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Sixty-seventh
Legislative Assembly
of North Dakota

SECOND DRAFT:
Prepared by the Legislative Council staff for the
Agriculture and Transportation Committee
September 2020

Introduced by

A BILL for an Act to create and enact a new section to chapter 60-02, and two new sections to chapter 60-02.1 of the North Dakota Century Code, relating to financial criteria for grain buyer, grain broker, grain processor, and warehousemen licenses, and licensing and bonding for grain brokers and grain processors; to amend and reenact sections 60-02-01, 60-02-07, 60-02-09, 60-02-11, 60-02-12, 60-02-19.1, 60-02-24, 60-02.1-01, 60-02.1-07, 60-02.1-08, 60-02.1-10, 60-02.1-11, 60-02.1-13, 60-02.1-14, 60-02.1-15, 60-02.1-17, 60-02.1-19, 60-02.1-21, 60-02.1-23, 60-02.1-29, 60-02.1-32, 60-02.1-41, subsection 2 of section 60-04-01, and section 60-10-16 of the North Dakota Century Code, relating to definitions of grain brokers and processors, the duties and powers of the commissioner, confidentiality records, scale ticket contents, credit-sale contracts, reports, annual licenses, fees, and bonds for grain buyers, grain brokers, grain processors, and warehousemen; to repeal sections 60-02.1-06, 60-02.1-07.1, 60-02.1-26, 60-02.1-27, and 60-10-15; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 60-02-01 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the agriculture commissioner.
2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in ~~subsection 7 of~~ section 60-02-19.1. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.

3. "Deferred-payment contract" means a credit-sale contract for which the amount owed for the sale of grain has been established, but the payment is postponed until a later date.

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 grain or grass seed. "Grain" as defined in this chapter shall not include grain or grass seeds owned by or in the possession of the warehouseman ~~that~~which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.

~~4.~~5. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.

~~5.~~6. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure ~~or facility not licensed under the United States Warehouse Act [7 U.S.C. 241-273]~~ in which grain is received for storing, buying, selling, shipping, or processing for compensation. Provided, however, that nothing in this chapter shall be construed to require a processor to receive, store, or purchase any lot or kind of grain at said facility.

~~6.~~7. "Public warehouseman" means the person operating a public warehouse that is located or doing business within this state, whether or not such owner or operator resides within this state. The term does not include a person ~~who~~that is permitted to sell seed under chapter 4.1-53, if that person does not store grain for the public and buys grain only for processing and subsequent resale as seed, or an authorized dealer or agent of a seed company holding a permit in accordance with section 4.1-53-38.

~~7.~~8. "Receipts" means grain warehouse receipts, scale tickets, checks, or other memoranda given by a public warehouseman 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.

~~8.~~9. "Receiving station" means any facility other than an individually licensed warehouse that is used by a licensed public warehouseman to receive and temporarily store grain

prior to transferring the grain to the warehouseman's primary licensed warehouse location or delivering it directly to market.

**SECTION 2. AMENDMENT.** Section 60-02-07 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-07. Public warehouse license - Fee ~~- Financial statement~~.**

A license must be obtained from the commissioner for each public warehouse in operation in this state.

1. a. All licenses issued under this section must be for a period of ~~two years~~one year and terminate on the thirty-first day of July in the year of expiration.

   b. ~~(1) Notwithstanding the provisions of subdivision a, the commissioner shall license a warehouse annually, for the first six years of the warehouse's operation.~~

      ~~(2)~~ An initial annual license application that becomes effective on or after June first does not expire until July thirty-first of the following calendar year.

2. ~~No~~A license may not describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described.

3. a. The annual license fee for a public warehouse is:

      (1) Four hundred dollars for a warehouse ~~having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters]~~that purchased up to one million dollars worth of grain during the previous licensing period, or intends to purchase up to one million dollars worth of grain during the first year of operation;

      (2) ~~Five~~Eight hundred ~~fifty~~ dollars for a warehouse ~~having a capacity of~~that purchased more than ~~two hundred thousand bushels [7047.8 cubic meters]~~one million dollars worth of grain but not more than ~~five hundred thousand bushels [17619.54 cubic meters]~~ten million dollars worth of grain during the previous licensing period, or intends to purchase more than one million dollars worth of grain but not more than ten million dollars worth of grain during the first year of operation; and

(3) ~~Six~~One thousand two hundred ~~fifty~~ dollars for a warehouse ~~having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].~~

~~b. The biennial license fee for a public warehouse is:~~

~~(1) Seven hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];~~

~~(2) One thousand dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and~~

~~(3) One thousand two hundred dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters]~~that purchased more than ten million dollars worth of grain during the previous licensing period, or intends to purchase more than ten million dollars worth of grain during the first year of operation.

~~c.~~b. An application for an annual license renewal that is received after July fifteenth must include an additional one hundred dollar fee per warehouse. ~~An application for a biennial license renewal that is received after July fifteenth must include an additional two hundred dollar fee per warehouse.~~

4. 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. When two or more warehouses are operated under one license, the license fee is based upon the combined ~~bushel capacity of~~value of the grain purchased by the warehouses during the previous licensing period.

~~5. If required to obtain United States department of agriculture approval of the commissioner's warehouse inspection program, the commissioner may require the applicant submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this subsection is a confidential trade secret and is not a public record.~~

**SECTION 3.** A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

**Public warehouse license - Financial criteria to be met.**

1. To be eligible to receive an annual license under section 60-02-07, an applicant shall submit current financial documentation to the commissioner verifying the applicant has satisfactory net worth and working capital, as determined by the commissioner.
2. A licensed public warehouseman or an applicant for initial licensure shall report balance sheets and income statements to the commissioner annually at the time of application for initial licensure or license renewal if the applicant purchased up to ten million dollars worth of grain during the previous licensing period, or intends to purchase up to ten million dollars worth of grain during the first year of operation.
3. As a condition of licensure under section 60-02-07, an applicant shall provide to the commissioner, upon request, any financial record or bank verification release the commissioner deems relevant for the purpose of verifying the financial information of an applicant pursuant to the requirements of this section.
4. As a condition of licensure under section 60-02-07, an applicant must:
   a. Pass a criminal background check;
   b. Have a satisfactory credit score, as determined by the commissioner; and
   c. Be a responsible person with a good business reputation, as determined by the commissioner, who:
      (1) Is in the public warehouse business;
      (2) Has knowledge of, and experience with, generally accepted grain warehousing and handling practices;
      (3) Is competent and willing to operate a public warehouse in accordance with state and federal regulations; and
      (4) Has not committed fraud or a criminal offense indicating a lack of business integrity or honesty that undermines the person's responsibility as a warehouse operator.

**SECTION 4. 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.**

1. Before any license is effective for any public warehouseman under this chapter, the applicant for the license shall file a bond with the commissioner which must:

~~1.~~ a. Be in a sum not less than ~~five~~one hundred thousand dollars for any one warehouse.

~~2.~~ b. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.

~~3.~~ c. Run to the state of North Dakota for the benefit of all persons storing or selling grain in that warehouse.

~~4.~~ d. Be conditioned:

~~a.~~ (1) For the faithful performance of the licensee's duties as a public warehouseman.

~~b.~~ (2) For compliance with the provisions of law and the rules of the commissioner relating to the storage and purchase of grain by such warehouseman.

~~5.~~ e. Specify the location of each public warehouse intended to be covered by such bond.

~~6.~~ f. Be for the specific purpose of:

~~a.~~ (1) Protecting the holders of outstanding receipts.

~~b.~~ (2) Covering the costs incurred by the commissioner in the administration of chapter 60-04 in the event of the licensee's insolvency.

~~7.~~ g. Not accrue to the benefit of any person entering into a credit-sale contract with a public warehouseman.

~~8.~~2. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

3. The commissioner shall set the amount of the bond and may require an increase in the amount of any bond~~, from time to time,~~ as the commissioner deems necessary to accomplish the purposes of this section. The amount of the bond must be:

a. Based on the dollar value of the grain purchased; and

b. Calculated using the value of the amount of grain intended to be purchased by a new licensee during the first year of operation, or the three-year rolling annual average of the value of grain purchased at the time of license renewal.

4. The surety on the bond must be a corporate surety company, approved by the commissioner, and authorized to do business within the state. The commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond if, in the commissioner's judgment, the cash, negotiable instrument, or personal surety bond properly will protect the holders of outstanding receipts. One bond only 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 the bond must be construed to cover the elevators, mills, or warehouses, as a whole and not a specific amount for each.

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

**60-02-11. Scale ticket - Contents - Conversion.**

1. a. Every public warehouseman, upon receiving grain into the warehouse, shall issue a uniform scale ticket for each load of grain received. The scale tickets must be numbered consecutively, and one copy of each ticket must be retained and remain as a permanent record. The original ticket must be delivered to the person from ~~whom~~which the grain is received, upon receipt of each load of grain.

b. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts, within ~~forty-five~~thirty days after the grain is delivered to the warehouse~~, unless:~~

~~(1) The person to whom the scale ticket is issued signs a form waiving all rights to trust benefits under section 60-04-03.1;~~

~~(2) The form identifies by number each scale ticket to which the waiver applies; and~~

~~(3) The form is signed by the warehouseman.~~

~~c. The commissioner shall prepare the waiver form required by subdivision b and make the form available to each warehouse.~~

~~d. The warehouseman shall keep one copy of the signed waiver form with the records of the warehouse, provide one copy to the person who was issued the scale ticket and signed the form, and file one copy with the commissioner~~.

2. Nothing in this chapter requires a warehouseman to receive grain for storage. A warehouseman shall publish and post, in a conspicuous place in the warehouse, a publication identifying whether storage will be available to patrons or whether grain will be accepted via cash or a credit-sale contract arrangement.

3. A producer that fails to convert a scale ticket in accordance with subdivision b of subsection 1 forfeits any bond or credit-sale contract protection provided under sections 60-02-09, 60-02-19.1, and 60-04-03.1, and chapter 60-10.

**SECTION 6. AMENDMENT.** Section 60-02-12 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-12. ~~Penalty~~Violations of chapter - Criminal penalty - Civil penalty.**

1. Any person ~~who shall violate~~violating any of the provisions of this chapter or any rule adopted pursuant to this chapter, if punishment is not specifically provided for, ~~shall be guilty~~is:
   a. Guilty of an infraction; and
   b. Subject to a civil penalty in an amount not to exceed five thousand dollars for each violation.
2. The civil penalty may be adjudicated by a court or by the agriculture commissioner through an administrative hearing.

**SECTION 7. AMENDMENT.** Section 60-02-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-19.1. Credit-sale contracts.**

1. A warehouseman ~~shall~~may not purchase grain by a credit-sale contract except as provided in this section. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing the contract. The warehouseman shall maintain an accurate record of all credit-sale contract numbers, including the disposition of each numbered form, whether by execution, destruction, or otherwise. Each credit-sale contract must contain or provide for all of the following:
   ~~1.~~ a. The seller's name and address.

~~2.~~ b. The conditions of delivery.

~~3.~~ c. The amount and kind of grain delivered.

~~4.~~ d. The price per unit or basis of value.

~~5.~~ e. The date payment is to be made.

~~6.~~ f. The duration of the credit-sale contract.

~~7.~~ g. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02-09. However, if the warehouseman has obtained bond coverage in addition to that required by section 60-02-09 and such coverage extends to the benefit of credit-sale contracts, the warehouseman may state the same in the credit-sale contract along with the extent of such coverage.

2. The contract must be signed by both parties and executed in duplicate. An electronic signature satisfies the requirement. An unsigned contract must be considered an unconverted scale ticket in accordance with section 60-02-11. One copy shall be retained by the warehouseman and one copy shall be delivered to the seller. Upon revocation, termination, or cancellation of a warehouseman's license, the payment date for all credit-sale contracts shall, at the seller's option, be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain shall be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. When a public warehouse is transferred under this chapter, credit-sale contracts may be assigned to another licensed public warehouseman ~~or facility-based grain buyer~~.

3. A warehouseman that uses deferred-payment contracts shall offer bond protection to producers.

**SECTION 8. AMENDMENT.** Section 60-02-24 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-24. Reports to be made by public warehouseman - Penalty for failure.**

1. Each licensed and bonded public warehouseman shall:

~~1.~~ a. Prepare for each month a report giving facts and information called for on the form of report prepared by the commissioner. The report must contain or be verified by a written declaration the report is made under the penalties of perjury.

The report may be called for more frequently if the commissioner deems necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The commissioner may make the information available for use by other governmental entities, but the commissioner may not release the information in a manner that jeopardizes the confidentiality of individual licensees.

~~2.~~ b. File the report with the commissioner not later than the last day of the following month, and failure to file this report promptly will be considered cause for revoking the warehouse license after due notice and hearing.

~~3.~~ c. Keep a separate account of the grain business, if the warehouseman is engaged in handling or selling any other commodity, and under no circumstances may the grain account and other accounts be mixed.

d. Submit additional information requested by the commissioner pursuant to a report or an inspection within five business days.

2. The commissioner may refuse to renew a license to any public warehouseman ~~who~~that fails to make a required report.

**SECTION 9. AMENDMENT.** Section 60-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the agriculture commissioner.
2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in ~~subsection 7 of~~ section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
3. "Deferred-payment contract" means a credit-sale contract for which the amount owed for the sale of grain has been established, but the payment is postponed until a later date.

4. "Facility" means a structure in which grain purchased by a grain buyer is received or held.

~~4. "Facility-based grain buyer" means a grain buyer who operates a facility licensed under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.~~

5. "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 grain or grass seed. "Grain" does not include grain or grass seeds owned by or in the possession of the grain buyer which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.

6. "Grain broker" means a person that:

   a. Is involved in the negotiation of grain transactions in the state;

   b. Receives compensation from at least one party to the transaction; and

   c. Does not take title to the grain and is not under any financial or contractual obligation related to the transaction.

7. "Grain buyer" means any person, other than a public warehouseman as defined in chapter 60-02, ~~who~~that purchases or otherwise merchandises grain for compensation. The term includes roving grain buyers, grain brokers, and grain processors. The term does not include:

   a. A producer of grain ~~who~~that purchases grain from other producers to complete a carload or truckload in which the greater portion of the load is grain grown by the producer or on-farm feedlot operations in which at least fifty percent of the livestock is owned by the owner of the farm.

   b. A person ~~who~~that is permitted to sell seed under chapter 4.1-53, if that person buys grain only for processing and subsequent resale as seed.

   c. A person ~~who~~that is an authorized dealer or agent of a seed company holding a permit in accordance with section 4.1-53-38.

~~7.~~8. "Grain processor" means an entity that purchases grain to process into end products of a substantially different makeup or nature than the original grain.

9. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.

~~8.~~10. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract.

~~9.~~11. "Roving grain buyer" means a grain buyer ~~who~~that does not operate a facility where grain is received.

**SECTION 10. 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~~.**

1. Grain buyers that purchase, solicit, merchandise, or take possession of grain in this state shall obtain an annual license from the commissioner. Except as provided in this section, each license expires on July thirty-first of each year. If a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. ~~A facility-based grain buyer shall 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 ~~four~~:
   a. Four hundred dollars for a grain buyer that purchased up to one million dollars worth of grain during the previous licensing period, or intends to purchase up to one million dollars worth of grain during the first year of operation;
   b. Eight hundred dollars for a grain buyer that purchased more than one million dollars worth of grain but not more than ten million dollars worth of grain during the previous licensing period, or intends to purchase more than one million dollars worth of grain but not more than ten million dollars worth of grain during the first year of operation; and ~~a~~
   c. One thousand two hundred dollars for a grain buyer that purchased more than ten million dollars worth of grain during the previous licensing period, or intends to purchase more than ten million dollars worth of grain during the first year of operation.

2. A license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee per receiving location.

~~If required to obtain United States department of agriculture approval of the commissioner's grain buyer inspection program, the commissioner may require 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.~~

3. A license issued under this section is not transferable.

4. The commissioner may refuse to issue, renew, or may revoke a license:

   a. If the licensee or applicant has been convicted of a criminal offense;

   b. If the licensee or applicant has failed to comply with the requirements of this section;

   c. If the commissioner has evidence the licensee negotiated in bad faith; or

   d. For any other reason determined by the commissioner.

5. A licensed grain buyer shall submit a monthly report to the commissioner by the tenth day of each month. The report must include the total volume of each commodity brokered in the preceding month.

6. A licensed grain buyer shall notify each potential commodity seller of the identity of the potential commodity buyer before the final confirmation of the transaction.

7. Before a license is effective for a grain buyer under this section, the licensee or applicant shall file a bond with the commissioner for not less than one hundred thousand dollars.

**SECTION 11.** A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

**Grain buyer license - Financial criteria to be met.**

1. To be eligible to receive an annual license under section 60-02.1-07, an applicant shall submit current financial documentation to the commissioner verifying the applicant has satisfactory net worth and working capital, as determined by the commissioner.

2. A licensed grain buyer or an applicant for initial licensure shall report balance sheets and income statements to the commissioner annually at the time of application for initial licensure or license renewal if the applicant purchased up to ten million dollars

worth of grain during the previous licensing period, or intends to purchase up to ten million dollars worth of grain during the first year of operation.

3. As a condition of licensure under section 60-02.1-07, an applicant shall provide to the commissioner, upon request, any financial record or bank verification release the commissioner deems relevant for the purpose of verifying the financial information of an applicant pursuant to the requirements of this section.

4. As a condition of licensure under section 60-02.1-07, an applicant must:

a. Pass a criminal background check;

b. Have a satisfactory credit score, as determined by the commissioner; and

c. Be a responsible individual with a good business reputation, as determined by the commissioner, who:

(1) Is in the grain buying business;

(2) Has knowledge of, and experience with, generally accepted grain buying and handling practices;

(3) Is competent and willing to operate as a grain buyer in accordance with state and federal regulations; and

(4) Has not committed fraud or a criminal offense indicating a lack of business integrity or honesty that undermines the person's responsibility as a grain buyer.

**SECTION 12. 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.**

1. Before any license is effective for any grain buyer under this chapter, the applicant for the license shall file a bond with the commissioner which must:

~~1.~~ a. Be in a sum not less than ~~ten~~one hundred thousand dollars.

~~2.~~ b. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.

~~3.~~ c. Run to the state of North Dakota for the benefit of all persons selling grain to or through the grain buyer.

~~4.~~ d. Be conditioned:

~~a.~~ (1) For the faithful performance of the licensee's duties as a grain buyer.

~~b.~~ (2) For compliance with the provisions of law and the rules of the commissioner relating to the purchase of grain by such grain buyer.

~~5.~~ e. ~~For facility-based grain buyers, specify the location of each facility intended to be covered by the bond.~~

~~6.~~ Be for the specific purpose of:

~~a.~~ (1) Protecting the sellers of grain.

~~b.~~ (2) Covering the costs incurred by the commissioner in the administration of the licensee's insolvency.

~~7.~~ f. Not accrue to the benefit of any person entering a credit-sale contract with a grain buyer.

~~8.~~2. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

3. The commissioner shall set the amount of the bond and may require an increase in the amount of any bond as the commissioner deems necessary to accomplish the purposes of this section.

4. The amount of the bond for a grain buyer must be based on the dollar value of the grain purchased, solicited, or merchandised.

5. A grain buyer shall report purchases, solicitations, and merchandising agreements to the commissioner monthly.

6. The surety on the bond must be a corporate surety company, approved by the commissioner, and authorized to do business within the state. The commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in the commissioner's judgment, 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 the bond must be construed to cover those facilities as a whole and not a specific amount for each.~~

**SECTION 13. AMENDMENT.** Section 60-02.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-10. Grain buyer license to be posted or carried - Penalty.**

~~The license obtained by a facility-based grain buyer shall be posted in a conspicuous place in the buyer's facility.~~ A ~~roving~~ grain buyer shall have the buyer's license in possession at all times. A grain buyer ~~who~~that transacts business without first procuring a license and giving a bond is guilty of a class B misdemeanor.

**SECTION 14. 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 commissioner 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 commissioner'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 commissioner~~.

**SECTION 15. AMENDMENT.** Section 60-02.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-13. ~~Penalty~~Violations of chapter - Criminal penalty - Civil penalty.**

1. Any person ~~who violates~~violating any provision of this chapter or any rule adopted pursuant to this chapter, if punishment is not specifically provided for, is ~~guilty~~:
   a. Guilty of an infraction; and
   b. Subject to a civil penalty in an amount not to exceed five thousand dollars for each violation.
2. The civil penalty may be adjudicated by a court or by the agriculture commissioner through an administrative hearing.

**SECTION 16. AMENDMENT.** Section 60-02.1-14 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-14. Credit-sale contracts.**

1. A grain buyer may not purchase grain by a credit-sale contract except as provided in this section. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing the contract. The grain buyer shall maintain an accurate record of all credit-sale contract numbers, including the disposition of each numbered form, whether by execution, destruction, or otherwise. Each credit-sale contract must contain or provide for all of the following:
   ~~1.~~ a. The seller's name and address.
   ~~2.~~ b. The conditions of delivery.
   ~~3.~~ c. The amount and kind of grain delivered.
   ~~4.~~ d. The price per unit or basis of value.
   ~~5.~~ e. The date payment is to be made.
   ~~6.~~ f. The duration of the credit-sale contract.
   ~~7.~~ g. 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 60-02.1-08 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.
2. The contract must be signed by both parties and executed in duplicate. An electronic signature satisfies the requirement. A holder of an unsigned contract is not eligible for any protection provided by chapter 60-10. One copy must be retained by the grain buyer and one copy must be delivered to the seller. Upon revocation, termination, or cancellation of a grain buyer's license, the payment date for all credit-sale contracts, at the seller's option, must be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain must be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. ~~When a facility is transferred under this chapter, credit-sale contracts may be assigned to another licensed facility-based grain buyer or public warehouseman.~~
3. A buyer that offers deferred-payment contracts shall offer bond protection to producers.

**SECTION 17. AMENDMENT.** Section 60-02.1-15 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-15. Discrimination by grain buyer prohibited.**

1. A grain buyer may not discriminate:

~~1.~~ a. In the buying, selling, receiving, and handling of grain or in the charges made or the service rendered to owners of purchased grain;

~~2.~~ b. In the receiving of grain offered for sale, but this chapter may not be construed to require a processor to receive or purchase any lot or kinds of grain;

~~3.~~ c. In regard to the persons offering such grain for sale; or

~~4.~~ d. Between points or stations except as the marketing factors or transportation costs or grain quality premiums may warrant.

2. A grain buyer is not required to receive any grain that is heating or otherwise out of condition. ~~A facility-based grain buyer shall post grain prices paid in a conspicuous place in the office or driveway of the buyer's place of business.~~

**SECTION 18. AMENDMENT.** Section 60-02.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-17. Reports to be made by grain buyers - Penalty for failure.**

1. Each licensed and bonded grain buyer shall:

~~1.~~ a. Prepare for each month a report giving facts and information called for on the form of report prepared by the commissioner. The report must contain or be verified by a written declaration the report is made under the penalties of perjury. The report may be called for more frequently if the commissioner deems necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The commissioner may make this information available for use by other governmental entities, but the information may not be released by those entities in a manner that jeopardizes the confidentiality of individual licensees.

~~2.~~ b. File the report with the commissioner not later than the last day of the following month. Failure to file this report promptly will be considered cause for revoking the grain buyer license after due notice and hearing.

~~3.~~ c. Keep a separate account of the grain business, if the grain buyer is engaged in handling or selling any other commodity, and under no circumstances may the grain account and other accounts be mixed.

d. Submit additional information requested by the commissioner pursuant to a report or an inspection within five business days.

2. The commissioner may refuse to renew a license to any grain buyer ~~who~~that fails to make a required report.

**SECTION 19. AMENDMENT.** Section 60-02.1-19 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-19. Federal grades to control - Grades to be posted.**

All grain buyers shall purchase grain, except dry edible beans, in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in applicable rules and regulations adopted by federal officials pursuant to law. ~~A facility-based grain buyer shall post in a conspicuous place in the buyer's facility the official grades so established and also any change that may be made from time to time.~~ A grain buyer of dry edible beans shall purchase and deliver beans in accordance with the buyer's policy, which must be filed with the commissioner and, if applicable, posted in a conspicuous place in the buyer's facility. Other grading standards may be used if mutually agreed to in writing by the grain buyer and the owner of the grain. However, the owner may demand the use of federal grading standards. After hearing, the commissioner may prohibit the use of nonfederal grades.

**SECTION 20. AMENDMENT.** Section 60-02.1-21 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-21. Grain to be kept insured for benefit of owner by grain buyer.**

A license may not be issued to a ~~facility-based~~ grain ~~buyer~~processor unless all company-owned and unconverted scale ticket grain is kept fully insured at the expense of the grain buyer 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. An insurance policy may not be transferred or assigned to any person for any purpose.

**SECTION 21. AMENDMENT.** Section 60-02.1-23 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-23. Destruction of grain - First lien by holder of outstanding receipt.**

The holder of an unconverted scale ticket or other comparable receipt issued by any ~~facility-based~~ grain ~~buyer~~processor shall have a first lien, to the extent of the value of the grain at the time of loss at the place where held, on all insurance of the grain buyer for any loss sustained by the receiptholder, on account of the loss of such grain by fire, tornado, or any other cause covered by such insurance policy.

**SECTION 22. AMENDMENT.** Section 60-02.1-29 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-29. Appointment of commissioner.**

Upon the insolvency of any ~~roving~~ grain buyer, the commissioner 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 commissioner secure and execute the trust, the court shall issue an order granting the application, without bond, and the commissioner shall proceed to exercise the commissioner's authority without further direction from the court.

Upon the filing of the commissioner'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 23.** A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

**Joinder - Grain broker.**

A licensed grain broker may be joined as a party to an insolvency proceeding if the commissioner determines the grain broker negotiated a grain transaction:

1. With an insolvent grain buyer; or

2. That was discriminatory, predatory, or in bad faith.

**SECTION 24. 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 the commissioner's appointment, the commissioner may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the commissioner shall publish a notice of the commissioner's 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~~processor, the notice must be published once each week for two consecutive weeks in a newspaper in the county in which the ~~warehouse~~facility is located. The notice must require outstanding receiptholders and credit-sale contract claimants to file their claims with the commissioner along with the receipts, contracts, or other evidence of the claims required by the commissioner. 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 commissioner, the commissioner 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 25. AMENDMENT.** Section 60-02.1-41 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-41. Roving grain buyers - Exception - Applicability of provisions.**

Notwithstanding any other law, this chapter does not apply to any person that purchases, solicits, or merchandises grain, which has been cleaned, processed, and made ready for consumption, from a public warehouseman licensed and bonded under chapter 60-02 ~~or from a facility-based grain buyer licensed and bonded under this chapter~~. If the person engages in any activity other than those described in this section, the person is subject to the law governing those other activities.

**SECTION 26. AMENDMENT.** Subsection 2 of section 60-04-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in ~~subsection 7 of~~ section 60-02-19.1. When a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.

**SECTION 27. AMENDMENT.** Section 60-10-16 of the North Dakota Century Code is amended and reenacted as follows:

**60-10-16. Roving grain buyers - Exception - Applicability of provisions.**

Notwithstanding any other law, this chapter does not apply to any person that purchases, solicits, or merchandises grain, which has been cleaned, processed, and made ready for consumption, from a public warehouseman licensed and bonded under chapter 60-02 ~~or from a facility-based grain buyer licensed and bonded under chapter 60-02.1~~. If the person engages in any activity other than those described in this section, the person is subject to the law governing those other activities.

**SECTION 28. REPEAL.** Sections 60-02.1-06, 60-02.1-07.1, 60-02.1-26, 60-02.1-27, and 60-10-15 of the North Dakota Century Code are repealed.