. In the case of scale tickets or warehouse receipts, the amount thereof based upon the
5 market price prevailing on the date of the insolvency, ~~with interest at the weighted-~~
6 average prime rate charged by the Bank of North Dakota since the date of the
7 insolvency commission first received a copy of the written demand required by section
8 60-04-02.

9 6. In the case of a credit-sale or noncredit-sale contract, the amount remaining to be paid
10 based on the terms of the contract.

11 The report must also contain the proposed reimbursement to the commission for the
12 expenses of administering the insolvency, a proposed distribution of the trust fund assets ~~bond-~~
13 ~~proceeds in the insolvency fund,~~ less ~~an appropriate portion of the~~ expenses incurred by the
14 commission in the administration of this chapter, and the proposed credit-sale contract
15 indemnity fund payments to receiptholder and credit-sale contract claimants as their interests
16 are determined. If the ~~trust~~ insolvency fund is insufficient to redeem all receiptholder claims in
17 full, the ~~fund~~ claims must be shown prorated in the report in the manner the commission deems
18 fair and equitable.

19 The ~~court shall set~~ commission shall hold a hearing and the appropriate notice ~~at least forty-~~
20 ~~five days before the hearing,~~ for interested persons to show cause why the commission's report
21 should not ~~be approved~~ become final, and ~~grain~~ credit-sale contract indemnity fund payments
22 and distribution of the ~~insolvency~~ trust fund be made as proposed, and payments from the
23 credit-sale contracts be made as proposed. Copies of the report and notice of hearing must be
24 served by the commission by certified mail upon the warehouseman and the surety and by
25 ordinary mail upon all persons having claims filed with the commission.

26 Any aggrieved person having an objection to the commission's report shall file the objection
27 with the ~~court~~ commission and serve copies on the commission, the warehouseman, and the
28 surety at least ~~tent~~ twenty days before the hearing. Failure to file and serve objections in the time
29 set is a waiver of the objection.

30 Following hearing, the ~~court~~ commission shall ~~approve~~ adopt or modify the report and issue
31 an order directing payment of the necessary bond proceeds, ~~from insolvency fund and~~

distribution ~~offrom~~ the ~~trustgrain indemnity~~ fund, payments from the credit-sale contract indemnity fund, and discharge of the commission from its trust.

SECTION 17. AMENDMENT. Section 60-04-10 of the North Dakota Century Code is amended and reenacted as follows:

60-04-10. Filing fees and court costs - Expenses.

~~Upon the application to the district court as provided in this chapter, or in~~ In any action in a state court in this state, the commission shall not be required to pay any filing fee or other court costs or disbursements if the fees accrue to the county or to the state. The attorney general may employ outside legal services to assist the commission in the prosecution of such action~~any proceeding~~ as in the attorney general's judgment may be necessary and may~~the~~ commission shall deduct the ~~expense~~expenses of the same from the ~~trustgrain indemnity~~ fund and the ~~insolvency~~credit-sale contract indemnity fund as appropriate. All other necessary expenses incurred by the commission in carrying out the provisions of this chapter, including adequate insurance to protect the commission, its employees, and others engaged in carrying out the provisions of this chapter, ~~may~~must be ~~deducted~~reimbursed to the commission from the ~~trust fund~~insolvency and grain ~~credit-sale~~ indemnity funds as appropriate.

~~— SECTION 34. AMENDMENT. Section 60-10-01 of the North Dakota Century Code is amended and reenacted as follows:~~

~~— 60-10-01. Credit-sale contracts -- Assessment on grain -- Submission of assessment.~~

~~— An assessment at the rate of two-tenths~~two one-hundredths of one percent is placed on the value of all grain sold in this state under a ~~noncredit sale contract~~, credit-sale contract, as provided for in sections 60-02-19.1 and 60-02.1-14, ~~or for cash~~. The licensee purchasing the grain shall note the assessment on the ~~check, noncredit sale contract, or credit sale 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 ~~the last day of each~~ calendar quarter. ~~An assessment at the same rate is placed on all grain delivered for storage in this state when a receipt~~holder claim based on stored grain is payable by the commission under chapter 60-04. The licensee receiving grain for storage shall note the potential assessment on the warehouse receipt. In the event of an insolvency proceeding, the commission shall deduct the assessment from the amount payable to a receiptholder from the grain indemnity fund for a

~~claim based on stored grain. The commission shall deposit the assessments received under this section in the credit-sale contract~~grain indemnity fund.

— **SECTION 35. AMENDMENT.** Section 60-10-02 of the North Dakota Century Code is amended and reenacted as follows:

— **60-10-02. Credit-sale contract**Grain indemnity fund -- Creation -- Continuing appropriation.

~~There is created~~The grain indemnity fund is a special fund in the state treasury the credit-sale contract indemnity fund. The state treasurer shall invest available moneys in the fund in accordance with section 21-10-07 and in cooperation with the public service commission and shall deposit any income earned through the investments into the fund. The fund and earnings of 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 chapter.

— **SECTION 36. AMENDMENT.** Section 60-10-04 of the North Dakota Century Code is amended and reenacted as follows:

— **60-10-04. Credit-sale contract**Grain indemnity fund -- Eligibility for reimbursement.

~~A person is eligible to receive indemnity payments from the credit-sale contract~~grain indemnity fund if:

— 1. ~~After August 1, 2003, the person sold grain to a licensed warehouse or a grain buyer in this state under the provisions of a credit-sale contract;~~

— 2. ~~After August 1, 2017, the person delivered or sold grain to a licensed warehouse or a grain buyer in this state;~~

— 3. ~~The licensed warehouse to which the person sold grain or the grain buyer to whom the person sold grain becomes insolvent; and~~

— 3.4. ~~The licensed warehouse or the grain buyer, as a result of the insolvency, does not fully compensate the person in accordance with the credit-sale contract, noncredit-sale contract, sale, or storage contract.~~

— **SECTION 37. AMENDMENT.** Section 60-10-05 of the North Dakota Century Code is amended and reenacted as follows:

— **60-10-05. Credit-sale contract**Grain indemnity fund -- Availability of money.

~~Upon the insolvency of a licensed warehouse or a grain buyer and a declaration that the public service commission serve as the trustee, the public service commission shall commence~~

~~an insolvency proceeding under chapter 60-04 to make the proceeds of the credit-sale-
contractgrain indemnity fund available for use in meeting the licensee's obligations with respect
to the reimbursement of any person who delivered or sold grain to the licensee under a
credit-sale contract and who was not fully compensated in accordance with the sale, contract,
or storage contract.~~

~~— **SECTION 38. AMENDMENT.** Section 60-10-06 of the North Dakota Century Code is
amended and reenacted as follows:~~

~~— **60-10-06. Credit-sale contractGrain indemnity fund -- Reimbursement limit.**~~

~~— The amount payable to any eligible person from the credit-sale contractgrain indemnity fund
for each insolvency may not exceed the lesser of eighty percent of the amount owed to that
eligible person in accordance with all of that person's unsatisfied credit-sale contracts, storage
contracts, noncredit sale contracts, or sales, or twofour hundred eighty thousand dollars.~~

~~— **SECTION 39. AMENDMENT.** Section 60-10-07 of the North Dakota Century Code is
amended and reenacted as follows:~~

~~— **60-10-07. Credit-sale contractGrain indemnity fund -- Prorated claims.**~~

~~— If claims for indemnity payments from the credit-sale contractgrain indemnity fund exceed
the amount in the fund, the public service commission shall prorate the claims and pay the
prorated amounts. As future assessments are collected, the public service commission shall
continue to forward indemnity payments to each eligible person until the person receives the
maximum amount payable in accordance with this chapter.~~

~~— **SECTION 22. AMENDMENT.** Section 60-10-08 of the North Dakota Century Code is
amended and reenacted as follows:~~

~~— **60-10-08. Reimbursement for later insolvencies.**~~

~~— The public service commission shall ensure that all persons eligible for payment from the
grain indemnity fund as a result of an insolvency are fully compensated to the extent permitted
by this chapter before any payments from the indemnity fund are initiated as a result of a later
insolvency. The chronological order of insolvencies is determined by the date the public service
commission is appointed trustee underfirst received a copy of the written demand required by
section 60-02.1-2960-02.1-28 or 60-04-0360-04-02.~~

SECTION 18. AMENDMENT. Section 60-10-09 of the North Dakota Century Code is
amended and reenacted as follows:

**60-10-09. Credit-sale contract~~Grain~~ indemnity fund - Reimbursement for
administrative expenses.**

Any expense incurred by the public service commission in administering the credit-sale contract~~grain~~ indemnity fund ~~is reimbursable~~ must be reimbursed from the fund before any other claim for indemnity is paid.

~~— **SECTION 42. AMENDMENT.** Section 60-10-10 of the North Dakota Century Code is amended and reenacted as follows:~~

~~— **60-10-10. Credit-sale contract~~Grain~~ indemnity fund assessment - Failure to collect assessment - Penalty.**~~

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

~~— **SECTION 43. AMENDMENT.** Section 60-10-13 of the North Dakota Century Code is amended and reenacted as follows:~~

~~— **60-10-13. 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~~grain~~ 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.].~~

~~— **SECTION 44. AMENDMENT.** Section 60-10-14 of the North Dakota Century Code is amended and reenacted as follows:~~

~~— **60-10-14. Subrogation.**~~

~~— Money paid from the credit-sale contract~~grain~~ 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~~grain~~ indemnity fund, the claimant shall~~

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

3 ~~—~~ **SECTION 45. AMENDMENT.** Section 60-10-15 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 ~~—~~ **60-10-15. Unlicensed facility-based grain buyer.**

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

14 **SECTION 19. REPEAL.** Sections 60-02-02, 60-02-25.1, 60-02-39, 60-02.1-02, and
15 60-02.1-25, 60-04-03.2, and 60-10-03 of the North Dakota Century Code are repealed.

16 ~~—~~ **SECTION 25. TRANSFER.** On August 1, 2017, the state treasurer shall transfer the
17 balance of the credit-sale contract indemnity fund to the grain indemnity fund.