

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2009

Introduced by

Appropriations Committee

1 A BILL for an Act to provide an appropriation for defraying the expenses of the agriculture
2 commissioner; to provide for transfers; ~~to create and enact a new chapter to title 4.1 of the~~
3 ~~North Dakota Century Code, relating to the agricultural products utilization commission~~to create
4 and enact a new section to chapter 60-01, a new section to chapter 60-02, and a new section to
5 chapter 60-02.1 of the North Dakota Century Code, relating to the definition of agriculture
6 commissioner and records confidentiality for warehousemen and grain buyers; to amend and
7 reenact ~~section~~sections 4.1-01-02 and 49-02-01, subsection 1 of section 60-02-01, sections
8 60-02-02, 60-02-03, 60-02-04, 60-02-05.1, 60-02-07, 60-02-07.2, 60-02-09, 60-02-09.1,
9 60-02-10.1, 60-02-11, 60-02-14, 60-02-17, 60-02-24, 60-02-27, 60-02-35.1, 60-02-38, 60-02-40,
10 60-02-41, 60-02-42, 60-02.1-01, 60-02.1-02, 60-02.1-03, 60-02.1-04, 60-02.1-06, 60-02.1-07,
11 60-02.1-07.1, 60-02.1-08, 60-02.1-09, 60-02.1-11, 60-02.1-16, 60-02.1-17, 60-02.1-19,
12 60-02.1-22, 60-02.1-26, 60-02.1-27, 60-02.1-29, 60-02.1-30, 60-02.1-32, 60-02.1-33,
13 60-02.1-34, 60-02.1-35, 60-02.1-36, 60-02.1-37, 60-02.1-38, and 60-02.1-39, subsection 1 of
14 section 60-04-01, and sections 60-04-03, 60-04-03.1, 60-04-03.2, 60-04-03.3, 60-04-04,
15 60-04-05, 60-04-06, 60-04-07, 60-04-08, 60-04-09, 60-04-10, 60-05-01, 60-05-02, 60-05-03,
16 60-05-04, 60-06-05, 60-06-06.1, 60-10-01, 60-10-02, 60-10-03, 60-10-05, 60-10-07, 60-10-08,
17 60-10-09, 60-10-10, 60-10-11, 60-10-12, 60-10-14, and 60-10-15 of the North Dakota Century
18 Code, relating to the salary of the agriculture commissioner and moving the authority over grain,
19 grain buyers, warehousing, deposits, and warehousemen from the public service commission to
20 the agriculture commissioner; ~~to repeal chapter 54-60.3 of the North Dakota Century Code,~~
21 ~~relating to the agricultural products utilization commission~~; and to provide for a report to the
22 legislative assembly; to provide a penalty; and to provide a continuing appropriation.

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

1 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds
 2 as may be necessary, are appropriated out of any moneys in the general fund in the state
 3 treasury, not otherwise appropriated, and from special funds derived from federal funds and
 4 other income, to the agriculture commissioner for the purpose of defraying the expenses of
 5 the agriculture commissioner, for the biennium beginning July 1, 2019, and ending June 30,
 6 2021, as follows:

| | <u>Base Level</u> | <u>Adjustments or Enhancements</u> | <u>Appropriation</u> |
|--|-------------------------|--|-------------------------|
| 9 Salaries and wages | \$12,372,949 | \$676,514 | \$13,049,463 |
| 10 Operating expenses | 6,444,336 | 133,444 | 6,577,780 |
| 11 Capital assets | 13,000 | 2,000 | 15,000 |
| 12 Grants | 8,817,774 | 6,000 | 8,823,774 |
| 13 Board of animal health | 865,718 | 0 | 865,718 |
| 14 Wildlife services | 1,408,000 | 49,400 | 1,457,400 |
| 15 Crop harmonization board | 75,000 | 0 | 75,000 |
| 16 Pipeline restoration and reclamation | 200,000 | 0 | 200,000 |
| 17 —oversight program | | | |
| 18 Agricultural products utilization commission | 0 | 3,176,791 | 3,176,791 |
| 19 Total all funds | \$30,196,777 | \$4,044,149 | \$34,240,926 |
| 20 Less estimated income | 21,087,676 | 3,415,513 | 24,503,189 |
| 21 Total general fund | \$9,109,101 | 628,636 | \$9,737,737 |
| 22 Full-time equivalent positions | 73.00 | 2.00 | 75.00 |
| 23 <u>Salaries and wages</u> | <u>\$12,372,949</u> | <u>\$1,859,797</u> | <u>\$14,232,746</u> |
| 24 <u>Operating expenses</u> | <u>6,444,336</u> | <u>258,444</u> | <u>6,702,780</u> |
| 25 <u>Capital assets</u> | <u>13,000</u> | <u>2,000</u> | <u>15,000</u> |
| 26 <u>Grants</u> | <u>8,817,774</u> | <u>6,000</u> | <u>8,823,774</u> |
| 27 <u>Board of animal health</u> | <u>865,718</u> | <u>0</u> | <u>865,718</u> |
| 28 <u>Wildlife services</u> | <u>1,408,000</u> | <u>49,400</u> | <u>1,457,400</u> |
| 29 <u>Crop harmonization board</u> | <u>75,000</u> | <u>0</u> | <u>75,000</u> |
| 30 <u>Pipeline restoration and reclamation</u> | <u>200,000</u> | <u>0</u> | <u>200,000</u> |
| 31 <u>—oversight program</u> | | | |

| | | | | |
|---|--|---------------------|--------------------|---------------------|
| 1 | <u>Agricultural products utilization</u> | <u>0</u> | <u>3,760,417</u> | <u>3,760,417</u> |
| 2 | <u>commission</u> | | | |
| 3 | <u>Total all funds</u> | <u>\$30,196,777</u> | <u>\$5,936,058</u> | <u>\$36,132,835</u> |
| 4 | <u>Less estimated income</u> | <u>21,087,676</u> | <u>4,234,730</u> | <u>25,322,406</u> |
| 5 | <u>Total general fund</u> | <u>\$9,109,101</u> | <u>\$1,701,328</u> | <u>\$10,810,429</u> |
| 6 | <u>Full-time equivalent positions</u> | <u>73.00</u> | <u>5.00</u> | <u>78.00</u> |

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO

SIXTY-SEVENTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the one-time funding items included in the appropriation in section 1 of this Act:

| 11 | <u>One-Time Funding Description</u> | <u>2017-19</u> | <u>2019-21</u> |
|----|---|------------------------|----------------------|
| 12 | National genomics center | \$120,000 | \$0 |
| 13 | Federal environmental law impact review | 1,000,000 | 0 |
| 14 | Master customer database | 0 | 110,000 |
| 15 | Total all funds | \$1,120,000 | \$110,000 |
| 16 | Less estimated income | 1,120,000 | 0 |
| 17 | Total general fund | \$0 | \$110,000 |
| 18 | <u>National genomics center</u> | <u>\$120,000</u> | <u>\$0</u> |
| 19 | <u>Federal environmental law impact review</u> | <u>1,000,000</u> | <u>0</u> |
| 20 | <u>Master customer database</u> | <u>0</u> | <u>110,000</u> |
| 21 | <u>Agricultural products utilization commission</u> | <u>0</u> | <u>2,000,000</u> |
| 22 | <u>Total all funds</u> | <u>\$1,120,000</u> | <u>\$2,110,000</u> |
| 23 | <u>Less estimated income</u> | <u>1,120,000</u> | <u>2,000,000</u> |
| 24 | <u>Total general fund</u> | <u>\$0</u> | <u>\$110,000</u> |

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The agriculture commissioner shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 3. TRANSFER - ENVIRONMENT AND RANGELAND PROTECTION FUND - MINOR USE PESTICIDE FUND. The agriculture commissioner shall transfer \$325,000 from

1 the environment and rangeland protection fund to the minor use pesticide fund during the
2 biennium beginning July 1, 2019, and ending June 30, 2021.

3 **SECTION 4. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION**

4 **FUND.** The estimated income line item in section 1 of this Act includes the sum of

5 ~~\$6,663,678~~ \$6,725,799 from the environment and rangeland protection fund for the purpose of
6 defraying the expenses of various department of agriculture programs, for the biennium
7 beginning July 1, 2019, and ending June 30, 2021.

8 **SECTION 5. ESTIMATED INCOME - GAME AND FISH FUND.** The estimated income line
9 item in section 1 of this Act includes the sum of \$614,430 from the game and fish department
10 operating fund for the purpose of defraying the expenses of various department of
11 agriculture programs, for the biennium beginning July 1, 2019, and ending June 30, 2021.

12 **SECTION 6. ESTIMATED INCOME - STATE WATER COMMISSION - TRANSFER.** The
13 estimated income line item in section 1 of this Act includes the sum of \$125,000 which the state
14 water commission shall transfer to the agriculture commissioner for the wildlife services
15 program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

16 **SECTION 7. WATERBANK PROGRAM - MATCHING FUNDS.** The salaries and wages line
17 item in section 1 of this Act includes \$50,000 from the general fund for matching funds for the
18 North Dakota outdoor heritage fund grant provided for the waterbank program.

19 **SECTION 8. ESTIMATED INCOME - PIPELINE RESTORATION AND RECLAMATION.**

20 The estimated income line item in section 1 of this Act includes the sum of \$200,000 from the
21 abandoned oil and gas well plugging and site reclamation fund for the purpose of defraying the
22 expenses of the pipeline restoration and reclamation program, for the biennium beginning
23 July 1, 2019, and ending June 30, 2021.

24 **SECTION 9. TRANSFER - BANK OF NORTH DAKOTA PROFITS - AGRICULTURAL**

25 **PRODUCTS UTILIZATION COMMISSION.** The Bank of North Dakota shall transfer the sum of
26 \$2,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and
27 undivided profits to the agriculture commissioner for deposit in the agricultural products
28 utilization commission fund during the biennium beginning July 1, 2019, and ending June 30,
29 2021. This funding is considered a one-time funding item.

30 **SECTION 10. AMENDMENT.** Section 4.1-01-02 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **4.1-01-02. Salary of agriculture commissioner.**

2 The annual salary of the agriculture commissioner is one hundred five ~~seventeen~~ sixteen
3 thousand four hundred ninety-one ~~eighty-seven~~ eight hundred thirty-six dollars through June 30,
4 2016 ~~2020~~, and one hundred eight ~~twenty~~ nineteen thousand ~~six~~ seven hundred fifty-six
5 fifty-seven dollars after that date.

6 ~~SECTION 10. A new chapter to title 4.1 of the North Dakota Century Code is created and~~
7 ~~enacted as follows:~~

8 ~~**Agricultural products utilization commission - Composition - Appointment.**~~

9 ~~1. The agricultural products utilization commission shall administer the agricultural~~
10 ~~products utilization fund.~~

11 ~~2. The commission consists of nine members:~~

12 ~~a. Five members, appointed by the governor for terms of two years each, arranged~~
13 ~~so that two terms expire in odd-numbered years and three terms expire in~~
14 ~~even-numbered years, three of the members appointed by the governor must be~~
15 ~~actively engaged in farming in this state and two members appointed by the~~
16 ~~governor must be actively engaged in business in this state;~~

17 ~~b. One member, appointed by the agriculture commissioner for a term of two years~~
18 ~~which expires in odd-numbered years, the member must be actively engaged in~~
19 ~~farming in this state; and~~

20 ~~c. The commissioner of commerce, the president of North Dakota state university,~~
21 ~~and the agriculture commissioner, or their designees.~~

22 ~~3. Commission members may be reappointed.~~

23 ~~4. Terms of appointed commissioners commence on the first day of July.~~

24 ~~5. The commission shall elect one member to serve as the presiding officer.~~

25 ~~**Agricultural products utilization commission - Authority.**~~

26 ~~1. The North Dakota agricultural products utilization commission may apply for and~~
27 ~~accept any appropriation, grant, gift, or service made available from public or private~~
28 ~~sources.~~

29 ~~2. The commission may administer grant programs including:~~

30 ~~a. A basic and applied research grant program;~~

31 ~~b. A utilization and marketing grant program;~~

1 ~~_____ c. A cooperative marketing grant program;~~

2 ~~_____ d. A nature-based tourism grant program;~~

3 ~~_____ e. A technical assistance grant program for value-added businesses;~~

4 ~~_____ f. A farm diversification grant program;~~

5 ~~_____ g. An agricultural prototype development grant program;~~

6 ~~_____ h. An agricultural technologies grant program; and~~

7 ~~_____ i. A North American marketing grant program.~~

8 ~~_____ 3. As a condition of any grant administered by the commission, the commission may~~
9 ~~require the recipient repay some or all of the grant if the recipient does not fulfill the~~
10 ~~conditions of the grant. Repayment may be monetary or any other type or method~~
11 ~~determined by the commission.~~

12 ~~_____ **Agricultural products utilization commission - Meetings - Personnel - Report.**~~

13 ~~_____ The agricultural products utilization commission shall meet as necessary and shall report to~~
14 ~~each session of the legislative assembly. The commission may secure office space, employ~~
15 ~~required personnel for the performance of commission duties, hire consultants, spend any funds~~
16 ~~appropriated to the commission, and contract with public entities or private parties for services.~~

17 ~~_____ **Agricultural products utilization commission - Reimbursement - Compensation.**~~

18 ~~_____ Members of the agricultural products utilization commission are entitled to be reimbursed~~
19 ~~for expenses incurred in the performance of official duties, in the same manner as other state~~
20 ~~officials are reimbursed, according to sections 44-08-04 and 54-06-09. If not otherwise~~
21 ~~employed by the state of North Dakota, members of the commission are entitled to receive per-~~
22 ~~diem compensation of one hundred thirty-five dollars for each day of attending meetings and~~
23 ~~performing other duties relating to official business of the commission. The presiding officer, if~~
24 ~~not otherwise employed by the state of North Dakota, may receive an additional one hundred~~
25 ~~dollars for each day of a regular meeting attended as payment for reviewing and evaluating~~
26 ~~grant proposals.~~

27 ~~_____ **Agricultural products utilization commission - Administrative expenses.**~~

28 ~~_____ Administrative expenses of the agricultural products utilization commission, including~~
29 ~~expenses of members of the commission, employment of required personnel, hiring of~~
30 ~~consultants, and contracting with public or private entities for services may not exceed ten-~~

~~percent of the funds appropriated to the commission by the legislative assembly each biennium,
excluding federal funds.~~

~~— **Agricultural products utilization fund - Purposes.**~~

~~— The agricultural products utilization fund in the state treasury must be used to fund
programs for agricultural research, development, processing, technology, and marketing. The
fund must be used to defray the expenses of the North Dakota agricultural products utilization
commission. Interest earned on moneys in the fund must be credited to the fund.~~

~~— **SECTION 11. REPEAL.** Chapter 54-60.3 of the North Dakota Century Code is repealed.~~

SECTION 11. APPROPRIATION - GRAIN INSOLVENCY LITIGATION - ONE-TIME

FUNDING - APPLICATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of paying the public service commission to continue providing services related to grain insolvency litigation that began prior to July 1, 2019, for the biennium beginning July 1, 2019, and ending June 30, 2021. This funding is considered a one-time funding item. Sections 60-02.1-38 and 60-04-10 do not apply to any expenses paid from the appropriation provided in this section.

SECTION 12. AMENDMENT. Section 49-02-01 of the North Dakota Century Code is amended and reenacted as follows:

49-02-01. General jurisdiction of the public service commission over public utilities.

The general jurisdiction of the commission shall extend to and include:

1. Contract and common carriers engaged in the transportation of persons and property, excluding air carriers.
2. Telecommunications companies engaged in the furnishing of telecommunications services as provided for in chapter 49-21.
3. Pipeline utilities engaged in the transportation of gas, oil, coal, and water.
4. Electric utilities engaged in the generation and distribution of light, heat, or power.
5. Gas utilities engaged in the distribution of natural, synthetic, or artificial gas.
6. All heating utilities engaged in the distribution of heat.
7. ~~Warehouse companies engaged in the marketing, storage, or handling of agricultural products.~~

1 ~~8.~~ All other public utilities engaged in business in this state or in any county, city,
2 township, or other political subdivision of the state.

3 **SECTION 13.** A new section to chapter 60-01 of the North Dakota Century Code is created
4 and enacted as follows:

5 **Definition.**

6 For purposes of this title, "commissioner" means the agriculture commissioner.

7 **SECTION 14. AMENDMENT.** Subsection 1 of section 60-02-01 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 1. ~~"Commission~~Commissioner" means the ~~public service commission~~agriculture
10 commissioner.

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

13 **60-02-02. ~~Commission~~Commissioner - Powers and duties.**

14 The commissioner has the powers and duties ~~imposed by the provisions of~~enumerated
15 under this chapter ~~and the powers conferred herein devolve upon the commission.~~

16 **SECTION 16. AMENDMENT.** Section 60-02-03 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **60-02-03. Duties and powers of the ~~commission~~commissioner.**

19 The ~~commission shall have the duty and power to~~commissioner has the following powers
20 and duties:

- 21 1. Exercise general supervision of the public warehouses of this state, including the
22 handling, weighing, and storing of grain, and the management of public warehouses.
- 23 2. Investigate all complaints of fraud and injustice, unfair practices, and unfair
24 discrimination.
- 25 3. Examine and inspect, during ordinary business hours, any licensed warehouse,
26 including all books, documents, and records.
- 27 4. Require the filing of reports pertaining to the operation of the warehouse.
- 28 5. Make all proper rules for carrying out and enforcing any law in this state regarding
29 public warehouses.

30 **SECTION 17. AMENDMENT.** Section 60-02-04 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **60-02-04. Federal licensed inspector**~~–Appointed by commission.~~

2 The ~~commission~~commissioner may employ a federal licensed inspector whose duties are
3 ~~hereinafter prescribed and such~~enumerated under this chapter and may employ other
4 employees as ~~may be~~necessary to carry out the provisions of this chapter.

5 **SECTION 18. AMENDMENT.** Section 60-02-05.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **60-02-05.1. Notice of procedures for resolving disputes over grain.**

8 A public warehouse shall post a notice containing the procedures specified in section
9 60-02-05 for resolving disputes. The ~~commission~~commissioner shall prescribe the form of the
10 notice and shall provide a copy of the notice to each public warehouse. The public
11 warehouseman shall post the notice in the grain inspection room of the warehouse. The notice
12 must specifically mention ~~that~~the procedure for resolving disputes applies to the grade,
13 dockage, moisture content, and protein content of grain and to the quality factors of grain for
14 which inspection rules and grades have not been adopted by the secretary of agriculture of the
15 United States.

16 **SECTION 19. AMENDMENT.** Section 60-02-07 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **60-02-07. Public warehouse license - Fee - Financial statement.**

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

- 21 1. a. ~~The commission shall stagger by lot the expiration date of all licenses issued for~~
22 ~~the period beginning August 1, 2015, so that one-half of all the licenses issued~~
23 ~~expire on July 31, 2016, and one-half of all the licenses issued expire on July 31,~~
24 ~~2017. Thereafter, all~~All licenses issued under this section must be for a period of
25 two years and terminate on the thirty-first day of July in the year of expiration.
- 26 b. (1) Notwithstanding the provisions of subdivision a, the
27 ~~commission~~commissioner shall license a warehouse annually, for the first
28 six years of the warehouse's operation.
- 29 (2) An initial annual license application that becomes effective on or after June
30 first does not expire until July thirty-first of the following calendar year.

- 1 2. No license may describe more than one public warehouse nor grant permission to
2 operate any public warehouse other than the one described.
- 3 3. a. The annual license fee for a public warehouse is:
4 (1) ~~Three~~Four hundred dollars for a warehouse having a maximum capacity of
5 two hundred thousand bushels [7047.8 cubic meters];
6 (2) ~~Four~~Five hundred fifty dollars for a warehouse having a capacity of more
7 than two hundred thousand bushels [7047.8 cubic meters] but not more
8 than five hundred thousand bushels [17619.54 cubic meters]; and
9 (3) ~~Five~~Six hundred fifty dollars for a warehouse having a capacity of more than
10 five hundred thousand bushels [17619.54 cubic meters].
11 b. The biennial license fee for a public warehouse is:
12 (1) ~~Six~~Seven hundred dollars for a warehouse having a maximum capacity of
13 two hundred thousand bushels [7047.8 cubic meters];
14 (2) ~~Nine hundred~~One thousand dollars for a warehouse having a capacity of
15 more than two hundred thousand bushels [7047.8 cubic meters] but not
16 more than five hundred thousand bushels [17619.54 cubic meters]; and
17 (3) One thousand ~~one~~two hundred dollars for a warehouse having a capacity of
18 more than five hundred thousand bushels [17619.54 cubic meters].
19 c. An application for an annual license renewal that is received after July fifteenth
20 must include an additional one hundred dollar fee per warehouse. An application
21 for a biennial license renewal that is received after July fifteenth must include an
22 additional two hundred dollar fee per warehouse.
- 23 4. If a public warehouseman operates two or more warehouses in the same city or
24 siding, in conjunction with each other and with the same working force, and keeps one
25 set of books and records for all such warehouses, and issues one series of scale
26 tickets, warehouse receipts, checks, and credit-sale contracts for the grain stored and
27 purchased therein, only one license is required for the operation of all such
28 warehouses. When two or more warehouses are operated under one license, the
29 license fee is based upon the combined bushel capacity of the warehouses.
- 30 5. If required to obtain United States department of agriculture approval of the
31 ~~commission's~~commissioner's warehouse inspection program, the

1 ~~commission~~ commissioner may require ~~that~~ the applicant submit a current financial
2 statement prepared in accordance with generally accepted accounting principles. A
3 financial statement furnished under this subsection is a confidential trade secret and is
4 not a public record.

5 **SECTION 20. AMENDMENT.** Section 60-02-07.2 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **60-02-07.2. Receiving stations.**

8 A licensed public warehouseman may establish a receiving station without a separate
9 warehouse license for that facility if all of the following conditions are met:

- 10 1. The station is colocated with another licensed public warehouse, the operator of which
11 will take delivery of the grain on behalf of the warehouseman who established the
12 receiving station.
- 13 2. The storage space used by the receiving station is used solely by the receiving station
14 and is not licensed as part of the warehouse that is located at that site.
- 15 3. The grain taken in by the receiving station is not commingled with other grain at that
16 site.
- 17 4. The warehouseman establishing the station requests and receives ~~commission-~~
18 permission from the commissioner to increase licensed capacity to include the space
19 to be used at the receiving station.
- 20 5. Grain received at the receiving station is recorded on scale tickets issued by the
21 warehouseman who established the station and is covered by that warehouseman's
22 bond.
- 23 6. Warehouse-receipted grain received at the receiving station is available for redelivery
24 to the receipt holder at that location even if the station has been closed. A charge for
25 redelivery must be stated in the warehouseman's redelivery policy.

26 The storage space used by a receiving station need not be physically disconnected from the
27 facilities of the other licensed warehouse located at that site.

28 **SECTION 21. AMENDMENT.** Section 60-02-09 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **60-02-09. Bond filed by public warehouseman.**

2 Before any license is effective for any public warehouseman under this chapter, the
3 applicant for the license shall file a bond with the ~~commission~~commissioner which must:

- 4 1. Be in a sum not less than five thousand dollars for any one warehouse.
- 5 2. Be continuous, unless the corporate surety by certified mail notifies the licensee and
6 the ~~commission that~~commissioner the surety bond will be canceled ninety days after
7 receipt of the notice of cancellation.
- 8 3. Run to the state of North Dakota for the benefit of all persons storing or selling grain in
9 that warehouse.
- 10 4. Be conditioned:
 - 11 a. For the faithful performance of the licensee's duties as a public warehouseman.
 - 12 b. For compliance with the provisions of law and the rules of the
13 ~~commission~~commissioner relating to the storage and purchase of grain by such
14 warehouseman.
- 15 5. Specify the location of each public warehouse intended to be covered by such bond.
- 16 6. Be for the specific purpose of:
 - 17 a. Protecting the holders of outstanding receipts.
 - 18 b. Covering the costs incurred by the ~~commission~~commissioner in the
19 administration of chapter 60-04 in the event of the licensee's insolvency.
- 20 7. Not accrue to the benefit of any person entering into a credit-sale contract with a
21 public warehouseman.
- 22 8. The aggregate liability of the surety under a bond does not accumulate for each
23 successive annual license renewal period during which the bond is in force but, for
24 losses during any annual license renewal period, is limited in the aggregate to the
25 bond amount stated or changed by appropriate endorsement or rider.

26 The ~~commission~~commissioner shall set the amount of the bond and may require an increase in
27 the amount of any bond, from time to time, as the ~~commission~~commissioner deems necessary
28 to accomplish the purposes of this section. The surety on the bond must be a corporate surety
29 company, approved by the ~~commission~~commissioner, and authorized to do business within the
30 state. The ~~commission~~commissioner may accept cash, a negotiable instrument, or a bond
31 executed by personal sureties in lieu of a surety bond ~~when~~if, in ~~its~~the commissioner's

1 judgment, the cash, negotiable instrument, or personal surety bond properly will protect the
2 holders of outstanding receipts. One bond only may be given for any line of elevators, mills, or
3 warehouses, owned, controlled, or operated by one individual, firm, corporation, or limited
4 liability company, and the bond must be construed to cover ~~such~~the elevators, mills, or
5 warehouses, as a whole and not a specific amount for each.

6 **SECTION 22. AMENDMENT.** Section 60-02-09.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **60-02-09.1. Bond cancellation - Release of surety.**

9 The surety on a bond is released from all future liability accruing on the bond after the
10 expiration of ninety days from the date of receipt by the ~~commission~~commissioner of notice of
11 cancellation by the surety or on a later date specified by the surety. This provision does not
12 operate to relieve, release, or discharge the surety from any liability already accrued or which
13 accrues before the expiration of the ninety-day period. Unless the warehouseman files a new
14 bond at least thirty days before liability ceases, the ~~commission~~commissioner, without hearing,
15 shall immediately suspend the warehouseman's license and the suspension may not be
16 removed until a new bond has been filed and approved by the ~~commission~~commissioner.
17 ~~When~~If a license is so suspended, the warehouseman shall give notice of such suspension to
18 each receipt holder having grain stored in the warehouse. The warehouseman shall further notify
19 each receipt holder having grain stored in the warehouse that the grain must be removed from
20 the warehouse or ~~it~~the grain will be priced and redeemed in cash in accordance with section
21 60-02-41.

22 **SECTION 23. AMENDMENT.** Section 60-02-10.1 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **60-02-10.1. Revocation and suspension.**

25 The ~~commission~~commissioner may suspend or revoke the license of any warehouseman
26 for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the
27 license of a warehouseman must automatically be suspended for failure at any time to have or
28 to maintain either a bond or insurance policy in the amount and type required. During a
29 suspension of a license the warehouseman may, upon the ~~commission's~~commissioner's
30 approval, operate the warehouse and purchase or redeliver grain previously received, but may

1 not receive additional grain for purchase, storage, shipping, or processing. Grain may be sold
2 only with the prior approval of the ~~commission~~commissioner.

3 **SECTION 24. AMENDMENT.** Section 60-02-11 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **60-02-11. Scale ticket - Contents - Conversion.**

- 6 1. a. Every public warehouseman, upon receiving grain into the warehouse, shall
7 issue a uniform scale ticket for each load of grain received. The scale tickets
8 must be numbered consecutively, and one copy of each ticket must be retained
9 and remain as a permanent record. The original ticket must be delivered to the
10 person from whom the grain is received, upon receipt of each load of grain.
- 11 b. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale
12 contracts, or warehouse receipts, within forty-five days after the grain is delivered
13 to the warehouse, unless:
- 14 (1) The person to whom the scale ticket is issued signs a form waiving all rights
15 to trust benefits under section 60-04-03.1;
- 16 (2) The form identifies by number each scale ticket to which the waiver applies;
17 and
- 18 (3) The form is signed by the warehouseman.
- 19 c. The ~~commission~~commissioner shall prepare the waiver form required by
20 subdivision b and make the form available to each warehouse.
- 21 d. The warehouseman shall keep one copy of the signed waiver form with the
22 records of the warehouse, provide one copy to the person who was issued the
23 scale ticket and signed the form, and file one copy with the
24 ~~commission~~commissioner.
- 25 2. Nothing in this chapter requires a warehouseman to receive grain for storage. A
26 warehouseman shall publish and post, in a conspicuous place in the warehouse, a
27 publication identifying whether storage will be available to patrons or whether grain will
28 be accepted via cash or a credit-sale contract arrangement.

29 **SECTION 25. AMENDMENT.** Section 60-02-14 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **60-02-14. Warehouse receipts - Copy.**

2 Provision ~~shall~~must be made for a stub record or copy of each warehouse receipt issued by
3 a warehouseman, showing:

- 4 1. The serial number and date of receipt.
- 5 2. The kind and grade of grain.
- 6 3. The dockage and net weight of the grain.

7 The record or copy ~~shall~~must remain in the possession of the warehouseman for inspection by
8 the ~~commission~~commissioner and persons properly interested.

9 **SECTION 26. AMENDMENT.** Section 60-02-17 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery.**

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

14 This grain is received, insured, and stored subject to the laws and rules of the state of
15 North Dakota, the terms of this contract, and the charges and conditions stated herein
16 and as filed with the North Dakota ~~public service commission~~agriculture commissioner.

17 Upon surrender of this receipt and payment or tender of all applicable charges, the
18 amount, kind, and grade of grain identified in this receipt will be delivered to the
19 person named above or the person's order as rapidly as due diligence, care, and
20 prudence will permit. At the option of the holder of this receipt, the amount, kind, and
21 grade of grain for which this receipt is issued, upon demand, must be delivered back
22 to the holder at any terminal point customarily shipped to, or at the place where
23 received, upon the payment of any charges for receiving, handling, storage, and
24 insurance and in case of terminal delivery, the payment in addition to the above of the
25 regular freight charges on the gross amount called for by this ticket or in lieu thereof, a
26 receipt issued by a bonded warehouse or elevator company doing business at the
27 terminal point. This receipt does not require the delivery of the identical grain specified
28 herein, but an equal amount of grain of the same kind and grade must be delivered.

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

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

5 **SECTION 27. AMENDMENT.** Section 60-02-24 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **60-02-24. Reports to be made by public warehouseman - Penalty for failure.**

8 Each licensed and bonded public warehouseman shall:

- 9 1. Prepare for each month a report giving facts and information called for on the form of
10 report prepared by the ~~commission~~commissioner. The report must contain or be
11 verified by a written declaration ~~that it~~the report is made under the penalties of perjury.
12 The report may be called for more frequently if the ~~commission~~commissioner deems ~~it~~
13 necessary. Information pertaining to the volume of grain handled is a confidential trade
14 secret and is not a public record. The ~~commission~~commissioner may make the
15 information available for use by other governmental entities, but the
16 ~~commission~~commissioner may not release the information in a manner that
17 jeopardizes the confidentiality of individual licensees.
- 18 2. File the report with the ~~commission~~commissioner not later than the last day of the
19 following month, and failure to file this report promptly will be considered cause for
20 revoking the warehouse license after due notice and hearing.
- 21 3. Keep a separate account of the grain business, if the warehouseman is engaged in
22 handling or selling any other commodity, and under no circumstances ~~shall~~may the
23 grain account and other accounts be mixed.

24 The ~~commission~~commissioner may refuse to renew a license to any public warehouseman who
25 fails to make a required report.

26 **SECTION 28. AMENDMENT.** Section 60-02-27 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **60-02-27. Federal grades to control - Grades to be posted.**

29 All public warehousemen shall purchase and store grain except dry edible beans in
30 accordance with the official grades established from time to time by the secretary of agriculture
31 of the United States, except as otherwise provided in rules and regulations applicable thereto

1 adopted by federal officials pursuant to law. ~~They~~Public warehousemen shall post in a
2 conspicuous place in ~~their~~the public warehousemen's warehouse the official grades so
3 established and also any change that may be made from time to time. Warehousemen of dry
4 edible beans shall purchase, store, and deliver beans in accordance with ~~their~~the policy of the
5 warehousemen which must be filed with the ~~commission~~commissioner and posted in a
6 conspicuous place in ~~their~~the warehouse of the public warehousemen. Other grading standards
7 may be used if mutually agreed to in writing by the warehouseman and the owner of the grain.
8 However, the owner may demand the use of federal grading standards. The
9 ~~commission~~commissioner, after hearing, may prohibit the use of nonfederal grades.

10 **SECTION 29. AMENDMENT.** Section 60-02-35.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **60-02-35.1. Insurance - Cancellation - Suspension of license.**

13 An insurance company shall give at least sixty days' notice to the ~~commission~~commissioner
14 and the insured by certified mail return receipt requested before cancellation of an insurance
15 policy required in section 60-02-35. Unless the warehouseman files proof of new or renewed
16 insurance at least thirty days before the existing policy ceases, the ~~commission~~commissioner,
17 without hearing, shall immediately suspend the warehouseman's license and the suspension
18 may not be removed until a new policy has been filed and approved by the
19 ~~commission~~commissioner. ~~When~~If a license is so suspended, the warehouseman shall give
20 notice of ~~such~~the suspension to each receipt holder having grain stored in the warehouse. The
21 warehouseman shall further notify each receipt holder having grain stored in the warehouse ~~that~~
22 the grain must be removed from the warehouse or ~~it~~the grain will be priced and redeemed in
23 cash in accordance with section 60-02-41.

24 **SECTION 30. AMENDMENT.** Section 60-02-38 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **60-02-38. Refund of license fee by ~~commission~~commissioner.**

27 ~~When~~If requested in writing, the ~~commission~~commissioner shall refund the license fee of a
28 public warehouse, or so much as in ~~it~~the commissioner's judgment is just and reasonable,
29 ~~when~~if satisfactory proof is furnished ~~that~~ the warehouse has been transferred to some other
30 person, and the new owner has obtained a license for the same warehouse for the unexpired

1 period for which the original license was issued. ~~When~~If a warehouse is destroyed by fire or
2 other cause, the license fee may be prorated as the ~~commission~~commissioner may determine.

3 **SECTION 31. AMENDMENT.** Section 60-02-40 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **60-02-40. Transfer of warehouse - Redemption of receipts.**

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

- 8 1. Notify the ~~commission~~commissioner first of ~~its~~the warehouseman's intention to transfer
9 the warehouse, giving the name and address of the proposed lessee or purchaser.
- 10 2. Furnish a statement of all proper claims that may be filed or pending against the
11 warehouseman pertaining to the storage, inspection, and marketing of grain, together
12 with a statement of:
 - 13 a. The number of bushels [cubic meters] of grain of each kind and grade in store in
14 the warehouse;
 - 15 b. The number and amount of receipts outstanding; and
 - 16 c. The names and addresses of the receiptholders.
- 17 3. Serve notice by registered or certified mail, at least thirty days before the transfer,
18 upon all receiptholders having claims against the warehouse to call for delivery of the
19 grain covered by the receipts, and to pay all storage charges due, the warehouseman
20 in such case to make no charge for redelivery. The ~~commission~~commissioner may
21 waive the thirty-day notice period upon receipt of written consent of all receiptholders.
- 22 4. Transfer all stored grain undelivered at the expiration of such thirty-day period to ~~its~~the
23 warehouseman's successor, if licensed, or to the nearest licensed warehouse for
24 restorage, taking receipts for the same in favor of the owner of the grain so
25 transferred.
- 26 5. Surrender to the ~~commission~~its commissioner ~~the warehouseman's~~ license for
27 cancellation ~~and at such, at which~~ time the proposed lessee or purchaser shall file in
28 due form for a new license and tender a new bond for review by the ~~commission,~~
29 ~~whereupon, it~~commissioner, at which time, the commissioner, first being duly satisfied
30 ~~that~~ all the outstanding receipts have been redeemed, or that the redemption ~~thereof~~of

1 all outstanding receipts has been provided for, the ~~commission~~commissioner may
2 permit a new license to become effective for the lessee or purchaser.

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

5 **SECTION 32. AMENDMENT.** Section 60-02-41 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **60-02-41. Going out of business - Redemption of receipts.**

8 ~~When~~if a public warehouseman ceases business through the destruction of a warehouse by
9 fire or other cause, or through insolvency, ~~such~~the warehouseman shall redeem all outstanding
10 unconverted scale tickets or warehouse receipts at the price prevailing on the date the
11 warehouse was destroyed or closed because of insolvency. The holder of such receipts, upon
12 due notice, ~~must~~shall accept this price and surrender the receipts. Any public warehouseman
13 who voluntarily ceases business or fails to renew an existing warehouse license or whose
14 warehouse license is revoked shall notify the ~~commission~~commissioner and all outstanding
15 receiptholders of such closing and redeem all outstanding unconverted scale tickets or
16 warehouse receipts at the price prevailing on the date the warehouse closed or at the option of
17 the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the
18 unconverted scale ticket or warehouse receipt. On commingled grain the value of over and
19 under deliveries in quantity, grade, and protein ~~shall~~must be settled in cash and priced on the
20 market on the day of closing.

21 **SECTION 33. AMENDMENT.** Section 60-02-42 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **60-02-42. Cease and desist.**

24 ~~Whenever~~if an entity engages in an activity or practice ~~that is~~ contrary to the provisions of
25 this chapter or related rules, the ~~commission~~commissioner, upon ~~its~~the commissioner's own
26 motion without complaint, with or without hearing, may order the entity to cease and desist from
27 the activity until further order of the ~~commission~~commissioner. Such orders may include any
28 corrective action up to and including license suspensions. Cease and desist orders must be
29 accompanied by a notice of opportunity to be heard on the order within fifteen days of the
30 issuance of the order.

1 **SECTION 34.** A new section to chapter 60-02 of the North Dakota Century Code is created
2 and enacted as follows:

3 **Release of records - Confidentiality.**

4 1. As a condition of licensure under section 60-02-07, an applicant shall agree to provide
5 to the commissioner, upon request, any financial record the commissioner deems
6 relevant for purposes related to:

7 a. The issuance or renewal of a public warehouse license; or

8 b. An investigation after issuance or renewal of a public warehouse license.

9 2. As a condition of licensure, an applicant shall file a records release with the
10 commissioner, authorizing the commissioner to obtain from any source any financial
11 record the commissioner deems relevant for purposes related to:

12 a. The issuance or renewal of a public warehouse license; or

13 b. An investigation after issuance or renewal of a public warehouse license.

14 3. Any information obtained by the commissioner under this section is confidential and
15 may be provided only:

16 a. To federal authorities in accordance with federal law;

17 b. To the attorney general, state agencies, and law enforcement agencies, for use in
18 the pursuit of official duties; and

19 c. As directed by an order of a court pursuant to a showing of good cause.

20 **SECTION 35. AMENDMENT.** Section 60-02.1-01 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **60-02.1-01. Definitions.**

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

24 1. ~~"Commissioner"~~ "Commissioner" means the ~~public service commission~~ agriculture
25 commissioner.

26 2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which
27 the sale price is to be paid or may be paid more than thirty days after the delivery or
28 release of the grain for sale and which contains the notice provided in subsection 7 of
29 section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be
30 paid or may be paid more than thirty days after the delivery or release of the grain for
31 sale, only such part of the contract is a credit-sale contract.

- 1 3. "Facility" means a structure in which grain purchased by a grain buyer is received or
2 held.
- 3 4. "Facility-based grain buyer" means a grain buyer who operates a facility licensed
4 under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.
- 5 5. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower,
6 sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa,
7 and any other commercially grown grain or grass seed. "Grain" does not include grain
8 or grass seeds owned by or in the possession of the grain buyer which have been
9 cleaned, processed, and specifically identified for an intended use of planting for
10 reproduction and for which a warehouse receipt has not been issued.
- 11 6. "Grain buyer" means any person, other than a public warehouseman as defined in
12 chapter 60-02, who purchases or otherwise merchandises grain for compensation.
13 The term does not include:
- 14 a. A producer of grain who purchases grain from other producers to complete a
15 carload or truckload in which the greater portion of the load is grain grown by the
16 producer or on-farm feedlot operations in which at least fifty percent of the
17 livestock is owned by the owner of the farm.
- 18 b. A person who is permitted to sell seed under chapter 4.1-53, if that person buys
19 grain only for processing and subsequent resale as seed.
- 20 c. A person who is an authorized dealer or agent of a seed company holding a
21 permit in accordance with section 4.1-53-38.
- 22 7. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale
23 contract.
- 24 8. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer
25 for, or as evidence of, the receipt or sale of grain except when such memoranda was
26 received as a result of a credit-sale contract.
- 27 9. "Roving grain buyer" means a grain buyer who does not operate a facility where grain
28 is received.

29 **SECTION 36. AMENDMENT.** Section 60-02.1-02 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **60-02.1-02. ~~Commission~~Commissioner - Powers and duties.**

2 The ~~powers and~~ duties ~~imposed and the powers conferred by this chapter devolve upon the~~
3 ~~commission of the commissioner~~ are enumerated in this chapter.

4 **SECTION 37. AMENDMENT.** Section 60-02.1-03 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **60-02.1-03. Duties and powers of the ~~commission~~commissioner.**

7 The ~~commission~~commissioner has the duty and power to:

- 8 1. Exercise general supervision of grain buyers of this state.
- 9 2. Investigate all complaints of fraud and injustice, unfair practices, and unfair
10 discrimination.
- 11 3. Examine and inspect, during ordinary business hours, any books, documents, and
12 records.
- 13 4. Make all proper rules for carrying out and enforcing any law in this state regarding
14 grain buyers.

15 **SECTION 38. AMENDMENT.** Section 60-02.1-04 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **60-02.1-04. Federal licensed inspector -- ~~Appointed by commission.~~**

18 The ~~commission~~commissioner may employ a federal licensed inspector whose duties are
19 ~~hereinafter prescribed, and such~~ enumerated in this chapter and may employ other employees
20 as ~~may be~~ necessary to carry out the provisions of this chapter.

21 **SECTION 39. AMENDMENT.** Section 60-02.1-06 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **60-02.1-06. Notice of procedures for resolving disputes over grain.**

24 A facility-based grain buyer shall post a notice containing the procedures specified in
25 section 60-02.1-05 for resolving disputes. The ~~commission~~commissioner shall prescribe the
26 form of the notice and shall provide a copy of the notice to each facility-based grain buyer. The
27 facility-based grain buyer shall post the notice in the grain inspection room of the facility. The
28 notice must specifically mention ~~that~~ the procedure for resolving disputes applies to the grade,
29 dockage, moisture content, and protein content of grain and to the quality factors of grain for
30 which inspection rules and grades have not been adopted by the secretary of agriculture of the
31 United States.

1 **SECTION 40. AMENDMENT.** Section 60-02.1-07 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement.**

4 Grain buyers ~~must~~shall obtain an annual license from the ~~commission~~commissioner. Except
5 as provided in this section, each license expires on July thirty-first of each year. ~~When~~if a
6 licensee's initial license is issued effective after May thirty-first, that license expires on July
7 thirty-first of the following year. A facility-based grain buyer ~~must~~shall obtain a license for each
8 receiving location operated in the state. If a grain buyer operates two or more facilities in the
9 same city or siding, in conjunction with each other and with the same working force, and where
10 but one set of books and records is kept for all such facilities, and scale tickets and checks of
11 but one series are issued for the grain, purchased, only one license is required for the operation
12 of all such facilities. The annual license fee for a facility-based grain buyer is ~~three~~four hundred
13 dollars and a license renewal application that is received after July fifteenth must be assessed
14 an additional one hundred dollar fee per receiving location.

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

20 **SECTION 41. AMENDMENT.** Section 60-02.1-07.1 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **60-02.1-07.1. Roving grain buyer license - How obtained - Fee.**

23 Roving grain buyers that purchase, solicit, merchandise, or take possession of grain in this
24 state ~~must~~shall obtain an annual license from the ~~commission~~commissioner. Except as provided
25 in this section, each license expires on July thirty-first of each year. ~~When~~if a licensee's initial
26 license is issued effective after May thirty-first, that license expires on July thirty-first of the
27 following year. The annual license fee for a roving grain buyer is ~~two~~three hundred dollars, and
28 a license renewal application that is received after July fifteenth must be assessed an additional
29 one hundred dollar fee.

30 **SECTION 42. AMENDMENT.** Section 60-02.1-08 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **60-02.1-08. Bond filed by grain buyer.**

2 Before any license is effective for any grain buyer under this chapter, the applicant for the
3 license shall file a bond with the ~~commission~~commissioner which must:

- 4 1. Be in a sum not less than ~~five~~ten thousand dollars.
- 5 2. Be continuous, unless the corporate surety by certified mail notifies the licensee and
6 the ~~commission that~~commissioner the surety bond will be canceled ninety days after
7 receipt of the notice of cancellation.
- 8 3. Run to the state of North Dakota for the benefit of all persons selling grain to or
9 through the grain buyer.
- 10 4. Be conditioned:
 - 11 a. For the faithful performance of the licensee's duties as a grain buyer.
 - 12 b. For compliance with the provisions of law and the rules of the
13 ~~commission~~commissioner relating to the purchase of grain by such grain buyer.
- 14 5. For facility-based grain buyers, specify the location of each facility intended to be
15 covered by the bond.
- 16 6. Be for the specific purpose of:
 - 17 a. Protecting the sellers of grain.
 - 18 b. Covering the costs incurred by the ~~commission~~commissioner in the
19 administration of the licensee's insolvency.
- 20 7. Not accrue to the benefit of any person entering ~~into~~ a credit-sale contract with a grain
21 buyer.
- 22 8. The aggregate liability of the surety under a bond does not accumulate for each
23 successive annual license renewal period during which the bond is in force but, for
24 losses during any annual license renewal period, is limited in the aggregate to the
25 bond amount stated or changed by appropriate endorsement or rider.

26 The ~~commission~~commissioner may require an increase in the amount of any bond, ~~from time to~~
27 ~~time~~, as ~~it~~the commissioner deems necessary to accomplish the purposes of this section. The
28 surety on the bond must be a corporate surety company, approved by the
29 ~~commission~~commissioner, and authorized to do business within the state. The
30 ~~commission~~commissioner may accept cash, a negotiable instrument, or a bond executed by
31 personal sureties in lieu of a surety bond when, in ~~its~~the commissioner's judgment, cash, a

1 negotiable instrument, or a personal surety bond properly will protect the holders of outstanding
2 receipts. Only one bond may be required for any series of facilities operated by a facility-based
3 grain buyer, and the bond must be construed to cover those facilities as a whole and not a
4 specific amount for each.

5 **SECTION 43. AMENDMENT.** Section 60-02.1-09 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **60-02.1-09. Bond cancellation - Release of surety.**

8 The surety on a bond is released from all future liability accruing on the bond after the
9 expiration of ninety days from the date of receipt by the ~~commission~~commissioner of notice of
10 cancellation by the surety or on a later date specified by the surety. This provision does not
11 operate to relieve, release, or discharge the surety from any liability already accrued or which
12 accrues before the expiration of the ninety-day period. Unless the grain buyer files a new bond
13 at least thirty days before liability ceases, the ~~commission~~commissioner, without hearing, shall
14 immediately suspend the grain buyer's license and the suspension may not be removed until a
15 new bond has been filed and approved by the ~~commission~~commissioner.

16 **SECTION 44. AMENDMENT.** Section 60-02.1-11 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **60-02.1-11. Revocation and suspension.**

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

27 **SECTION 45. AMENDMENT.** Section 60-02.1-16 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **60-02.1-16. Records required to be kept by grain buyers.**

30 Each grain buyer shall keep such accounts, records, and memoranda concerning the
31 buyer's dealing as such grain buyer as ~~from time to time~~ may be required by the

1 ~~commission~~commissioner and shall make such reports of purchases of grain as may be
2 required by the rules ~~made~~adopted by the ~~commission~~commissioner. The
3 ~~commission~~commissioner at all times ~~shall~~must have access to such accounts, records, and
4 memoranda.

5 **SECTION 46. AMENDMENT.** Section 60-02.1-17 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **60-02.1-17. Reports to be made by grain buyers - Penalty for failure.**

8 Each licensed and bonded grain buyer shall:

- 9 1. Prepare for each month a report giving facts and information called for on the form of
10 report prepared by the ~~commission~~commissioner. The report must contain or be
11 verified by a written declaration ~~that it~~the report is made under the penalties of perjury.
12 The report may be called for more frequently if the ~~commission~~commissioner deems ~~it~~
13 necessary. Information pertaining to the volume of grain handled is a confidential trade
14 secret and is not a public record. The ~~commission~~commissioner may make this
15 information available for use by other governmental entities, but the information may
16 not be released by those entities in a manner that jeopardizes the confidentiality of
17 individual licensees.
- 18 2. File the report with the ~~commission~~commissioner not later than the last day of the
19 following month. Failure to file this report promptly will be considered cause for
20 revoking the grain buyer license after due notice and hearing.
- 21 3. Keep a separate account of the grain business, if the grain buyer is engaged in
22 handling or selling any other commodity, and under no circumstances may the grain
23 account and other accounts be mixed.

24 The ~~commission~~commissioner may refuse to renew a license to any grain buyer who fails to
25 make a required report.

26 **SECTION 47. AMENDMENT.** Section 60-02.1-19 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **60-02.1-19. Federal grades to control - Grades to be posted.**

29 All grain buyers shall purchase grain, except dry edible beans, in accordance with the
30 official grades established from time to time by the secretary of agriculture of the United States,
31 except as otherwise provided in ~~applicable~~rules and regulations ~~applicable thereto~~adopted by

1 federal officials pursuant to law. A facility-based grain buyer shall post in a conspicuous place in
2 the buyer's facility the official grades so established and also any change that may be made
3 from time to time. A grain buyer of dry edible beans shall purchase and deliver beans in
4 accordance with the buyer's policy, which must be filed with the ~~commission~~commissioner and,
5 if applicable, posted in a conspicuous place in the buyer's facility. Other grading standards may
6 be used if mutually agreed to in writing by the grain buyer and the owner of the grain. However,
7 the owner may demand the use of federal grading standards. After hearing, the
8 ~~commission~~commissioner may prohibit the use of nonfederal grades.

9 **SECTION 48. AMENDMENT.** Section 60-02.1-22 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **60-02.1-22. Insurance - Cancellation - Suspension of license.**

12 An insurance company shall give at least sixty days' notice to the ~~commission~~commissioner
13 and the insured by registered mail return receipt requested before cancellation of an insurance
14 policy required in section 60-02.1-21. Unless the grain buyer files proof of new or renewed
15 insurance at least thirty days before the existing policy ceases, the ~~commission~~commissioner,
16 without hearing, shall immediately suspend the grain buyer's license and the suspension may
17 not be removed until a new policy has been filed and approved by the
18 ~~commission~~commissioner.

19 **SECTION 49. AMENDMENT.** Section 60-02.1-26 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **60-02.1-26. Transfer of facility - Redemption of receipts.**

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

- 24 1. Notify the ~~commission~~commissioner first of its intention to transfer the facility, giving
25 the name and address of the proposed lessee or purchaser.
- 26 2. Provide related information as may be required by the ~~commission~~commissioner.
- 27 3. Surrender to the ~~commission~~commissioner the grain buyer's license for cancellation
28 and at that time the proposed lessee or purchaser shall file in due form for a new
29 license and tender a new bond for review by the ~~commission~~commissioner,
30 whereupon, it first being duly satisfied that all the outstanding receipts have been
31 redeemed, or that the redemption thereof has been provided for, the

1 ~~commission~~commissioner may permit a new license to become effective for the lessee
2 or purchaser.

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

5 **SECTION 50. AMENDMENT.** Section 60-02.1-27 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **60-02.1-27. Going out of business - Redemption of receipts.**

8 ~~When~~If a facility-based grain buyer ceases business through closure, the destruction of a
9 facility by fire or other cause, or through insolvency, ~~such~~the grain buyer shall redeem all
10 outstanding receipts at the price prevailing on the date the facility was closed, destroyed, or
11 became insolvent. The holder of ~~such~~the receipts, upon due notice, ~~must~~shall accept this price
12 and surrender the receipts. Any facility-based grain buyer who voluntarily ceases business or
13 fails to renew an existing grain buyer license or whose grain buyer license is revoked shall
14 notify the ~~commission~~commissioner and all receiptholders of such closing and redeem all such
15 receipts at the price prevailing on the date the business closed or at the option of the owner of
16 the receipt redeliver the kind, grade, and quantity of grain called for by the receipt. On
17 commingled grain the value of over and under deliveries in quantity, grade, and protein
18 ~~shall~~must be settled in cash and priced on the market on the day of closing.

19 **SECTION 51. AMENDMENT.** Section 60-02.1-29 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **60-02.1-29. Appointment of ~~commission~~commissioner.**

22 Upon the insolvency of any roving grain buyer, the ~~commission~~commissioner shall apply to
23 the district court of Burleigh County for authority to take all action necessary to act as trustee of
24 the trust fund described in section 60-02.1-30. If the insolvency involves a facility-based grain
25 buyer, application must be to the district court of a county in which the licensee operates a
26 licensed facility. Upon notice to the licensee as the court prescribes, but not exceeding twenty
27 days, or upon waiver of notice in writing by the licensee, the court shall hear and determine the
28 application in a summary manner. If the court determines that the licensee is insolvent within
29 the meaning of this chapter and that it would be in the best interests of the receiptholders that
30 the ~~commission~~commissioner secure and execute the trust, the court shall issue an order

1 granting the application, without bond, and the ~~commission~~commissioner shall proceed to
2 exercise ~~its~~the commissioner's authority without further direction from the court.

3 Upon the filing of the ~~commission's~~commissioner's application, the court may issue ex parte
4 a temporary order to preserve or protect the assets of the trust fund until the court issues its
5 order granting or denying the application.

6 **SECTION 52. AMENDMENT.** Section 60-02.1-30 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **60-02.1-30. Trust fund established.**

9 Upon the insolvency of any licensee, a trust fund must be established for the benefit of
10 noncredit-sale receipt holders and to pay the costs incurred by the ~~commission~~commissioner in
11 the administration of the insolvency. The trust fund must consist of the following:

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

28 **SECTION 53. AMENDMENT.** Section 60-02.1-32 of the North Dakota Century Code is
29 amended and reenacted as follows:

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

Upon ~~its~~the commissioner's appointment, the ~~commission~~commissioner may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the ~~commission~~commissioner shall publish a notice of ~~its~~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, the notice must be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located. The notice must require outstanding receiptholders and credit-sale contract claimants to file their claims with the ~~commission~~commissioner along with the receipts, contracts, or other evidence of the claims required by the ~~commission~~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 ~~commission~~commissioner, the ~~commission~~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 54. AMENDMENT. Section 60-02.1-33 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-33. Remedy of receiptholders.

~~NeA~~ receiptholder ~~has~~does not have a separate claim for relief upon any insolvent licensee's bond, nor for insurance, nor against any person converting grain, nor against any other receiptholder, except through the trustee, unless, upon demand of five or more receiptholders, the ~~commission~~commissioner fails or refuses to apply for ~~its~~the commissioner's own appointment or unless the district court denies the application. This chapter does not prohibit any receiptholder, either individually or in conjunction with other receiptholders, from pursuing concurrently any other remedy against the person or property of the licensee.

SECTION 55. AMENDMENT. Section 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

1 **60-02.1-34. ~~Commission~~Commissioner to marshal trust assets.**

2 Upon ~~its~~the commissioner's appointment, the ~~commission~~commissioner shall marshal all of
3 the trust fund assets. The ~~commission~~commissioner may maintain suits in the name of the state
4 of North Dakota for the benefit of all receiptholders against the licensee's bonds, insurers of
5 grain, any person who may have converted any grain, and any person who may have received
6 preferential treatment by being paid by the insolvent licensee after the first default.

7 **SECTION 56. AMENDMENT.** Section 60-02.1-35 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **60-02.1-35. Power of ~~commission~~commissioner to prosecute or compromise claims.**

10 The ~~commission~~commissioner may:

- 11 1. Prosecute any action provided in sections 60-02.1-28 through 60-02.1-38 in any court
12 in this state or in any other state.
- 13 2. Appeal from any adverse judgment to the courts of last resort.
- 14 3. Settle and compromise any action ~~when~~if it will be in the best interests of the
15 receiptholders.
- 16 4. Settle and compromise any action ~~when~~if it is in the best interests of the credit-sale
17 contract claimants.
- 18 5. Upon payment of the amount of any settlement or of the full amount of any bond,
19 exonerate the person so paying from further liability growing out of the action.

20 **SECTION 57. AMENDMENT.** Section 60-02.1-36 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **60-02.1-36. Money received by trustee - Deposited in Bank of North Dakota.**

23 All funds received by the ~~commission~~commissioner as trustee must be deposited in the
24 Bank of North Dakota.

25 **SECTION 58. AMENDMENT.** Section 60-02.1-37 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **60-02.1-37. Report of trustee to court - Approval - Distribution.**

- 28 1. Upon the receipt and evaluation of claims, the ~~commission~~commissioner shall file with
29 the court a report showing the amount and validity of each claim after recognizing:
 - 30 a. Relevant liens or pledges.
 - 31 b. Relevant assignments.

- 1 c. Relevant deductions due to advances or offsets accrued in favor of the licensee.
- 2 d. In case of relevant cash claims or checks, the amount of the claim.
- 3 e. In case of a relevant credit-sale contract or noncredit-sale contract, the amount
- 4 remaining to be paid based on the terms of the contract.
- 5 2. The report must also contain the proposed reimbursement to the
- 6 ~~commission~~commissioner for the expenses of administering the insolvency, the
- 7 proposed distribution of the trust fund assets to receiptholders, less expenses incurred
- 8 by the ~~commission~~commissioner in the administration of the insolvency, and the
- 9 proposed credit-sale contract indemnity fund payments to credit-sale contract
- 10 claimants. If the trust fund is insufficient to redeem all receiptholder claims in full, the
- 11 report should list the funds as prorated.
- 12 3. The court shall set a hearing and the appropriate notice for interested persons to show
- 13 cause why the ~~commission's~~commissioner's report should not be approved and
- 14 distribution of the trust fund be made as proposed. Copies of the report and notice of
- 15 hearing must be served by the ~~commission~~commissioner by certified mail upon the
- 16 licensee and the surety and by ordinary mail upon all persons having claims filed with
- 17 the ~~commission~~commissioner.
- 18 4. Any aggrieved person having an objection to the ~~commission's~~commissioner's report
- 19 shall file the objection with the court and serve copies on the
- 20 ~~commission~~commissioner, the licensee, and the surety at least twenty days before the
- 21 hearing. Failure to file and serve objections in the time set is a waiver of the objection.
- 22 5. Following the hearing, the court shall approve or modify the report and issue an order
- 23 directing payment of the necessary bond proceeds, distribution of the trust fund,
- 24 payments from the credit-sale contract indemnity fund, and discharge of the
- 25 ~~commission~~commissioner from ~~its~~the commissioner's trust.

26 **SECTION 59. AMENDMENT.** Section 60-02.1-38 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **60-02.1-38. Filing fees and court costs - Expenses.**

29 The ~~commission~~commissioner may not be required to pay any filing fee or other court costs
30 or disbursements. The attorney general may appoint outside legal counsel to assist the
31 ~~commission~~commissioner in the prosecution of the action and the cost of employing outside

1 counsel must be paid from the trust fund and the credit-sale contract indemnity fund as
2 appropriate. All other necessary expenses incurred by the ~~commission~~commissioner in carrying
3 out the provisions of this chapter, including adequate insurance to protect the ~~commission,~~
4 ~~its~~commissioner, the commissioner's employees, and others engaged in carrying out the
5 provisions of sections 60-02.1-28 through 60-02.1-38, must be reimbursed to the
6 ~~commission~~commissioner from the trust fund and credit-sale contract indemnity funds as
7 appropriate.

8 **SECTION 60. AMENDMENT.** Section 60-02.1-39 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **60-02.1-39. Cease and desist.**

11 ~~Whenever~~if an entity engages in an activity or practice that is contrary to the provisions of
12 this chapter or related rules, the ~~commission~~commissioner, upon ~~its~~the commissioner's own
13 motion without complaint, with or without hearing, may order the entity to cease and desist from
14 the activity until further order of the ~~commission~~commissioner. 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 61.** A new section to chapter 60-02.1 of the North Dakota Century Code is
19 created and enacted as follows:

20 **Release of records - Confidentiality.**

21 1. As a condition of licensure under section 60-02.1-07, an applicant shall agree to
22 provide to the commissioner, upon request, any financial record the commissioner
23 deems relevant for purposes related to:

24 a. The issuance or renewal of a grain buyer license; or

25 b. An investigation after issuance or renewal of a grain buyer license.

26 2. As a condition of licensure, an applicant shall file a records release with the
27 commissioner, authorizing the commissioner to obtain from any source any financial
28 record the commissioner deems relevant for purposes related to:

29 a. The issuance or renewal of a grain buyer license; or

30 b. An investigation after issuance or renewal of a grain buyer license.

- 1 3. Any information obtained by the commissioner under this section is confidential and
2 may be provided only:
3 a. To federal authorities in accordance with federal law;
4 b. To the attorney general, state agencies, and law enforcement agencies for use in
5 the pursuit of official duties; and
6 c. As directed by an order of a court pursuant to a showing of good cause.

7 **SECTION 62. AMENDMENT.** Subsection 1 of section 60-04-01 of the North Dakota
8 Century Code is amended and reenacted as follows:

- 9 1. "~~Commission~~Commissioner" means the ~~public service commission~~agriculture
10 commissioner.

11 **SECTION 63. AMENDMENT.** Section 60-04-03 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **60-04-03. Appointment of ~~commission~~commissioner.**

14 Upon the insolvency of any warehouseman, the ~~commission~~commissioner shall apply to the
15 district court of a county in which the warehouseman operates a licensed warehouse for
16 authority to take all action necessary and appropriate to secure and act as trustee of the trust
17 fund described in section 60-04-03.1. Upon such notice to the warehouseman as the court shall
18 prescribe, but not exceeding twenty days, or upon waiver of such notice in writing by the
19 warehouseman, the court shall proceed to hear and determine such application in a summary
20 manner. If it shall appear to the court ~~that such~~the warehouseman is insolvent within the
21 meaning of this chapter and ~~that~~ it would be for the best interests of the receipt holders that the
22 ~~commission~~commissioner secure and execute such trust, the court shall issue an order granting
23 the application, without bond, ~~whereupon~~at which time the ~~commission~~commissioner shall
24 proceed to exercise ~~its~~the commissioner's authority without further direction from the court.

25 Upon the filing of the ~~commission's~~commissioner's application, the court may issue ex parte
26 such temporary order as may be necessary to preserve or protect the assets of the trust fund,
27 or the value ~~thereof~~of the trust fund, until the court issues ~~its~~an order granting or denying the
28 application.

29 **SECTION 64. AMENDMENT.** Section 60-04-03.1 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **60-04-03.1. Trust fund established.**

- 2 1. Upon the insolvency of any warehouseman, a trust fund ~~shall~~must be established:
- 3 a. For the benefit of noncredit-sale receiptholders of the insolvent warehouseman,
4 other than those who have waived their rights as beneficiaries of the trust fund in
5 accordance with section 60-02-11; and
- 6 b. To pay the costs incurred by the ~~commission~~commissioner in the administration
7 of this chapter.
- 8 2. The trust fund consists of the following:
- 9 a. The grain in the warehouse of the insolvent warehouseman or the proceeds as
10 obtained through the sale of such grain;
- 11 b. The proceeds, including accounts receivable, from any grain sold from the time of
12 the filing of the claim that precipitated an insolvency until the
13 ~~commission~~commissioner is appointed trustee;
- 14 c. The proceeds of insurance policies upon grain destroyed in the elevator;
- 15 d. The claims for relief, and proceeds ~~therefrom~~from the claims for relief, for
16 damages upon any bond given by the warehouseman to ensure faithful
17 performance of the duties of a warehouseman;
- 18 e. The claims for relief, and proceeds ~~therefrom~~from the claims for relief, for the
19 conversion of any grain stored in the warehouse;
- 20 f. Unencumbered accounts receivable for grain sold ~~prior to~~before the filing of the
21 claim that precipitated an insolvency;
- 22 g. Unencumbered equity in grain hedging accounts; and
- 23 h. Unencumbered grain product assets.

24 **SECTION 65. AMENDMENT.** Section 60-04-03.2 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **60-04-03.2. Possession of grain.**

27 Upon ~~its~~the commissioner's appointment by the district court, the ~~commission~~commissioner
28 shall seek possession of the grain to be included in the trust fund. Upon ~~its~~the commissioner's
29 possession of any grain in the warehouse, the ~~commission~~commissioner shall sell such grain
30 and apply the proceeds to the trust fund.

1 **SECTION 66. AMENDMENT.** Section 60-04-03.3 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **60-04-03.3. Joinder of surety - Deposit of proceeds.**

4 The surety on the warehouseman's bond must be joined as a party to the insolvency
5 proceeding upon a motion by the ~~commission~~ when commissioner if the
6 ~~commission~~ commissioner believes ~~that~~ proceeds from the warehouseman's bond may be
7 needed to redeem outstanding receipts issued by the warehouseman. ~~When~~ if it appears in the
8 best interests of the receiptholders, the court may order the surety to deposit the penal sum of
9 the bond, or so much ~~thereof~~ of the sum as may be deemed necessary, into the trustee's trust
10 account pending a final determination of the surety's liability under the bond.

11 **SECTION 67. AMENDMENT.** Section 60-04-04 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **60-04-04. Notice to receiptholders and credit-sale contract claimants.**

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

1 **SECTION 68. AMENDMENT.** Section 60-04-05 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **60-04-05. Remedy of receiptholders.**

4 ~~Ne~~A receiptholder ~~has~~does not have a separate claim for relief upon the warehouseman's
5 bond, nor for insurance, nor against any person converting grain, nor against any other
6 receiptholder, except through the trustee, unless, upon demand of five or more receiptholders,
7 the ~~commission~~commissioner fails or refuses to apply for ~~its~~the commissioner's own
8 appointment from the district court or unless the district court denies the application for
9 appointment. This chapter does not prohibit or prevent any receiptholder, either individually or in
10 conjunction with other receiptholders, from pursuing concurrently such other remedy against the
11 person or property of ~~such~~the warehouseman, for the whole, or any deficiency occurring in the
12 redemption, of the receipts.

13 **SECTION 69. AMENDMENT.** Section 60-04-06 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **60-04-06. ~~Commission~~Commissioner to marshal trust assets.**

16 Upon ~~its~~the commissioner's appointment by the district court, the ~~commission~~commissioner
17 may maintain suits at law or in equity, or any special proceeding, in the name of the state of
18 North Dakota, upon ~~its~~the commissioner's own relation, but for the benefit of all such
19 receiptholders against:

- 20 1. The insurers of grain;
- 21 2. The warehouseman's bond;
- 22 3. Any person who may have converted any grain; or
- 23 4. Any receiptholder who ~~shall have~~ received more than ~~its~~the receiptholder's just and
24 pro rata share of grain,

25 for the purpose of marshalling all of the trust fund assets and distributing the same among the
26 receiptholders. The ~~commission~~commissioner shall seek possession of any grain in the
27 warehouse before recourse is had against the insurers of grain, and the remedy against the
28 insurers of grain ~~shall~~must be exhausted before recourse is had against the bond, and against
29 the bond before recourse is had against the person honestly converting grain, unless the
30 ~~commission shall deem~~commissioner deems it necessary to the redemption of the receipts that
31 all the above remedies be pursued at the same time.

1 **SECTION 70. AMENDMENT.** Section 60-04-07 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **60-04-07. Power of ~~commission~~commissioner to prosecute or compromise claims.**

4 The ~~commission~~commissioner may:

- 5 1. Prosecute any action provided in this chapter in any court in this state or in any other
6 state.
- 7 2. Appeal from any adverse judgment to the courts of last resort.
- 8 3. Settle and compromise any action ~~whenever~~if it is in the best interests of the
9 receiptholders.
- 10 4. Settle and compromise any action ~~when~~if it is in the best interests of the credit-sale
11 contract claimants.
- 12 5. Upon payment of the amount of the compromise or of the full amount of any insurance
13 policy, bond, or conversion claim, exonerate the person so compromising or paying in
14 full from further liability growing out of the action.

15 **SECTION 71. AMENDMENT.** Section 60-04-08 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **60-04-08. Money received by trustee - Deposited in Bank of North Dakota.**

18 All moneys collected and received by the ~~commission~~commissioner as trustee under this
19 chapter, pending the marshalling of the fund, ~~shall~~must be deposited in the Bank of North
20 Dakota.

21 **SECTION 72. AMENDMENT.** Section 60-04-09 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **60-04-09. Report of trustee to court - Approval - Distribution.**

24 Upon the receipt and evaluation of claims filed with ~~it~~the commissioner, the
25 ~~commission~~commissioner shall file with the court a report showing the amount and validity of
26 each claim after recognizing:

- 27 1. Any proper liens or pledges ~~thereon~~on the claims.
- 28 2. Assignments ~~thereof~~of the claims.
- 29 3. Deductions ~~therefrom~~from the claims by reason of advances or offsets accrued in
30 favor of the warehouseman.
- 31 4. In case of cash claims or checks, the amount ~~thereof~~of the claims or checks.

1 5. In the case of scale tickets or warehouse receipts, the amount ~~thereof~~ based upon the
2 market price prevailing on the date the ~~commission~~commissioner first received a copy
3 of the written demand required by section 60-04-02.

4 6. In the case of a credit-sale or noncredit-sale contract, the amount remaining to be paid
5 based on the terms of the contract.

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

13 The court shall set a hearing and the appropriate notice for interested persons to show
14 cause why the ~~commission's~~commissioner's report should not be approved and credit-sale
15 contract indemnity fund payments and distribution of the trust fund be made as proposed, and
16 payments from the credit-sale contracts be made as proposed. Copies of the report and notice
17 of hearing must be served by the ~~commission~~commissioner by certified mail upon the
18 warehouseman and the surety and by ordinary mail upon all persons having claims filed with
19 the ~~commission~~commissioner.

20 Any aggrieved person having an objection to the ~~commission's~~commissioner's report shall
21 file the objection with the court and serve copies on the ~~commission~~commissioner, the
22 warehouseman, and the surety at least twenty days before the hearing. Failure to file and serve
23 objections in the time set is a waiver of the objection.

24 Following hearing, the court shall approve or modify the report and issue an order directing
25 payment of the necessary bond proceeds, distribution of the trust fund, payments from the
26 credit-sale contract indemnity fund, and discharge of the ~~commission~~commissioner from ~~its~~the
27 commissioner's trust.

28 **SECTION 73. AMENDMENT.** Section 60-04-10 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **60-04-10. Filing fees and court costs - Expenses.**

2 In any action in a state court in this state, the ~~commission shall~~commissioner may not be
3 required to pay any filing fee or other court costs or disbursements if the fees accrue to the
4 county or to the state. The attorney general may employ outside legal services to assist the
5 ~~commission~~commissioner in the prosecution of such action as in the attorney general's
6 judgment may be necessary and the ~~commission~~commissioner shall deduct the expenses of
7 the same from the trust fund and the credit-sale contract indemnity fund as appropriate. All
8 other necessary expenses incurred by the ~~commission~~commissioner in carrying out the
9 provisions of this chapter, including adequate insurance to protect the ~~commission,~~
10 ~~its~~commissioner, the commissioner's employees, and others engaged in carrying out the
11 provisions of this chapter, must be reimbursed to the ~~commission~~commissioner from the trust
12 fund and credit-sale indemnity funds as appropriate.

13 **SECTION 74. AMENDMENT.** Section 60-05-01 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **60-05-01. Public elevators and warehouses - ~~Commission~~Commissioner may require**
16 **uniform accounting system.**

17 The ~~public service commission~~commissioner may require every association, copartnership,
18 corporation, or limited liability company conducting a public elevator or warehouse in this state
19 to adopt a uniform accounting system established by ~~such commission~~the commissioner.

20 **SECTION 75. AMENDMENT.** Section 60-05-02 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **60-05-02. Examination of financial accounts of elevator or warehouse by competent**
23 **examiner - Request by percentage of stockholders.**

24 The ~~commission~~commissioner may install, and ~~whenever~~if requested by not less than
25 fifteen percent of the partners, stockholders, or members of any association, copartnership,
26 corporation, or limited liability company conducting such public elevator or warehouse, shall
27 install, the uniform system of accounting mentioned in section 60-05-01. The
28 ~~commission~~commissioner on ~~its~~the commissioner's own motion may, or on request of the
29 required percentage of partners, stockholders, or members, the ~~commission~~commissioner shall,
30 send a competent examiner to examine the books and financial accounts of ~~such~~the elevator or
31 warehouse. ~~Whenever~~if a request for the examination of the accounts of any association,

1 copartnership, corporation, or limited liability company has been made to the
2 ~~commission~~commissioner, as provided for in this section, ~~an examination thereafter~~
3 ~~shall~~subsequent examinations must be made at least once every year until the ~~commission~~
4 ~~shall be~~commissioner is requested to discontinue such examination by resolution adopted by
5 the partners, stockholders, or members at any annual meeting. ~~When~~If such examination has
6 been made, the examiner shall report immediately the results ~~thereof~~of the examination to the
7 president and the secretary of such association, copartnership, corporation, or limited liability
8 company and to the ~~commission~~commissioner.

9 **SECTION 76. AMENDMENT.** Section 60-05-03 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **60-05-03. Certificate issued by ~~commission~~commissioner after ~~its~~ examination of**
12 **accounts.**

13 If the ~~commission~~commissioner is satisfied from ~~its~~the commissioner's examination that the
14 person, association, copartnership, corporation, or limited liability company examined is solvent
15 and ~~its~~the method of doing business is such as is likely to be beneficial to all of its members or
16 persons interested therein, the ~~commission~~commissioner shall issue a certificate, countersigned
17 by the examiner, to the agent or manager. Such certificate ~~shall~~must be kept posted
18 conspicuously in the warehouse or elevator of such person, association, copartnership,
19 corporation, or limited liability company and ~~shall~~must state:

- 20 1. That said methods of doing business are sound.
- 21 2. That such person, association, copartnership, corporation, or limited liability company
22 is solvent.
- 23 3. That its books and accounts are kept properly.

24 If the affairs and methods of doing business of such person, association, copartnership,
25 corporation, or limited liability company ~~shall~~do not seem sound or satisfactory to the
26 ~~commission, it~~commissioner, the commissioner shall issue a certificate or statement,
27 countersigned by the person who made the examination, stating in what particular and in what
28 respect the business methods practiced or methods of keeping books and accounts of such
29 person, association, copartnership, corporation, or limited liability company are not deemed
30 safe. The ~~commission~~commissioner shall mail a copy of ~~said~~the statement or certificate to each
31 of such shareholders or stockholders as may have requested the ~~commission~~commissioner to

1 make such examination. The ~~commission~~commissioner also shall send a copy thereof to the
2 president and the secretary of such association, copartnership, corporation, or limited liability
3 company.

4 **SECTION 77. AMENDMENT.** Section 60-05-04 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **60-05-04. Fees of examiner for installing and examining accounting system.**

7 For making installation of a uniform accounting system and examining the financial
8 accounts of an elevator or public warehouse, an association, copartnership, corporation, or
9 limited liability company shall pay the examiner a reasonable fee, as determined by the
10 ~~commission~~commissioner. In case any such association, copartnership, corporation, or limited
11 liability company shall wrongfully refuse or neglect to pay such fees, then the
12 ~~commission~~commissioner may cancel the license to do business. All such fees shallmust be
13 paid into the state treasury. The expenses incurred by the examiner under the provisions of this
14 chapter shall be paid out of the appropriations made by the legislative assembly for this purpose
15 and such expenses shallmust be audited and paid in the same manner as other expenses are
16 audited and paid.

17 **SECTION 78. AMENDMENT.** Section 60-06-05 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **60-06-05. Sidetracks to be provided ~~by railroad company on its land.~~**

20 Every railroad company or corporation organized under the laws of this state or doing
21 business ~~therein in this state~~, upon application in writing, shall provide reasonable sidetrack
22 facilities and running connections between its main track and elevators and warehouses upon
23 or contiguous to its right of way at such stations. Every such railroad corporation shall permit
24 connections to be made and maintained in a reasonable manner with its sidetracks to and from
25 any warehouse or elevator without reference to its size, cost, or capacity, ~~whereif~~if grain or
26 potatoes are or may be stored. The railroad company is not required to construct or furnish any
27 sidetracks except upon its own land or right of way. Such elevators and warehouses may not be
28 constructed within one hundred feet [30.48 meters] of any existing structure and must be at safe
29 fire distance from the station buildings so as not to conflict essentially with the safe and
30 convenient operation of the road. ~~Whereif~~if stations are ten miles [16.09 kilometers] or more
31 apart the railroad company, ~~whenif~~if required so to do by the ~~public service-~~

1 ~~commission~~commissioner, shall construct and maintain a sidetrack for the use of shippers
2 between such stations.

3 **SECTION 79. AMENDMENT.** Section 60-06-06.1 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **60-06-06.1. Determination - ~~Appropriation~~Expenses.**

6 Any party may petition the ~~public service commission~~commissioner to determine rights
7 governed under this chapter. The ~~commission~~commissioner shall determine the matter in
8 accordance with chapter 28-32 and the parties' rights of appeal are as limited by chapter 28-32.
9 The value of a leaseholder's improvements may not be considered in determining a reasonable
10 lease rate or selling price. The parties to such a proceeding shall pay the expenses of the
11 proceeding, as determined by the ~~commission~~commissioner, directly to the entities owed. The
12 ~~commission~~commissioner may adopt rules to carry out this section.

13 **SECTION 80. AMENDMENT.** Section 60-10-01 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **60-10-01. Credit-sale contracts - Assessment on grain - Submission of assessment.**

16 An assessment at the rate of two-tenths of one percent is placed on the value of all grain
17 sold in this state under a credit-sale contract, as provided for in sections 60-02-19.1 and
18 60-02.1-14. The licensee purchasing the grain shall note the assessment on the contract
19 required under sections 60-02-19.1 and 60-02.1-14 and shall deduct the assessment from the
20 purchase price payable to the seller. The licensee shall submit any assessment collected under
21 this section to the ~~public service commission~~commissioner no later than thirty days after each
22 calendar quarter. The ~~commission~~commissioner shall deposit the assessments received under
23 this section in the credit-sale contract indemnity fund.

24 **SECTION 81. AMENDMENT.** Section 60-10-02 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **60-10-02. Credit-sale contract indemnity fund - Creation - Continuing appropriation.**

27 There is created in the state treasury the credit-sale contract indemnity fund. The state
28 treasurer shall invest available moneys in the fund in accordance with section 21-10-07 and in
29 cooperation with the ~~public service commission~~commissioner and shall deposit any income
30 earned through the investments into the fund. The fund and earnings of the fund are

1 appropriated to the ~~public-service-commission~~commissioner on a continuing basis to be used
2 exclusively to carry out the intent and purpose of this chapter.

3 **SECTION 82. AMENDMENT.** Section 60-10-03 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **60-10-03. Credit-sale contract indemnity fund - Suspension of assessment.**

6 At the end of the calendar quarter in which the credit-sale contract indemnity fund reaches a
7 level of six million dollars, the ~~public-service-commission~~commissioner shall suspend collection
8 of the assessment required by this chapter. If after suspension of collection the balance in the
9 fund is less than three million dollars, the ~~public-service-commission~~commissioner shall require
10 collection of the assessment.

11 **SECTION 83. AMENDMENT.** Section 60-10-05 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **60-10-05. Credit-sale contract indemnity fund - Availability of money.**

14 Upon the insolvency of a licensed warehouse or a grain buyer and a declaration ~~that~~ the
15 ~~public-service-commission~~commissioner serve as the trustee, the ~~public-service-~~
16 ~~commission~~commissioner shall make the proceeds of the credit-sale contract indemnity fund
17 available for use in meeting the licensee's obligations with respect to the reimbursement of any
18 person who sold grain to the licensee under a credit-sale contract and who was not fully
19 compensated in accordance with the contract.

20 **SECTION 84. AMENDMENT.** Section 60-10-07 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **60-10-07. Credit-sale contract indemnity fund - Prorated claims.**

23 If claims for indemnity payments from the credit-sale contract indemnity fund exceed the
24 amount in the fund, the ~~public-service-commission~~commissioner shall prorate the claims and
25 pay the prorated amounts. As future assessments are collected, the ~~public-service-~~
26 ~~commission~~commissioner shall continue to forward indemnity payments to each eligible person
27 until the person receives the maximum amount payable in accordance with this chapter.

28 **SECTION 85. AMENDMENT.** Section 60-10-08 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **60-10-08. Reimbursement for later insolvencies.**

2 The ~~public service commission~~commissioner shall ensure ~~that~~all persons eligible for
3 payment from the indemnity fund as a result of an insolvency are fully compensated to the
4 extent permitted by this chapter before any payments from the indemnity fund are initiated as a
5 result of a later insolvency. The chronological order of insolvencies is determined by the date
6 the ~~public service commission~~commissioner is appointed trustee under section 60-02.1-29 or
7 60-04-03.

8 **SECTION 86. AMENDMENT.** Section 60-10-09 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **60-10-09. Credit-sale contract indemnity fund - Reimbursement for administrative**
11 **expenses.**

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

15 **SECTION 87. AMENDMENT.** Section 60-10-10 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **60-10-10. Credit-sale contract indemnity fund assessment - Failure to collect**
18 **assessment - Penalty.**

19 Any person who knowingly or intentionally refuses or fails to collect the assessment
20 required under this chapter from producers or to submit any assessment collected from
21 producers to the ~~public service commission~~commissioner for deposit in the credit-sale contract
22 indemnity fund is guilty of a class A misdemeanor.

23 **SECTION 88. AMENDMENT.** Section 60-10-11 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **60-10-11. Revocation and suspension.**

26 The ~~commission~~commissioner may suspend or revoke the license of any licensee for cause
27 upon notice and hearing for violation of this chapter.

28 **SECTION 89. AMENDMENT.** Section 60-10-12 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **60-10-12. Cease and desist.**

2 If a person engages in an activity or practice that is contrary to this chapter or rules adopted
3 by the ~~commission~~commissioner, the ~~commission~~commissioner, upon ~~its~~the commissioner's
4 own motion without complaint and with or without a hearing, may order the person to cease and
5 desist from the activity until further order of the ~~commission~~commissioner. The order may
6 include any corrective action up to and including license suspension. A cease and desist order
7 must be accompanied by a notice of opportunity to be heard on the order within fifteen days of
8 the issuance of the order.

9 **SECTION 90. AMENDMENT.** Section 60-10-14 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **60-10-14. Subrogation.**

12 Money paid from the credit-sale contract indemnity fund in satisfaction of a valid claim
13 constitutes a debt obligation of the person against whom the claim was made. The
14 ~~commission~~commissioner may take action on behalf of the fund against a person to recover the
15 amount of payment made, plus costs and attorney's fees. Any recovery for reimbursement to
16 the fund must include interest computed at the weight average prime rate charged by the Bank
17 of North Dakota. Upon payment of a claim from the credit-sale contract indemnity fund, the
18 claimant shall subrogate ~~its~~the interest of the claimant, if any, to the ~~commission~~commissioner
19 in a cause of action against all parties, to the amount of the loss that the claimant was
20 reimbursed by the fund.

21 **SECTION 91. AMENDMENT.** Section 60-10-15 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **60-10-15. Unlicensed facility-based grain buyer.**

24 This chapter also applies to a facility-based grain buyer, as defined in section 60-02.1-01,
25 which is licensed under the United States Warehouse Act but which does not possess a state
26 grain buyer license. The ~~commission~~commissioner has the duty and power to examine and
27 inspect, during regular business hours, all books, documents, and records related to collections
28 and remittances pertaining to the credit-sale contract indemnity fund. In the case of insolvency,
29 credit-sale contract payments to valid claimants must be reduced by an amount equal to the
30 credit-sale contract indemnity payments received from payments administered by the United
31 States department of agriculture.