

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

HOUSE BILL NO. 1197
(Representatives Pollert, Mueller, Weisz)
(Senators Erbele, Nichols, Urlacher)

AN ACT to create and enact a new chapter to title 60 of the North Dakota Century Code, relating to the creation of a credit-sale contract indemnity fund; to amend and reenact sections 60-02.1-28, 60-02.1-29, 60-02.1-30, 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, 60-04-02, and 60-04-03.1 of the North Dakota Century Code, relating to insolvencies of grain buyers and warehousemen; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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.

SECTION 3. AMENDMENT. Section 60-02.1-30 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds obtained from the conversion 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 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 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 de 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 marshall trust assets. Upon its appointment, the commission shall marshall 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:
- 1- 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.

SECTION 10. 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 11. 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 12. 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 chapter.

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

Credit-sale contract 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 make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated in accordance with the contract.

Credit-sale contract indemnity fund - Reimbursement limit. The amount payable to any eligible person from the credit-sale contract indemnity fund 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 or two hundred eighty thousand dollars.

Credit-sale contract indemnity fund - Prorated claims. If claims for indemnity payments from the credit-sale contract 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.

Reimbursement for later insolvencies. The public service commission shall ensure that all persons eligible for payment from the 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.

Credit-sale contract indemnity fund - Reimbursement for administrative expenses. Any expense incurred by the public service commission in administrating the credit-sale contract indemnity fund is reimbursable from the fund before any other claim for 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 this chapter 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, documents, and records related to collections and remittances pertaining to the credit-sale contract indemnity fund. In the case of insolvency, credit-sale contract payments to valid claimants must be reduced by an amount equal to the credit-sale contract indemnity payments received from payments administered by the United States department of agriculture.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1197.

House Vote: Yeas 88 Nays 4 Absent 2

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at _____ o'clock _____ M.

Secretary of State