

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

HOUSE BILL NO. 1157
(Agriculture Committee)
(At the request of the Public Service Commission)

AN ACT to create and enact a new section to chapter 60-02 of the North Dakota Century Code, relating to licensed warehouse capacity and condominium storage; and to amend and reenact sections 60-02-07, 60-02-10.1, and 60-02-33, subsection 8 of section 60-02.1-01, sections 60-02.1-07 and 60-02.1-11, subsection 7 of section 60-02.1-14, sections 60-02.1-28, 60-02.1-29, and 60-02.1-32, and subsection 4 of section 60-03-01 of the North Dakota Century Code, relating to licensing of grain warehouses, grain buyers, and hay buyers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-02-07 of the North Dakota Century Code is amended and reenacted as follows:

60-02-07. Public warehouse license - How obtained - Fee - Financial statement. An annual license must be obtained from the commission for each public warehouse in operation in this state. The license expires on July thirty-first of each year. An initial license application that becomes effective on or after June first does not expire until July thirty-first of the following calendar year. No license may describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described. The annual license fee for a public warehouse is three hundred dollars for a warehouse of a bushel capacity of two hundred thousand [7047.8 cubic meters] or less, four hundred fifty dollars for a warehouse of a bushel capacity of more than two hundred thousand and not more than five hundred thousand [7047.8 to not more than 17619.54 cubic meters], and five hundred fifty dollars for a warehouse of a bushel capacity of more than five hundred thousand [17619.54 cubic meters]. A license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee per warehouse. If a public warehouseman operates two or more warehouses in the same city or siding, in conjunction with each other and with the same working force, and keeps one set of books and records for all such warehouses, and issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts for the grain stored and purchased therein, only one license is required for the operation of all such warehouses. Where two or more warehouses are operated under one license, the license fee is based upon the combined bushel capacity of the warehouses. If the commission employs fewer than two full-time equivalent warehouse inspectors, each annual fee under this section is reduced by one hundred dollars.

If required to obtain United States department of agriculture approval of the commission's warehouse inspection program, the commission may require that the applicant submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this section is a confidential trade secret and is not a public record.

SECTION 2. AMENDMENT. Section 60-02-10.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-10.1. Revocation and suspension. The commission may suspend or revoke the license of any warehouseman for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a warehouseman must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license the warehouseman may, upon the commission's approval, operate the warehouse and purchase or redeliver grain previously received, but may not receive additional grain for purchase, storage, shipping, or processing. Grain may be sold only with the prior approval of the commission.

SECTION 3. AMENDMENT. Section 60-02-33 of the North Dakota Century Code is amended and reenacted as follows:

60-02-33. Delivery of grain - Demand terminates storage charge. On the return and surrender of any receipt and the payment of all lawful charges, the grain represented therein shall be deliverable to the owner, and shall not be subject to any further charge for storage after demand for delivery shall have been made and proper facilities for receiving or shipping the same have been provided. The owner of the receipt shall order the receptacle in which the grain covered by the owner's receipt is to be transported, and the grain shall be delivered when the receptacle so ordered is in proper condition for loading and is placed at the warehouse. The licensee may not assess receiving or redelivery fees on the 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 4. A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 5. AMENDMENT. Subsection 8 of section 60-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt, ~~storage,~~ or sale of grain except when such memoranda was received as a result of a credit-sale contract.

SECTION 6. AMENDMENT. Section 60-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement. Grain buyers must obtain an annual license from the commission. The license expires on July thirty-first of each year. An initial license application that becomes effective on or after June first does not expire until July thirty-first of the following calendar year. A facility-based grain buyer must obtain a license for each receiving location operated in the state. If a grain buyer operates two or more facilities in the same city or siding, in conjunction with each other and with the same working force, and where but one set of books and records is kept for all such facilities, and scale tickets and checks of but one series are issued for the grain, purchased, only one license is required for the operation of all such facilities. The annual license fee for a facility-based grain buyer is three hundred dollars; and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee per receiving location. The annual license fee for a roving grain buyer is two hundred dollars; and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee.

If required to obtain United States department of agriculture approval of the commission's grain buyer inspection program, the commission may require that grain buyers submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this section is a confidential trade secret and is not a public record.

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

60-02.1-11. Revocation and suspension. The commission may suspend or revoke the license of any grain buyer for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a grain buyer must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license a facility-based grain buyer, upon the commission's approval, may operate its facility and purchase or redeliver grain previously received, but may not receive additional grain for purchase, shipping, or processing. Grain may be sold only with the prior approval of the commission.

SECTION 8. AMENDMENT. Subsection 7 of section 60-02.1-14 of the North Dakota Century Code is amended and reenacted as follows:

7. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02.1-08. However, if the grain buyer has obtained bond coverage in addition to that required by section ~~60-02.1-15~~ 60-02.1-08 and the coverage extends to the benefit of credit-sale contracts, the grain buyer may state that fact in the credit-sale contract along with the extent of such coverage.

SECTION 9. 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 payment for grain purchased or marketed by the licensee or is unable to make redelivery upon proper demand. 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 10. 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~~ roving grain buyer, 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. 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 shall prescribe, 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 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 11. 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. Upon its appointment, the commission may take possession of relevant books and records of the licensee. ~~The~~ If the insolvency involves a roving grain buyer, 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 disclosed by the licensee's records. If the insolvency involves a facility-based grain buyer, the notice must be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located. The notice must require claimants to file their claims with the commission along with the receipts or other evidence of the claims required by the commission. If a claimant 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 and the claimant may be barred from participation in the trust fund. Claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 12. AMENDMENT. Subsection 4 of section 60-03-01 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~"Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown domestic grain or grass seed.~~ "Hay" means alfalfa, clover, and any other grain or grass that has been cut and stacked or baled for use as feed for livestock.

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. 1157.

House Vote: Yeas 89 Nays 0 Absent 5

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