

# WAREHOUSING AND DEPOSITS

## CHAPTER 417

### HOUSE BILL NO. 1126

(Agriculture Committee)  
(At the request of the Public Service Commission)

AN ACT to amend and reenact sections 60-02-09, 60-02-17, 60-02-35, 60-02-38, 60-02-40, 60-02.1-08, 60-02.1-26, 60-02.1-28, 60-02.1-32, 60-02.1-35, 60-02.1-37, 60-02.1-38, 60-04-02, 60-04-04, 60-04-07, 60-04-09, 60-04-10, and 60-10-09 of the North Dakota Century Code, relating to public warehouse and grain buyer licensing and insolvencies of public warehouses and grain buyers; to repeal sections 60-02-39 and 60-02.1-25 of the North Dakota Century Code, relating to warehouse closures; and to provide for a legislative management study.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**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~~ limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

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

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

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

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

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

A warehouseman shall publish and post, in a conspicuous place in its warehouse, the fees that will be assessed for receiving, storing, processing, or redelivering grain and the termination date of its warehouse receipts. This publication must be filed with the

commission as a part of the warehouse license application process or annual renewal. The fees and termination date must be stated on the warehouse receipt issued for the grain. The fees or termination date may be changed upon filing a revised publication with the commission.

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

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

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

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

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

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

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

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

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

1. Notify the commission first of its intention to transfer the warehouse, giving the name and address of the proposed lessee or purchaser.
2. Furnish a statement of all proper claims that may be filed or pending against the warehouseman pertaining to the storage, inspection, and marketing of grain, together with a statement of:
  - a. The number of bushels [cubic meters] of grain of each kind and grade in store in the warehouse;
  - b. The number and amount of receipts outstanding; and
  - c. The names and addresses of the receiptholders.

3. Serve notice by registered or certified mail, at least thirty days before the transfer, upon all receiptholders having claims against the warehouse to call for delivery of the grain covered by the receipts, and to pay all storage charges due, the warehouseman in such case to make no charge for redelivery. The commission may waive the thirty-day notice period upon receipt of written consent of all receiptholders.
4. Transfer all stored grain undelivered at the expiration of such thirty-day period to its successor, if licensed, or to the nearest licensed warehouse for restorage, taking receipts for the same in favor of the owner of the grain so transferred.
5. Surrender to the commission its license for cancellation and at such time the proposed lessee or purchaser shall apply in due form for a new license and tender a new bond for approval review by the commission, whereupon, it first being duly satisfied that all the outstanding receipts have been redeemed, or that the redemption thereof has been provided for, the commission may issue permit a new license to become effective for the lessee or purchaser.

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

**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.

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

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

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

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

1. Notify the commission first of its intention to transfer the facility, giving the name and address of the proposed lessee or purchaser.
2. Provide related information as may be required by the commission.
3. Surrender to the commission ~~its~~the grain buyer's license for cancellation and at ~~such~~that time the proposed lessee or purchaser shall applyfile in due form for a new license and tender a new bond for approvalreview by the commission, whereupon, it first being duly satisfied that all the outstanding receipts have been redeemed, or that the redemption thereof has been provided for, the commission may issuepermit a new license to become effective for the lessee or purchaser.

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

**SECTION 8. 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 refuses, neglects, or is unable upon proper written demand, including electronic communication, to make payment for grain purchased or marketed by the licensee or is unable to make redelivery upon proper written demand, including electronic communication. 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 9. AMENDMENT.** Section 60-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

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

Upon its appointment, the commission may take possession of relevant books and records of the licensee. 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, the holders of record of outstanding receipts and those who are potential credit-sale contract 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 outstanding receiptholders and credit-sale contract claimants to file their claims with the commission along with the receipts, contracts, or other evidence of the claims required by the commission. If an outstanding receiptholder or credit-sale contract 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 receiptholder or credit-sale contract claimant and the receiptholder may be barred from participation in the trust fund, and the credit-sale contract claimant may be barred from payment for any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

**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.
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.

**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 - 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:
  - 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 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 credit-sale contract claimants. If the trust fund is insufficient to redeem all receiptholder 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 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 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 shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, payments from the credit-sale contract indemnity fund, and discharge of the commission from its trust.

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

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

The commission may not be required to pay any filing fee or other court costs or disbursements. The attorney general may appoint outside legal counsel to assist the commission in the prosecution of the action and the cost of employing outside counsel ~~may~~must be paid from the trust fund and the 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 sections 60-02.1-28 through 60-02.1-38, ~~may~~must be paid/reimbursed to the commission from the trust fund and credit-sale contract indemnity funds as appropriate.

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

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

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

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

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

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

**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 receiptholders.
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.

**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 - Distribution.**

Upon the receipt and evaluation of claims filed with it, the commission shall file with the court 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.
4. In case of cash claims or checks, the amount thereof, ~~with interest at the weighted average prime rate charged by the Bank of North Dakota since the date of the insolvency.~~
5. In the case of scale tickets or warehouse receipts, the amount thereof based upon the market price prevailing on the date of the insolvency, ~~with interest at the weighted average prime rate charged by the Bank of North Dakota since the date of the insolvency~~ commission first received a copy of the written demand required by section 60-04-02.
6. In the case of a credit-sale or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.

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

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 credit-sale contract indemnity fund payments and distribution of the trust fund be made as proposed, and payments from the credit-sale contracts be made as proposed. Copies of the report and notice of hearing must be served by the commission by certified mail upon the warehouseman and the surety and by ordinary mail upon all persons having claims filed with the commission.

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 warehouseman, and the surety at least twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.

Following 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, 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~~ 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 as in the attorney general's judgment may be necessary and ~~may~~the commission shall deduct the ~~expense~~expenses of the same from the trust fund and the 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 and credit-sale indemnity funds as appropriate.

**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 indemnity fund - Reimbursement for administrative expenses.**

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

**SECTION 19. REPEAL.** Sections 60-02-39 and 60-02.1-25 of the North Dakota Century Code are repealed.

**SECTION 20. LEGISLATIVE MANAGEMENT STUDY - CONSISTENCY IN GRAIN SAMPLING AND TESTING.** During the 2017-18 interim, the legislative management shall consider studying practices and procedures with the potential to increase consistency and reduce variability in the sampling and testing of grains for deoxynivalenol (DON/vomitoxin), falling numbers, and protein. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

Approved April 13, 2017

Filed April 13, 2017

## **CHAPTER 418**

### **HOUSE BILL NO. 1125**

(Agriculture Committee)

(At the request of the Public Service Commission)

AN ACT to repeal chapter 60-03 of the North Dakota Century Code, relating to licensing hay buyers; and to declare an emergency.

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

**SECTION 1. REPEAL.** Chapter 60-03 of the North Dakota Century Code is repealed.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 2, 2017

Filed March 3, 2017