

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1197

That the Senate recede from its amendments as printed on page 984 of the House Journal and pages 795 and 796 of the Senate Journal and that Engrossed House Bill No. 1197 be amended as follows:

Page 1, line 3, after the first comma insert "60-02.1-29," and after the second comma insert "60-02.1-31, 60-02.1-32, 60-02.1-33, and 60-02.1-34, subsection 3 of section 60-02.1-35, and sections 60-02.1-37,"

Page 1, after line 10, insert:

**"SECTION 2. 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.** Upon the insolvency of any licensee, the commission shall apply to the district court of Burleigh County, ~~North Dakota~~ for authority to take all action necessary to act as trustee of the trust fund described in section 60-02.1-30. Upon notice to the licensee as the court ~~shall prescribe~~ 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 ~~claimants~~ 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 application."

Page 1, line 14, remove "noncredit-sale" and overstrike "claimants" and insert immediately thereafter "noncredit-sale receiptholders"

Page 2, after line 8, insert:

**"SECTION 4. AMENDMENT.** Section 60-02.1-31 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-31. Joinder of surety - Deposit of proceeds.** Each surety on the insolvent licensee's bonds must be joined as a party to the insolvency proceeding. If it is in the best interests of the ~~claimants~~ receiptholders, the court may order a surety to deposit some or all of the penal sum of the bond into the trustee's trust account pending determination of the surety's liability under the bond.

**SECTION 5. AMENDMENT.** Section 60-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-32. Notice to claimants receiptholders.** Upon its appointment, the commission may take possession of relevant books and records of the licensee. The commission shall publish a notice of its appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail,

~~potential claimants~~ the holders of record of outstanding receipts disclosed by the licensee's records. The notice must require ~~claimants~~ outstanding receiptholders to file their claims with the commission along with the receipts or other evidence of the claims required by the commission. If ~~a claimant~~ an outstanding receiptholder fails to submit a claim within forty-five days after the last publication of the notice or a longer time set by the commission, the commission is relieved of further duty in the administration of the insolvency on behalf of the ~~claimant~~ receiptholder and the ~~claimant~~ receiptholder may be barred from participation in the trust fund. ~~Claimants~~ Outstanding receiptholders are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

**SECTION 6. AMENDMENT.** Section 60-02.1-33 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-33. Remedy of ~~claimants~~ receiptholders.** No ~~claimant~~ receiptholder has a separate claim for relief upon any insolvent licensee's bond, nor for insurance, nor against any person converting grain, nor against any other ~~claimant~~ receiptholder, except through the trustee, unless, upon demand of five or more ~~claimants~~ receiptholders, the commission fails or refuses to apply for its own appointment or unless the district court denies the application. ~~Provisions of this~~ This chapter ~~do~~ does not prohibit any ~~claimant~~ receiptholder, either individually or in conjunction with other ~~claimants~~ receiptholders, from pursuing concurrently any other remedy against the person or property of the licensee.

**SECTION 7. 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 ~~claimants~~ receiptholders 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 8. AMENDMENT.** Subsection 3 of section 60-02.1-35 of the North Dakota Century Code is amended and reenacted as follows:

3. Settle and compromise any action when it will be in the best interests of the ~~claimants~~ receiptholders.

**SECTION 9. 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 - Distribution.**

1. Upon the receipt and evaluation of claims, the commission shall file with the court a report showing the amount and validity of each claim after recognizing ~~relevant~~:
- 4- a. ~~Liens~~ Relevant liens or pledges.
- 2- b. ~~Assignments~~ Relevant assignments.
- 3- c. ~~Deductions~~ Relevant deductions due to advances or offsets accrued in favor of the licensee.
- 4- 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.

2. The report must also contain the proposed distribution of the trust fund assets, less expenses incurred by the commission in the administration of the insolvency. If the trust fund is insufficient to redeem all claims in full, the report should list the funds as prorated.
3. The court shall set a hearing and the appropriate notice for interested persons to show cause why the commission's report should not be approved and distribution of the 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 ~~claimants~~ 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 and serve copies on the commission, the licensee, and the surety at least ten 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 shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, and discharge of the commission from its trust."

Page 3, line 24, replace "Act" with "chapter"

Page 3, line 27, remove "section 1 of" and replace "Act" with "chapter"

Page 4, line 16, replace "fifty" with "eighty"

Page 4, line 22, replace "Act" with "chapter"

Page 4, line 25, replace "Act" with "chapter"

Page 5, line 3, remove "section 1 of" and replace "Act" with "chapter"

Re-number accordingly