

Introduced by

1 A BILL for an Act to create and enact two new sections to chapter 60-02, and two new sections
2 to chapter 60-02.1 of the North Dakota Century Code, relating to financial criteria for grain
3 buyer, grain broker, grain processor, and warehousemen licenses, and licensing and bonding
4 for grain brokers and grain processors; to amend and reenact sections 60-02-01, 60-02-03,
5 60-02-06.1, 60-02-07, 60-02-09, 60-02-10, 60-02-10.1, 60-02-11, 60-02-12, 60-02-19.1,
6 60-02-20, 60-02-24, 60-02.1-01, 60-02.1-03, 60-02.1-06.1, 60-02.1-07, 60-02.1-07.1,
7 60-02.1-08, 60-02.1-10, 60-02.1-11, 60-02.1-13, 60-02.1-14, 60-02.1-15, 60-02.1-16,
8 60-02.1-17, and subsection 2 of section 60-04-01 of the North Dakota Century Code, relating to
9 definitions of grain brokers and processors, the duties and powers of the commissioner,
10 confidentiality records, scale ticket contents, credit-sale contracts, reports, annual licenses,
11 fees, and bonds for grain buyers, grain brokers, grain processors, and warehousemen; and to
12 provide a penalty.

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

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

16 **60-02-01. Definitions.**

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

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

- 1 3. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower,
2 sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa,
3 and any other commercially grown grain or grass seed. "Grain" as defined in this
4 chapter shall not include grain or grass seeds owned by or in the possession of the
5 warehouseman ~~that~~which have been cleaned, processed, and specifically identified for
6 an intended use of planting for reproduction and for which a warehouse receipt has
7 not been issued.
- 8 4. "Grain processor" means an entity that purchases grain to process into end products
9 that are of a substantially different makeup or nature than the original grain.
- 10 5. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale
11 contract.
- 12 ~~5.6.~~ "Public warehouse" means any elevator, mill, warehouse, subterminal, grain
13 warehouse, terminal warehouse, or other structure or facility not licensed under the
14 United States Warehouse Act [7 U.S.C. 241-273] in which grain is received for storing,
15 buying, selling, shipping, or processing for compensation. Provided, however, that
16 nothing in this chapter shall be construed to require a processor to receive, store, or
17 purchase any lot or kind of grain at said facility.
- 18 ~~6.7.~~ "Public warehouseman" means the person operating a public warehouse that is
19 located or doing business within this state, whether or not such owner or operator
20 resides within this state. The term does not include a person ~~who~~that is permitted to
21 sell seed under chapter 4.1-53, if that person does not store grain for the public and
22 buys grain only for processing and subsequent resale as seed, or an authorized dealer
23 or agent of a seed company holding a permit in accordance with section 4.1-53-38.
- 24 ~~7.8.~~ "Receipts" means grain warehouse receipts, scale tickets, checks, or other
25 memoranda given by a public warehouseman for, or as evidence of, the receipt,
26 storage, or sale of grain except when such memoranda was received as a result of a
27 credit-sale contract.
- 28 ~~8.9.~~ "Receiving station" means any facility other than an individually licensed warehouse
29 that is used by a licensed public warehouseman to receive and temporarily store grain
30 prior to transferring the grain to the warehouseman's primary licensed warehouse
31 location or delivering it directly to market.

1 **SECTION 2. AMENDMENT.** Section 60-02-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **60-02-03. Duties and powers of the commissioner.**

4 The commissioner has the following powers and duties:

- 5 1. Exercise general supervision of the public warehouses and grain processors of this
6 state, including the handling, weighing, and storing of grain, and the management of
7 public warehouses and grain processors.
- 8 2. Investigate all complaints of fraud and injustice, unfair practices, and unfair
9 discrimination.
- 10 3. Examine and inspect, during ordinary business hours, any licensed warehouse or
11 processor, including all books, documents, and records.
- 12 4. Require the filing of reports pertaining to the operation of the warehouse or processor.
- 13 5. Make all proper rules for carrying out and enforcing any law in this state regarding
14 public warehouses and grain processors.

15 **SECTION 3. AMENDMENT.** Section 60-02-06.1 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **60-02-06.1. Release of records - Confidentiality.**

- 18 1. As a condition of licensure under section 60-02-07 and section 6 of this Act, an
19 applicant shall agree to provide to the commissioner, upon request, any financial
20 record the commissioner deems relevant for purposes related to:
 - 21 a. The issuance or renewal of a public warehouse or grain processor license; or
 - 22 b. An investigation after issuance or renewal of a public warehouse or grain
23 processor license.
- 24 2. As a condition of licensure, an applicant shall file a records release with the
25 commissioner, authorizing the commissioner to obtain from any source any financial
26 record the commissioner deems relevant for purposes related to:
 - 27 a. The issuance or renewal of a public warehouse or grain processor license; or
 - 28 b. An investigation after issuance or renewal of a public warehouse or grain
29 processor license.
- 30 3. Any information obtained by the commissioner under this section is confidential and
31 may be provided only:

- 1 a. To federal authorities in accordance with federal law;
- 2 b. To the attorney general, state agencies, and law enforcement agencies, for use in
- 3 the pursuit of official duties; and
- 4 c. As directed by an order of a court pursuant to a showing of good cause.

5 **SECTION 4. AMENDMENT.** Section 60-02-07 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **60-02-07. Public warehouse license - Fee—Financial statement.**

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

- 10 1. a. All licenses issued under this section must be for a period of ~~two years~~one year
11 and terminate on the thirty-first day of July in the year of expiration.
- 12 b. (1) ~~Notwithstanding the provisions of subdivision a, the commissioner shall~~
13 ~~license a warehouse annually, for the first six years of the warehouse's~~
14 ~~operation.~~
15 (2) An initial annual license application that becomes effective on or after June
16 first does not expire until July thirty-first of the following calendar year.
- 17 2. ~~No~~A license may not describe more than one public warehouse nor grant permission
18 to operate any public warehouse other than the one described.
- 19 3. a. The annual license fee for a public warehouse is:
20 (1) Four hundred dollars for a warehouse ~~having a maximum capacity of two~~
21 ~~hundred thousand bushels [7047.8 cubic meters]~~that purchased up to one
22 million dollars worth of grain during the previous licensing period, or intends
23 to purchase up to one million dollars worth of grain during the first year of
24 operation;
25 (2) ~~Five~~Eight hundred ~~fifty~~ dollars for a warehouse ~~having a capacity of that~~
26 ~~purchased more than two hundred thousand bushels [7047.8 cubic~~
27 ~~meters]~~one million dollars worth of grain but not more than ~~five hundred~~
28 ~~thousand bushels [17619.54 cubic meters]~~ten million dollars worth of grain
29 during the previous licensing period, or intends to purchase more than one
30 million dollars worth of grain but not more than ten million dollars worth of
31 grain during the first year of operation; and

- 1 (3) ~~Six~~One thousand two hundred fifty dollars for a warehouse having a
2 capacity of more than five hundred thousand bushels [~~17619.54~~ cubic
3 meters].~~–~~
- 4 b. The biennial license fee for a public warehouse is:
- 5 (1) ~~Seven hundred dollars for a warehouse having a maximum capacity of two~~
6 ~~hundred thousand bushels [7047.8 cubic meters];~~
- 7 (2) ~~One thousand dollars for a warehouse having a capacity of more than two~~
8 ~~hundred thousand bushels [7047.8 cubic meters] but not more than five~~
9 ~~hundred thousand bushels [17619.54 cubic meters]; and~~
- 10 (3) ~~One thousand two hundred dollars for a warehouse having a capacity of~~
11 ~~more than five hundred thousand bushels [17619.54 cubic meters]~~that
12 purchased more than ten million dollars worth of grain during the previous
13 licensing period, or intends to purchase more than ten million dollars worth
14 of grain during the first year of operation.
- 15 e.b. An application for an annual license renewal that is received after July fifteenth
16 must include an additional one hundred dollar fee per warehouse. ~~An application~~
17 ~~for a biennial license renewal that is received after July fifteenth must include an~~
18 ~~additional two hundred dollar fee per warehouse.~~
- 19 4. If a public warehouseman operates two or more warehouses in the same city or
20 siding, in conjunction with each other and with the same working force, and keeps one
21 set of books and records for all such warehouses, and issues one series of scale
22 tickets, warehouse receipts, checks, and credit-sale contracts for the grain stored and
23 purchased therein, only one license is required for the operation of all such
24 warehouses. When two or more warehouses are operated under one license, the
25 license fee is based upon the combined ~~bushel capacity of~~value of the grain
26 purchased by the warehouses during the previous licensing period.
- 27 5. ~~If required to obtain United States department of agriculture approval of the~~
28 ~~commissioner's warehouse inspection program, the commissioner may require the~~
29 ~~applicant submit a current financial statement prepared in accordance with generally~~
30 ~~accepted accounting principles. A financial statement furnished under this subsection~~
31 ~~is a confidential trade secret and is not a public record.~~

1 **SECTION 5.** A new section to chapter 60-02 of the North Dakota Century Code is created
2 and enacted as follows:

3 **Public warehouse license - Grain processor license - Financial criteria to be met.**

4 1. To be eligible to receive an annual license under section 60-02-07 or section 6 of this
5 Act, an applicant shall:

6 a. Submit current financial documentation to the commissioner verifying the
7 applicant has a total net worth of:

8 (1) Two hundred thousand dollars if the applicant purchased up to one million
9 dollars worth of grain during the previous licensing period, or intends to
10 purchase up to one million dollars worth of grain during the first year of
11 operation;

12 (2) Five hundred thousand dollars if the applicant purchased more than one
13 million dollars worth of grain but not more than ten million dollars worth of
14 grain during the previous licensing period, or intends to purchase more than
15 one million dollars worth of grain but not more than ten million dollars worth
16 of grain during the first year of operation; or

17 (3) One million dollars if the applicant purchased more than ten million dollars
18 worth of grain during the previous licensing period, or intends to purchase
19 more than ten million dollars worth of grain during the first year of operation;
20 and

21 b. Submit current documentation to the commissioner verifying the applicant has a
22 working capital ratio of greater than one.

23 2. A licensed public warehouseman, grain processor, or an applicant for initial licensure
24 shall report balance sheets and income statements to the commissioner:

25 a. Annually at the time of application for initial licensure or license renewal if the
26 applicant purchased up to ten million dollars worth of grain during the previous
27 licensing period, or intends to purchase up to ten million dollars worth of grain
28 during the first year of operation; or

29 b. Quarterly if the applicant purchased more than ten million dollars worth of grain
30 during the previous licensing period, or intends to purchase more than ten million
31 dollars worth of grain during the first year of operation.

1 3. As a condition of licensure under section 60-02-07 or section 6 of this Act, an applicant
2 shall provide to the commissioner, upon request, any financial record or bank
3 verification release the commissioner deems relevant for the purpose of verifying the
4 financial information of an applicant pursuant to the requirements of this section.

5 **SECTION 6.** A new section to chapter 60-02 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Grain processor license - Application - Bond - How obtained - Fee - Report -**
8 **Disclosure.**

- 9 1. Before conducting business in the state, a grain processor shall submit an application
10 to obtain an annual license from the commissioner. To conduct business in the state, a
11 grain processor also shall register and be in good standing with the secretary of state.
12 Except as provided in this section, each license expires on July thirty-first of each year.
13 When a licensee's initial license is issued effective after May thirty-first, that license
14 expires on July thirty-first of the following year. The annual license fee of a grain
15 processor is:
- 16 a. Four hundred dollars for a grain processor that purchased up to one million
17 dollars worth of grain during the previous licensing period, or intends to purchase
18 up to one million dollars worth of grain during the first year of operation;
- 19 b. Eight hundred dollars for a grain processor that purchased more than one million
20 dollars worth of grain but not more than ten million dollars worth of grain during
21 the previous licensing period, or intends to purchase more than one million
22 dollars worth of grain but not more than ten million dollars worth of grain during
23 the first year of operation; and
- 24 c. One thousand two hundred dollars for a grain processor that purchased more
25 than ten million dollars worth of grain during the previous licensing period, or
26 intends to purchase more than ten million dollars worth of grain during the first
27 year of operation.
- 28 2. A license issued under this section is not transferable.
- 29 3. The commissioner may refuse to issue, renew, or may revoke a license:
- 30 a. If the licensee or applicant has been convicted of a criminal offense;

- 1 b. If the licensee or applicant has failed to comply with the requirements of this
2 section;
- 3 c. If the commissioner has evidence the licensee negotiated in bad faith; or
4 d. For any other reason determined by the commissioner.
- 5 4. A licensed grain processor shall submit a monthly report to the commissioner by the
6 tenth day of each month. The report must include the total volume of each commodity
7 processed in the preceding month.
- 8 5. Before a license is effective for a grain processor under this section, the licensee or
9 applicant must file a bond with the commissioner for not less than one hundred
10 thousand dollars.

11 **SECTION 7. AMENDMENT.** Section 60-02-09 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **60-02-09. Bond filed by public warehouseman or grain processor.**

- 14 1. Before any license is effective for any public warehouseman or grain processor
15 this chapter, the applicant for the license shall file a bond with the commissioner which
16 must:
- 17 4. a. Be in a sum not less than ~~five~~one hundred thousand dollars for any one
18 warehouse.
- 19 2. b. Be continuous, unless the corporate surety by certified mail notifies the licensee
20 and the commissioner the surety bond will be canceled ninety days after receipt
21 of the notice of cancellation.
- 22 3. c. Run to the state of North Dakota for the benefit of all persons storing or selling
23 grain in that warehouse or selling grain to that grain processor.
- 24 4. d. Be conditioned:
- 25 a. (1) For the faithful performance of the licensee's duties as a public
26 warehouseman or grain processor.
- 27 b. (2) For compliance with the provisions of law and the rules of the commissioner
28 relating to the storage and purchase of grain by such warehouseman or the
29 purchase of grain by such grain processor.
- 30 5. e. Specify the location of each public warehouse or grain processor intended to be
31 covered by such bond.

1 **60-02-10. Warehouse or grain processor license to be posted.**

2 The license obtained by a public warehouseman ~~shall~~or grain processor must be posted in
3 a conspicuous place in the public warehouse or grain processing plant.

4 **SECTION 9. AMENDMENT.** Section 60-02-10.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **60-02-10.1. Revocation and suspension.**

7 The commissioner may suspend or revoke the license of any warehouseman or grain
8 processor for cause upon notice and hearing. Notwithstanding any other provisions of this
9 chapter, the license of a warehouseman or grain processor must automatically be suspended
10 for failure at any time to have or to maintain either a bond or insurance policy in the amount and
11 type required. During a suspension of a license the warehouseman or grain processor may,
12 upon the commissioner's approval, operate the warehouse or grain processing plant and
13 purchase or redeliver grain previously received, but may not receive additional grain for
14 purchase, storage, shipping, or processing. Grain may be sold only with the prior approval of
15 the commissioner.

16 **SECTION 10. AMENDMENT.** Section 60-02-11 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **60-02-11. Scale ticket - Contents - Conversion.**

- 19 1. a. Every public warehouseman, upon receiving grain into the warehouse, shall
20 issue a uniform scale ticket for each load of grain received. The scale tickets
21 must be numbered consecutively, and one copy of each ticket must be retained
22 and remain as a permanent record. The original ticket must be delivered to the
23 person from ~~whom~~which the grain is received, upon receipt of each load of grain.
- 24 b. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale
25 contracts, or warehouse receipts, within ~~forty-five~~thirty days after the grain is
26 delivered to the warehouse, unless:
- 27 (1) The person to ~~whom~~which the scale ticket is issued signs a form waiving all
28 rights to trust benefits under section 60-04-03.1;
- 29 (2) The form identifies by number each scale ticket to which the waiver applies;
30 and
- 31 (3) The form is signed by the warehouseman.

- 1 c. The commissioner shall prepare the waiver form required by subdivision b and
2 make the form available to each warehouse.
- 3 d. The warehouseman shall keep one copy of the signed waiver form with the
4 records of the warehouse, provide one copy to the person ~~whethat~~ was issued
5 the scale ticket and signed the form, and file one copy with the commissioner.
- 6 2. Nothing in this chapter requires a warehouseman to receive grain for storage. A
7 warehouseman shall publish and post, in a conspicuous place in the warehouse, a
8 publication identifying whether storage will be available to patrons or whether grain will
9 be accepted via cash or a credit-sale contract arrangement.
- 10 3. A producer that fails to convert a scale ticket in accordance with subdivision b of
11 subsection 1 forfeits any bond or credit-sale contract protection provided under
12 sections 60-02-09, 60-02-19.1, and 60-04-03.1, and chapter 60-10.

13 **SECTION 11. AMENDMENT.** Section 60-02-12 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **60-02-12. ~~Penalty~~Violations of chapter - Criminal penalty - Civil penalty.**

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

24 **SECTION 12. AMENDMENT.** Section 60-02-19.1 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **60-02-19.1. Credit-sale contracts.**

- 27 1. A warehouseman ~~shall~~may not purchase grain by a credit-sale contract except as
28 provided in this section. All credit-sale contracts must be in writing and must be
29 consecutively numbered at the time of printing the contract. The warehouseman shall
30 maintain an accurate record of all credit-sale contract numbers, including the

1 disposition of each numbered form, whether by execution, destruction, or otherwise.

2 Each credit-sale contract must contain or provide for all of the following:

3 ~~1.~~ a. The seller's name and address.

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

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

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

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

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

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

14 2. The contract must be signed by both parties and executed in duplicate. An electronic
15 signature satisfies the requirement. One copy shall be retained by the warehouseman
16 and one copy shall be delivered to the seller. Upon revocation, termination, or
17 cancellation of a warehouseman's license, the payment date for all credit-sale
18 contracts shall, at the seller's option, be advanced to a date not later than thirty days
19 after the effective date of the revocation, termination, or cancellation, and the
20 purchase price for all unpriced grain shall be determined as of the effective date of
21 revocation, termination, or cancellation in accordance with all other provisions of the
22 contract. When a public warehouse is transferred under this chapter, credit-sale
23 contracts may be assigned to another licensed public warehouseman or facility-based
24 grain buyer.

25 3. A warehouseman that uses credit-sale contracts shall maintain twenty percent of the
26 funds related to a credit-sale contract in a custodial account.

27 4. A warehouseman shall provide to the commissioner, upon request, any financial
28 record or bank verification release the commissioner deems relevant for the purpose
29 of verifying the financial information of a custodial account upon inspection pursuant to
30 the requirements of this section.

1 **SECTION 13. AMENDMENT.** Section 60-02-20 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **60-02-20. Discrimination by public warehouseman or grain processor prohibited -**
4 **Posting prices.**

5 1. No public warehouseman or grain processor shall discriminate:

6 4. a. In the buying, selling, receiving, and handling of grain or in the charges made or
7 the service rendered to owners of stored grain;

8 2. b. In the receiving of grain offered for sale or storage;

9 3. c. In regard to the persons offering such grain for sale or storage; nor

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

12 2. No public warehouseman or grain processor shall be required to receive for storage
13 any grain which is heating or otherwise out of condition. Storing grain free of charge is
14 prohibited except as prescribed by law. A warehouseman shall post grain prices paid
15 in a conspicuous place in the office or driveway of the warehouseman's place of
16 business.

17 **SECTION 14. AMENDMENT.** Section 60-02-24 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **60-02-24. Reports to be made by public warehouseman and grain processor - Penalty**
20 **for failure.**

21 1. Each licensed and bonded public warehouseman and grain processor shall:

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

- 1 2. b. File the report with the commissioner not later than the last day of the following
- 2 month, and failure to file this report promptly will be considered cause for
- 3 revoking the warehouse license after due notice and hearing.
- 4 3. c. Keep a separate account of the grain business, if the warehouseman is engaged
- 5 in handling or selling any other commodity, and under no circumstances may the
- 6 grain account and other accounts be mixed.
- 7 d. Submit additional information requested by the commissioner pursuant to a
- 8 report or an inspection within five business days.
- 9 2. The commissioner may refuse to renew a license to any public warehouseman
- 10 ~~whethat~~ fails to make a required report.

11 **SECTION 15. AMENDMENT.** Section 60-02.1-01 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **60-02.1-01. Definitions.**

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

- 15 1. "Commissioner" means the agriculture commissioner.
- 16 2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which
- 17 the sale price is to be paid or may be paid more than thirty days after the delivery or
- 18 release of the grain for sale and which contains the notice provided in ~~subsection 7 of~~
- 19 section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be
- 20 paid or may be paid more than thirty days after the delivery or release of the grain for
- 21 sale, only such part of the contract is a credit-sale contract.
- 22 3. "Facility" means a structure in which grain purchased by a grain buyer is received or
- 23 held.
- 24 4. "Facility-based grain buyer" means a grain buyer ~~whethat~~ operates a facility licensed
- 25 under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.
- 26 5. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower,
- 27 sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa,
- 28 and any other commercially grown grain or grass seed. "Grain" does not include grain
- 29 or grass seeds owned by or in the possession of the grain buyer which have been
- 30 cleaned, processed, and specifically identified for an intended use of planting for
- 31 reproduction and for which a warehouse receipt has not been issued.

- 1 6. "Grain broker" means a person that:
2 a. Is involved in the negotiation of grain transactions in the state;
3 b. Receives compensation from at least one party to the transaction; and
4 c. Does not take title to the grain and is not under any financial or contractual
5 obligation related to the transaction.
- 6 7. "Grain buyer" means any person, other than a public warehouseman as defined in
7 chapter 60-02, whethat purchases or otherwise merchandises grain for compensation.
8 The term does not include:
9 a. A producer of grain whethat purchases grain from other producers to complete a
10 carload or truckload in which the greater portion of the load is grain grown by the
11 producer or on-farm feedlot operations in which at least fifty percent of the
12 livestock is owned by the owner of the farm.
13 b. A person whethat is permitted to sell seed under chapter 4.1-53, if that person
14 buys grain only for processing and subsequent resale as seed.
15 c. A person whethat is an authorized dealer or agent of a seed company holding a
16 permit in accordance with section 4.1-53-38.
- 17 7-8. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale
18 contract.
- 19 8-9. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer
20 for, or as evidence of, the receipt or sale of grain except when such memoranda was
21 received as a result of a credit-sale contract.
- 22 9-10. "Roving grain buyer" means a grain buyer whethat does not operate a facility where
23 grain is received.

24 **SECTION 16. AMENDMENT.** Section 60-02.1-03 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **60-02.1-03. Duties and powers of the commissioner.**

27 The commissioner has the duty and power to:

- 28 1. Exercise general supervision of grain buyers and grain brokers of this state.
29 2. Investigate all complaints of fraud and injustice, unfair practices, and unfair
30 discrimination.

- 1 3. Examine and inspect, during ordinary business hours, any books, documents, and
- 2 records.
- 3 4. Make all proper rules for carrying out and enforcing any law in this state regarding
- 4 grain buyers and grain brokers.

5 **SECTION 17. AMENDMENT.** Section 60-02.1-06.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **60-02.1-06.1. Release of records - Confidentiality.**

- 8 1. As a condition of licensure under ~~section~~sections 60-02.1-07, 60-02.1-07.1, or
9 section 20 of this Act, an applicant shall agree to provide to the commissioner, upon
10 request, any financial record the commissioner deems relevant for purposes related
11 to:
 - 12 a. The issuance or renewal of a grain buyer or grain broker license; or
 - 13 b. An investigation after issuance or renewal of a grain buyer or grain broker
14 license.
- 15 2. As a condition of licensure, an applicant shall file a records release with the
16 commissioner, authorizing the commissioner to obtain from any source any financial
17 record the commissioner deems relevant for purposes related to:
 - 18 a. The issuance or renewal of a grain buyer or grain broker license; or
 - 19 b. An investigation after issuance or renewal of a grain buyer or grain broker
20 license.
- 21 3. Any information obtained by the commissioner under this section is confidential and
22 may be provided only:
 - 23 a. To federal authorities in accordance with federal law;
 - 24 b. To the attorney general, state agencies, and law enforcement agencies for use in
25 the pursuit of official duties; and
 - 26 c. As directed by an order of a court pursuant to a showing of good cause.

27 **SECTION 18. AMENDMENT.** Section 60-02.1-07 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **60-02.1-07. Grain buyer license - How obtained - Fee—Financial statement.**

- 30 1. Grain buyers shall obtain an annual license from the commissioner. Except as
31 provided in this section, each license expires on July thirty-first of each year. If a

1 licensee's initial license is issued effective after May thirty-first, that license expires on
2 July thirty-first of the following year. A facility-based grain buyer shall obtain a license
3 for each receiving location operated in the state. If a grain buyer operates two or more
4 facilities in the same city or siding, in conjunction with each other and with the same
5 working force, and where but one set of books and records is kept for all such
6 facilities, and scale tickets and checks of but one series are issued for the grain,
7 purchased, only one license is required for the operation of all such facilities. The
8 annual license fee per location for a facility-based grain buyer is ~~four~~:

9 a. Four hundred dollars for a grain buyer that purchased up to one million dollars
10 worth of grain during the previous licensing period, or intends to purchase up to
11 one million dollars worth of grain during the first year of operation;

12 b. Eight hundred dollars for a grain buyer that purchased more than one million
13 dollars worth of grain but not more than ten million dollars worth of grain during
14 the previous licensing period, or intends to purchase more than one million
15 dollars worth of grain but not more than ten million dollars worth of grain during
16 the first year of operation; and-a

17 c. One thousand two hundred dollars for a grain buyer that purchased more than
18 ten million dollars worth of grain during the previous licensing period, or intends
19 to purchase more than ten million dollars worth of grain during the first year of
20 operation.

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

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

28 **SECTION 19. AMENDMENT.** Section 60-02.1-07.1 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **60-02.1-07.1. Roving grain buyer license - How obtained - Fee.**

2 1. Roving grain buyers that purchase, solicit, merchandise, or take possession of grain in
3 this state shall obtain an annual license from the commissioner. Except as provided in
4 this section, each license expires on July thirty-first of each year. If a licensee's initial
5 license is issued effective after May thirty-first, that license expires on July thirty-first of
6 the following year. The annual license fee for a roving grain buyer is ~~three~~:

7 a. Four hundred dollars; for a roving grain buyer that purchased up to one million
8 dollars worth of grain during the previous licensing period, or intends to purchase
9 up to one million dollars worth of grain during the first year of operation;

10 b. Eight hundred dollars for a roving grain buyer that purchased more than one
11 million dollars worth of grain but not more than ten million dollars worth of grain
12 during the previous licensing period, or intends to purchase more than one million
13 dollars worth of grain but not more than ten million dollars worth of grain during
14 the first year of operation; and-a

15 c. One thousand two hundred dollars for a roving grain buyer that purchased more
16 than ten million dollars worth of grain during the previous licensing period, or
17 intends to purchase more than ten million dollars worth of grain during the first
18 year of operation.

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

21 **SECTION 20.** A new section to chapter 60-02.1 of the North Dakota Century Code is
22 created and enacted as follows:

23 **Grain broker license - Application - Bond - How obtained - Fee - Report - Disclosure.**

24 1. Grain brokers that purchase, solicit, merchandise, or take possession of grain in this
25 state shall submit an application to obtain an annual license from the commissioner. To
26 conduct business in the state, a grain broker also shall register and be in good
27 standing with the secretary of state. Except as provided in this section, each license
28 expires on July thirty-first of each year. When a licensee's initial license is issued
29 effective after May thirty-first, that license expires on July thirty-first of the following
30 year. The annual license fee of a grain broker is:

- 1 a. Four hundred dollars for a grain broker that purchased up to one million dollars
2 worth of grain during the previous licensing period, or intends to purchase up to
3 one million dollars worth of grain during the first year of operation;
4 b. Eight hundred dollars for a grain broker that purchased more than one million
5 dollars worth of grain but not more than ten million dollars worth of grain during
6 the previous licensing period, or intends to purchase more than one million
7 dollars worth of grain but not more than ten million dollars worth of grain during
8 the first year of operation; and
9 c. One thousand two hundred dollars for a grain broker that purchased more than
10 ten million dollars worth of grain during the previous licensing period, or intends
11 to purchase more than ten million dollars worth of grain during the first year of
12 operation.
- 13 2. A license issued under this section is not transferable.
- 14 3. The commissioner may refuse to issue, renew, or may revoke a license:
15 a. If the licensee or applicant has been convicted of a criminal offense;
16 b. If the licensee or applicant has failed to comply with the requirements of this
17 section;
18 c. If the commissioner has evidence the licensee negotiated in bad faith; or
19 d. For any other reason determined by the commissioner.
- 20 4. A licensed grain broker shall submit a monthly report to the commissioner by the tenth
21 day of each month. The report must include the total volume of each commodity
22 brokered in the preceding month.
- 23 5. A licensed grain broker shall notify each potential commodity seller of the identity of
24 the potential commodity buyer before the final confirmation of the transaction.
- 25 6. Before a license is effective for a grain broker under this section, the licensee or
26 applicant shall file a bond with the commissioner for not less than one hundred
27 thousand dollars.

28 **SECTION 21.** A new section to chapter 60-02.1 of the North Dakota Century Code is
29 created and enacted as follows:

1 **Grain buyer license - Roving grain buyer license - Grain broker license - Financial**
2 **criteria to be met.**

3 1. To be eligible to receive an annual license under sections 60-02.1-07, 60-02.1-07.1, or
4 section 20 of this Act, an applicant shall submit to the commissioner current:

5 a. Financial documentation verifying the applicant has a total net worth of:

6 (1) Two hundred thousand dollars if the applicant purchased up to one million
7 dollars worth of grain during the previous licensing period, or intends to
8 purchase up to one million dollars worth of grain during the first year of
9 operation;

10 (2) Five hundred thousand dollars if the applicant purchased more than one
11 million dollars worth of grain but not more than ten million dollars worth of
12 grain during the previous licensing period, or intends to purchase more than
13 one million dollars worth of grain but not more than ten million dollars worth
14 of grain during the first year of operation; or

15 (3) One million dollars if the applicant purchased more than ten million dollars
16 worth of grain during the previous licensing period, or intends to purchase
17 more than ten million dollars worth of grain during the first year of operation;
18 and

19 b. Documentation verifying the applicant has a working capital ratio of greater than
20 one.

21 2. A licensed grain buyer, broker, or an applicant for initial licensure shall report balance
22 sheets and income statements to the commissioner:

23 a. Annually at the time of application for initial licensure or license renewal if the
24 applicant purchased up to ten million dollars worth of grain during the previous
25 licensing period, or intends to purchase up to ten million dollars worth of grain
26 during the first year of operation; or

27 b. Quarterly if the applicant purchased more than ten million dollars worth of grain
28 during the previous licensing period, or intends to purchase more than ten million
29 dollars worth of grain during the first year of operation.

30 3. As a condition of licensure under sections 60-02.1-07, 60-02.1-07.1, or section 20 of
31 this Act, an applicant shall provide to the commissioner, upon request, any financial

1 record or bank verification release the commissioner deems relevant for the purpose
2 of verifying the financial information of an applicant pursuant to the requirements of
3 this section.

4 **SECTION 22. AMENDMENT.** Section 60-02.1-08 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **60-02.1-08. Bond filed by grain buyer or grain broker.**

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

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

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

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

15 4. d. Be conditioned:

16 a. (1) For the faithful performance of the licensee's duties as a grain buyer or
17 grain broker.

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

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

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

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

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

26 7. g. Not accrue to the benefit of any person entering a credit-sale contract with a
27 grain buyer.

28 8. 2. The aggregate liability of the surety under a bond does not accumulate for each
29 successive annual license renewal period during which the bond is in force but, for
30 losses during any annual license renewal period, is limited in the aggregate to the
31 bond amount stated or changed by appropriate endorsement or rider.

- 1 3. The commissioner shall set the amount of the bond and may require an increase in
2 the amount of any bond as the commissioner deems necessary to accomplish the
3 purposes of this section.
- 4 4. The amount of the bond for a grain buyer or grain broker must be:
5 a. Based on the dollar value of the grain purchased; and
6 b. Twenty percent of the value of the amount of grain purchased, rounded to the
7 nearest ten thousand dollars.
- 8 5. The amount of the bond for a roving grain buyer must be:
9 a. Based on the dollar value of the grain purchased, solicited, or merchandised; and
10 b. Twenty percent of the value of the amount of grain purchased, solicited, or
11 merchandised, rounded to the nearest ten thousand dollars.
- 12 6. A grain buyer, grain broker, or roving grain buyer shall report purchases, solicitations,
13 and merchandising agreements to the commissioner monthly.
- 14 7. The surety on the bond must be a corporate surety company, approved by the
15 commissioner, and authorized to do business within the state. The commissioner may
16 accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu
17 of a surety bond when, in the commissioner's judgment, cash, a negotiable instrument,
18 or a personal surety bond properly will protect the holders of outstanding receipts.
19 Only one bond may be required for any series of facilities operated by a facility-based
20 grain buyer, and the bond must be construed to cover those facilities as a whole and
21 not a specific amount for each.

22 **SECTION 23. AMENDMENT.** Section 60-02.1-10 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **60-02.1-10. Grain buyer or grain broker license to be posted or carried - Penalty.**

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

29 **SECTION 24. AMENDMENT.** Section 60-02.1-11 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **60-02.1-11. Revocation and suspension.**

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

10 **SECTION 25. AMENDMENT.** Section 60-02.1-13 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **60-02.1-13. ~~Penalty~~Violations of chapter - Criminal penalty - Civil penalty.**

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

20 **SECTION 26. AMENDMENT.** Section 60-02.1-14 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **60-02.1-14. Credit-sale contracts.**

- 23 1. A grain buyer may not purchase grain by a credit-sale contract except as provided in
24 this section. All credit-sale contracts must be in writing and must be consecutively
25 numbered at the time of printing the contract. The grain buyer shall maintain an
26 accurate record of all credit-sale contract numbers, including the disposition of each
27 numbered form, whether by execution, destruction, or otherwise. Each credit-sale
28 contract must contain or provide for all of the following:
29 1. a. The seller's name and address.
30 2. b. The conditions of delivery.
31 3. c. The amount and kind of grain delivered.

- 1 4. d. The price per unit or basis of value.
- 2 5. e. The date payment is to be made.
- 3 6. f. The duration of the credit-sale contract.
- 4 7. g. Notice in a clear and prominent manner that the sale is not protected by the bond
5 coverage provided for in section 60-02.1-08. However, if the grain buyer has
6 obtained bond coverage in addition to that required by section 60-02.1-08 and
7 the coverage extends to the benefit of credit-sale contracts, the grain buyer may
8 state that fact in the credit-sale contract along with the extent of such coverage.
- 9 2. The contract must be signed by both parties and executed in duplicate. An electronic
10 signature satisfies the requirement. One copy must be retained by the grain buyer and
11 one copy must be delivered to the seller. Upon revocation, termination, or cancellation
12 of a grain buyer's license, the payment date for all credit-sale contracts, at the seller's
13 option, must be advanced to a date not later than thirty days after the effective date of
14 the revocation, termination, or cancellation, and the purchase price for all unpriced
15 grain must be determined as of the effective date of revocation, termination, or
16 cancellation in accordance with all other provisions of the contract. When a facility is
17 transferred under this chapter, credit-sale contracts may be assigned to another
18 licensed facility-based grain buyer or public warehouseman.
- 19 3. A buyer that uses credit-sale contracts shall maintain twenty percent of the funds
20 related to a credit-sale contract in a custodial account.
- 21 4. A buyer shall provide to the commissioner, upon request, any financial record or bank
22 verification release the commissioner deems relevant for the purpose of verifying the
23 financial information of a custodial account upon inspection pursuant to the
24 requirements of this section.

25 **SECTION 27. AMENDMENT.** Section 60-02.1-15 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **60-02.1-15. Discrimination by grain buyer or grain broker prohibited.**

- 28 1. A grain buyer or grain broker may not discriminate:
- 29 4. a. In the buying, selling, receiving, and handling of grain or in the charges made or
30 the service rendered to owners of purchased grain;

- 1 2. b. In the receiving of grain offered for sale, but this chapter may not be construed to
2 require a processor to receive or purchase any lot or kinds of grain;
- 3 ~~3.~~ c. In regard to the persons offering such grain for sale; or
- 4 4. d. Between points or stations except as the marketing factors or transportation
5 costs or grain quality premiums may warrant.
- 6 2. A grain buyer is not required to receive any grain that is heating or otherwise out of
7 condition. A facility-based grain buyer shall post grain prices paid in a conspicuous
8 place in the office or driveway of the buyer's place of business.

9 **SECTION 28. AMENDMENT.** Section 60-02.1-16 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **60-02.1-16. Records required to be kept by grain buyers and grain brokers.**

12 Each grain buyer and grain broker shall keep such accounts, records, and memoranda
13 concerning the buyer's dealing as such grain buyer or grain broker as may be required by the
14 commissioner and shall make such reports of purchases of grain as may be required by the
15 rules adopted by the commissioner. The commissioner at all times must have access to such
16 accounts, records, and memoranda.

17 **SECTION 29. AMENDMENT.** Section 60-02.1-17 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **60-02.1-17. Reports to be made by grain buyers or grain brokers - Penalty for failure.**

- 20 1. Each licensed and bonded grain buyer or grain broker shall:
- 21 4. a. Prepare for each month a report giving facts and information called for on the
22 form of report prepared by the commissioner. The report must contain or be
23 verified by a written declaration the report is made under the penalties of perjury.
24 The report may be called for more frequently if the commissioner deems
25 necessary. Information pertaining to the volume of grain handled is a confidential
26 trade secret and is not a public record. The commissioner may make this
27 information available for use by other governmental entities, but the information
28 may not be released by those entities in a manner that jeopardizes the
29 confidentiality of individual licensees.

