

SENATE BILL NO. 2074

Introduced by

Agriculture Committee

(At the request of the Public Service Commission)

1 A BILL for an Act to create and enact a new section to chapter 60-02 and a new section to
2 chapter 60-02.1 of the North Dakota Century Code, relating to cease and desist orders against
3 grain warehouses and grain buyers; and to amend and reenact sections 60-02-07, 60-02.1-07,
4 60-02.1-30, and 60-04-03.1 of the North Dakota Century Code, relating to the licensing fees for
5 public warehouses and for grain buyers and assets of the trust fund upon the insolvency of a
6 grain warehouse or grain buyer licensee.

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

8 **SECTION 1. AMENDMENT.** Section 60-02-07 of the 1999 Supplement to the North
9 Dakota Century Code is amended and reenacted as follows:

10 **60-02-07. Public warehouse license - How obtained - Fee - Financial statement.**

11 An annual license must be obtained from the commission for each public warehouse in
12 operation in this state. The license expires on July thirty-first of each year. No license may
13 describe more than one public warehouse nor grant permission to operate any public
14 warehouse other than the one described. The annual license fee for a public warehouse is ~~two~~
15 three hundred ~~fifty~~ dollars for a warehouse of a bushel capacity of two hundred thousand
16 [7047.8 cubic meters] or less, four hundred fifty dollars for a warehouse of a bushel capacity of
17 more than two hundred thousand and not more than five hundred thousand [7047.8 to not more
18 than 17619.54 cubic meters], and five hundred fifty dollars for a warehouse of a bushel capacity
19 of more than five hundred thousand [17619.54 cubic meters]. If a public warehouseman
20 operates two or more warehouses in the same city or siding, in conjunction with each other and
21 with the same working force, and keeps one set of books and records for all such warehouses,
22 and issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts for
23 the grain stored and purchased therein, only one license is required for the operation of all such
24 warehouses. Where two or more warehouses are operated under one license, the license fee

1 is based upon the combined bushel capacity of the warehouses. If the commission employs
2 fewer than two full-time equivalent warehouse inspectors, each annual fee under this section is
3 reduced by one hundred dollars.

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

9 **SECTION 2.** A new section to chapter 60-02 of the North Dakota Century Code is
10 created and enacted as follows:

11 **Cease and desist.** Whenever an entity engages or is about to engage in an activity or
12 practice that is contrary to the provisions of this chapter or related rules, the commission, upon
13 its own motion without complaint, with or without hearing, may order the entity to cease and
14 desist from the activity until further order of the commission. Such orders may include any
15 corrective action up to and including license suspensions. Cease and desist orders must be
16 accompanied by a notice of opportunity to be heard on the order within fifteen days of the
17 issuance of the order.

18 **SECTION 3. AMENDMENT.** Section 60-02.1-07 of the 1999 Supplement to the North
19 Dakota Century Code is amended and reenacted as follows:

20 **60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement.** Grain
21 buyers must obtain an annual license from the commission. The license expires on July
22 thirty-first of each year. A facility-based grain buyer must obtain a license for each receiving
23 location operated in the state. If a grain buyer operates two or more facilities in the same city or
24 siding, in conjunction with each other and with the same working force, and where but one set
25 of books and records is kept for all such facilities, and scale tickets, and checks of but one
26 series are issued for the grain, purchased, only one license is required for the operation of all
27 such facilities. The annual license fee for a facility-based grain buyer is ~~two~~ three hundred ~~fifty~~
28 dollars. The annual license fee for a roving grain buyer is ~~one~~ two hundred ~~fifty~~ dollars.

29 If required to obtain United States department of agriculture approval of the
30 commission's grain buyer inspection program, the commission may require that grain buyers
31 submit a current financial statement prepared in accordance with generally accepted

1 accounting principles. A financial statement furnished under this section is a confidential trade
2 secret and is not a public record.

3 **SECTION 4.** A new section to chapter 60-02.1 of the North Dakota Century Code is
4 created and enacted as follows:

5 **Cease and desist.** Whenever an entity engages or is about to engage in an activity or
6 practice that is contrary to the provisions of this chapter or related rules, the commission, upon
7 its own motion without complaint, with or without hearing, may order the entity to cease and
8 desist from the activity until further order of the commission. Such orders may include any
9 corrective action up to and including license suspensions. Cease and desist orders must be
10 accompanied by a notice of opportunity to be heard on the order within fifteen days of the
11 issuance of the order.

12 **SECTION 5. AMENDMENT.** Section 60-02.1-30 of the 1999 Supplement to the North
13 Dakota Century Code is amended and reenacted as follows:

14 **60-02.1-30. Trust fund established.** Upon the insolvency of any licensee, a trust fund
15 must be established for the benefit of claimants and to pay the costs incurred by the
16 commission in the administration of the insolvency. The trust fund must consist of the following:

- 17 1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the
18 proceeds obtained from the conversion of such grain.
- 19 2. The proceeds, including accounts receivable, from any grain sold from the time of
20 the filing of the claim that precipitated an insolvency until the commission is
21 appointed trustee must be remitted to the commission and included in the trust
22 fund.
- 23 3. The proceeds of insurance policies on destroyed grain.
- 24 ~~3.~~ 4. The claims for relief, and proceeds therefrom, for damages upon bond given by the
25 licensee to ensure faithful performance of the duties of a licensee.
- 26 5. The claim for relief, and proceeds therefrom, for the conversion of any grain stored
27 in the warehouse.
- 28 6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that
29 precipitated an insolvency.
- 30 7. Unencumbered equity in grain hedging accounts.
- 31 8. Unencumbered grain product assets.

SECTION 6. AMENDMENT. Section 60-04-03.1 of the 1999 Supplement to 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 receipt holders 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.
- ~~3.~~ 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.
- ~~4.~~ 5. The claim for relief, and proceeds therefrom, for the conversion of any grain stored in the warehouse.
- ~~5.~~ 6. Unencumbered accounts receivable for grain sold at the time or following the filing of a claim that precipitates an insolvency prior to the filing of the claim that precipitated an insolvency.
- ~~6.~~ 7. Unencumbered equity in grain hedging accounts.
- ~~7.~~ 8. Unencumbered grain product assets.