

# WAREHOUSING AND DEPOSITS

## CHAPTER 671

SENATE BILL NO. 2353  
(Senators Adams, Barth, Bakewell)  
(Representatives Sinner, Peltier, Erdman)

### WAREHOUSEMAN'S OPERATION OF WAREHOUSE

AN ACT to create and enact a new section to chapter 60-02 of the North Dakota Century Code, relating to provisions governing the storage of grain in facilities owned by persons other than the licensee.

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

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

Warehouseman to operate warehouse owned by another. A warehouseman may operate under its warehouse license a warehouse owned by another person. Storage performed for such person in the entire licensed warehouse is excepted from the storage rate and discrimination provisions contained in sections 60-02-17 and 60-02-20 to the extent of the person's owned capacity in the warehouse.

Approved March 17, 1983

## CHAPTER 672

HOUSE BILL NO. 1213  
 (Committee on Industry, Business, and Labor)  
 (At the request of the Public Service Commission)

### PUBLIC GRAIN WAREHOUSEMAN REQUIREMENTS

AN ACT to create and enact four new sections to chapter 60-02 of the North Dakota Century Code, relating to bonds, insurance cancellation, license revocation and suspension, and credit-sale contracts of public grain warehousemen; to amend and reenact sections 60-02-01, 60-02-03, 60-02-07, 60-02-09, 60-02-10, 60-02-11, 60-02-12, 60-02-13, 60-02-14, 60-02-16, 60-02-24, 60-02-25, 60-02-30, 60-02-31, 60-02-32, 60-02-35, 60-02-36, 60-02-39, 60-02-40, and 60-02-41 of the North Dakota Century Code, relating to the license and operation of public grain warehouses; and to repeal sections 60-02-06, 60-02-08, 60-02-15, and 60-02-19 of the North Dakota Century Code, relating to track buyers and to rules and warehouse receipts for public grain warehousemen.

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

SECTION 1. AMENDMENT. Section 60-02-01 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" ~~shall mean~~ means the public service commission.
2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid after the delivery or release of the grain for sale, and includes but is not limited to those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.
3. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown domestic grain

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

4. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility in which grain is received from the public for storing, buying, selling, or shipping for compensation. Provided, however, that nothing in this subsection shall be construed to require any person operating a flour, cereal, or feed mill, doing manufacturing business only, to receive, store, or purchase any kind of grain at said mill.
5. "Public warehouseman" shall mean means the person, association, copartnership, or corporation owning or operating a public warehouses warehouse which are is located or doing business within this state, whether such owner or operator resides within this state or not.
- 3- "Public warehouse" shall include respectively-
  - a- All buildings, elevators, and warehouses,
  - b- All grist and flour mills, and
  - e- Cereal and feed mills doing a shipping business in this state, erected and operated by any person, association, copartnership, or corporation, for the purpose of public buying, selling, storing, and shipping grain for profit. Nothing in this subsection shall be construed to require any person operating a flour, cereal, or feed mill, doing manufacturing business only, to receive, store, or purchase at said mill any kind of grain.
- 4- "Track buyer" shall include any person, firm, or corporation, except a warehouseman, desiring to purchase grain from a producer for the purpose of loading the same in ears on the track of any railroad company or in trucks at any loading point in this state for shipment.
- 5- "Grain" shall include wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, and any other commercially grown domestic grain.
6. "Seeds" shall include clover, millet, alfalfa, and all other grass seeds.

"Receipts" means grain warehouse receipts, scale tickets, checks or other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain except where such memoranda was received as a result of a credit-sale contract.

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

60-02-03. Duties and powers of the commission. The commission shall have the duty and power to:

1. Exercise general supervision of the public warehouses of this state, including the handling, weighing, and storing of grain, and the management of public warehouses.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Determine and fix the intrastate rates for the transportation of all grain and grain products moving to or from any public terminal grain elevator within the state of North Dakota. All such rates shall be just and reasonable and shall be made with the view of recognizing such public terminal grain elevator as a public terminal market. No rates shall be established until notice has been given and an opportunity afforded all interested parties to appear and be heard, and Examine and inspect, during ordinary business hours, any licensed warehouse including all books, documents, and records.
4. Require the filing of reports pertaining to the operation of the warehouse.
- 4- 5. Make all proper rules and regulations for carrying out and enforcing any law in this state regarding public warehouses.

SECTION 3. AMENDMENT. Section 60-02-07 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-07. Public warehouse license - How obtained - Fee. A license must be obtained through the commission to expire on the first day of August of each year for each public warehouse in operation in this state. ~~No license so issued shall describe more than one public warehouse in operation in this state.~~ No license so issued shall describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described therein. The license fee which must accompany the application shall be one hundred dollars for a warehouse of a bushel capacity of two hundred thousand [7047.8 cubic meters] or less, two hundred dollars for a warehouse of a bushel capacity of two hundred thousand and one to and including five hundred thousand [7047.83 to and including

17619.54 cubic meters], and two hundred fifty dollars for a warehouse of a bushel capacity of five hundred thousand and one [17619.57 cubic meters] or more. The fees collected under this section shall be paid into the state treasury and credited to the general fund of the state. If a public warehouseman operates two or more warehouses in the same city or siding, in conjunction with each other and with the same working force, and where but one set of books and records is kept for all such warehouses, and each slips, scale tickets, storage tickets warehouse receipts, and checks, and credit-sale contracts of but one series are issued for the grain stored and purchased therein, only one license shall be required for the operation of all such warehouses. Where two or more warehouses are operated under one license, the license fee shall be based upon the combined bushel capacity of said warehouses.

SECTION 4. AMENDMENT. Section 60-02-09 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-09. Bond filed by ~~track buyer~~ of public warehouseman. Before any license is issued to any public warehouseman ~~or track buyer~~ under this chapter, the applicant for such license shall file a bond with the commission which shall:

1. Be in a sum not less than five thousand dollars for any one warehouse.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commission that the surety bond will be canceled ninety days after receipt of the notice of cancellation. On or before July thirty-first of each year, the surety shall file an endorsement a verification certificate with the commission evidencing stipulating that the bond coverage continues in full effect.
3. Run to the state of North Dakota ~~for the benefit of~~ and all persons storing or selling grain in such warehouse.
4. Be conditioned:
  - a. For the faithful performance of ~~his~~ the licensee's duties as a public warehouseman or track buyer.
  - b. For compliance with the provisions of law and the rules and ~~regulations~~ of the commission relating to the storage and purchase of grain by such warehouseman ~~or track buyer~~.
5. Specify the location of each public warehouse intended to be covered by such bond.

6. Be, at all times, in a sufficient sum to protect the holders of outstanding storage receipts and cash tickets or checks. Be for the specific purpose and benefit of:
- a. Protecting the holders of outstanding receipts.
  - b. Covering the costs incurred by the commission in the administration of chapter 69-04 in the event of the licensee's insolvency.
  - c. Protecting persons dealing with the licensee within the state of North Dakota from loss or damage by reason of any violation of this chapter.
7. Not accrue to the benefit of any person entering into deferred payments contracts or other credit arrangements a credit-sale contract with a track buyer or public warehouseman.
8. In no event shall the aggregate liability of the surety under a bond accumulate for each successive license period during which such bond is in force but, for losses during any license period, shall be limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

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

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

Bond cancellation - Release of surety. The surety on a bond shall be released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the commission of notice of cancellation by the surety, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the ninety-day period. Unless the warehouseman shall, on or before the expiration of the ninety-day

period, file a new bond, the commission, without hearing, shall immediately suspend the warehouseman's license and the suspension shall not be removed until a new bond has been filed and approved by the commission.

SECTION 6. AMENDMENT. Section 60-02-10 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-10. Warehouse license to be posted --Penalty---Revocation of license. The license obtained by a public warehouseman shall be posted in a conspicuous place in the public warehouse licensed. Any public warehouseman who shall transact business without first procuring and conspicuously posting a license shall be guilty of an infraction. The commission shall revoke the license of any warehouse for cause upon notice and hearing.

SECTION 7. A new section to chapter 60-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Revocation and suspension. The commission may suspend or revoke the license of any warehouseman for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a warehouseman shall automatically be suspended for failure at any time to have or to maintain either a bond or policy of insurance in the amount and type required.

SECTION 8. AMENDMENT. Section 60-02-11 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-11. Scale ticket - Contents. Every public warehouseman of this state, upon receiving grain into his its warehouse, shall issue a uniform scale ticket for each load of grain so received. Such tickets shall be bound in books of convenient size, shall be numbered consecutively, and provision shall be made in said books for at least one carbon copy of each ticket. One carbon copy of each ticket shall be retained in said book and shall remain as a permanent record. The original ticket shall be delivered to the person from whom the grain is received, upon receipt of each load of grain. All such tickets shall be signed by the warehouseman, his agent, or manager. All scale tickets shall be converted into cash, credit-sale contracts, or storage tickets warehouse receipts within a period of twenty days after first load of the grain is delivered to the elevator and no longer than five days after final load is delivered to the elevator. A reasonable amount of grain may remain on open storage at the end of each month in any licensed and bonded warehouse. The office copy of each scale ticket shall show the number of the cash ticket or storage ticket issued in lieu thereof warehouse.

SECTION 9. AMENDMENT. Section 60-02-12 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-12. ~~Cheating or false weighing--~~ Penalty. Any person who shall violate any of the provisions of this chapter or any rule adopted pursuant to this chapter, where punishment is not specifically provided for, shall be guilty of an infraction.

SECTION 10. AMENDMENT. Section 60-02-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-13. Purchase by warehouseman - Form of receipt. There may be printed on each storage warehouse receipt issued by a warehouseman a receipt executed by the owner for use in case the grain represented thereby is purchased by such warehouseman. The warehouseman shall record such purchase, as to the amount paid per bushel, on the stub record or copy of his storage its warehouse receipt books. Such receipt shall be in substantially the following form:

Received from -----, ----- dollars and ----- cents net, in full payment for the grain represented by this storage warehouse receipt. Gross price per bushel -----, storage per bushel -----, net price per bushel -----.

I hereby certify that I am the owner of the grain for which this receipt was issued, and that there are no liens, chattel mortgages, or other claims against the grain represented by this receipt.

Dated ----- 19--. Signed ----- Owner.

Nothing in this section contained shall be construed to affect in any manner the conditions of the storage contract specified in sections 60-02-17 and 60-02-18.

SECTION 11. AMENDMENT. Section 60-02-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-14. Stub record---Numbering Warehouse receipts - Special bin receipts Copy. A stub record or carbon copy shall be attached to each receipt issued by a warehouseman, as is provided by this chapter, showing: Provision shall be made for a stub record or copy of each warehouse receipt issued by a warehouseman, showing:

1. The serial number and date of receipt,.
2. The kind and grade of grain, and.
3. The dockage and net weight of the grain.

Such The record or copy shall remain in the possession of the warehouseman for inspection by the commission and persons properly interested. All special bin receipts and stub records thereof shall have marked plainly thereon the words "special bin."

SECTION 12. AMENDMENT. Section 60-02-16 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-16. Warehouse receipt - Contents and provisions. A warehouse receipt shall:

1. Be issued only upon the actual delivery of grain to the warehouse for storage<sub>7\_</sub>
2. Contain the following provisions:
  - a. The place and date when the grain was received;
  - b. The name and address of the owner of the grain;
  - c. The kind and grade of the grain according to the official standards established by the secretary of agriculture of the United States; and
  - d. The gross weight, dockage, and net weight of the grain according to North Dakota standard weight<sub>7\_</sub>
3. Be numbered consecutively and no two receipts bearing the same number and series shall be issued during the same year<sub>7\_</sub>
4. Not be altered by any warehouseman by his the insertion in such receipt of any language limiting or modifying his its liability as imposed by the laws of this state.
5. Contain, either on its face or reverse side, the warehouse and storage contract provided for in section 60-02-17<sub>7\_</sub>
6. Have printed upon it the following words: "All storage contracts on grain in store at public grain warehouses shall terminate on June thirtieth of each year, except storage contracts for dry edible beans which shall terminate on April thirtieth of each year. If storage charges and warehouseman's advances remain unpaid at the time of such termination, the warehouseman shall sell sufficient of said grain to pay such charges and advances. The holder hereof shall surrender this receipt to the issuing warehouseman for settlement".

SECTION 13. A new section to chapter 60-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

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

1. The seller's name and address.
2. The conditions of delivery.
3. The amount and kind of grain delivered.
4. The price per unit or basis of value.
5. The date payment is to be made.
6. The duration of the credit-sale contract, which must not exceed twelve months from the date the contract is executed.

The credit-sale contract shall state in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02-09, provided however, that if the warehouseman has obtained bond coverage in addition to that required by section 60-02-09 and such coverage extends to the benefit of credit-sale contracts, the warehouseman may state the same in the credit-sale contract along with the extent of such coverage. The contract must be signed by both parties and executed in duplicate. One copy shall be retained by the warehouseman and one copy shall be delivered to the seller. Upon revocation, termination, or cancellation of a warehouseman's license, the payment date for all credit-sale contracts shall, at the seller's option, be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain shall be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. However, if the license of the warehouseman is transferred to another licensed warehouseman, credit-sale contracts may be assigned to the transferee.

SECTION 14. AMENDMENT. Section 60-02-24 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-24. Reports to be made by public warehouseman - Penalty for failure. Each licensed and bonded public warehouseman shall:

1. Prepare and submit to the commission on the last day of for each month a report giving facts and information called for on the form of report prepared by said the commission, which report shall contain or be verified by a written declaration that it is made under the penalties of perjury. Such report may be called for more frequently if the commission deems it necessary.
2. File his the report with the commission not later than the last day of the following month, and failure to file this report promptly will be considered cause for revoking the warehouse license after due notice and hearing.

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

The ~~commission~~ also may require a special report from a warehouseman at such times as it may deem expedient. No license shall be reissued to any public warehouseman who fails to make reports as a required ~~herein~~ report.

SECTION 15. AMENDMENT. Section 60-02-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-25. Bailment not a sale --~~insolvency~~. Whenever any grain shall be delivered to any public elevator or warehouse in this state, and the receipt issued therefor provides for the delivery of a like amount and grade to the holder thereof in return an unconverted scale ticket or a warehouse receipt is issued therefor, such delivery shall be a bailment and not a sale of the grain so delivered. In no case shall the grain so stored delivered be liable to seizure upon process of any court in any action against such bailee, except in an action by an owner of such unconverted scale ticket or warehouse receipt to enforce the terms thereof or obtain redelivery of such delivered grain. Such grain first shall be applied at all times, in the event of the failure or ~~insolvency~~ of such bailee, exclusively to the redemption of outstanding warehouse receipts for grain so stored with such bailee, and in such event all grain on hand in any particular elevator or warehouse, whether the same is stored or not, shall be applied to the satisfaction of receipts issued by such warehouse.

SECTION 16. AMENDMENT. Section 60-02-30 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-30. Termination of public grain warehouse storage contracts. All storage contracts on grain in store at public grain warehouses shall terminate on June thirtieth of each year, except for storage contracts on dry edible beans which shall terminate on April thirtieth of each year. Storage on any or all such grain may be terminated by the owner at any time before the date mentioned herein by the payment of all legal charges and the surrender of the storage warehouse receipt, together with a demand for delivery of such grain, or notice to the warehouseman to sell the same. In the absence of a demand for delivery, an order to sell, or a request for the renewal of the storage contract, entered into prior to the expiration of the storage contract, for all grains except dry edible beans, the warehouseman shall sell, upon the expiration of the storage contract and compliance with section 60-02-31, at the local market price on the close of business on that day, sufficient of said stored grain to satisfy all accrued storage charges thereon and warehouseman's advances upon such storage contract, and shall issue a new storage warehouse receipt for the balance of said grain to the owner thereof upon the surrender of the old storage warehouse

receipt, properly canceled. Upon the expiration of the storage contract for dry edible beans, the warehouseman shall not be obligated to renew the storage contract. The storage rate and all other terms of the storage contract for dry edible beans stored after April thirtieth shall be determined by the private agreement of the warehouseman and the receipt holder. Nothing in this chapter shall be construed to govern the provisions of a contract for the storage of dry edible beans after April thirtieth. In the absence of a demand for delivery, an order to sell, or an agreement between the warehouseman and the receipt holder for the storage of dry edible beans after April thirtieth, the warehouseman may sell, upon the expiration of the storage contract, at the local market price on the close of business on that day, all the stored beans of the receipt holder and tender to the receipt holder the proceeds of the sale less an amount which will satisfy all accrued storage charges thereon and the warehouseman's advances upon any previous storage contract.

SECTION 17. AMENDMENT. Section 60-02-31 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-31. Notice to owner of termination of storage contract. On or before June first of each year, for all grains except dry edible beans, the warehouseman shall notify by mail the person in whose name the grain was stored of his the termination of the storage contract on June thirtieth and the warehouseman's intention to make a sale sell a sufficient amount of such grain on June thirtieth to satisfy accrued storage charges unless the receipt holder prior to that time demands redelivery, authorizes sale, or continues the storage contract. On or before April first of each year, a warehouseman storing dry edible beans shall notify by mail the person in whose name the dry edible beans are stored of his intention to terminate the storage contract on April thirtieth and to sell all dry edible beans stored as of that date, unless the receipt holder prior to that time demands redelivery, authorizes sale, or enters into a new contract with the warehouseman for restorage. Failure to comply with this section shall result in the forfeiture of storage charges accrued for the grain during the previous twelve months.

SECTION 18. AMENDMENT. Section 60-02-32 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-32. Reissue storage warehouse receipts - Provisions. Upon payment of all legal accrued charges and the surrender to the warehouseman of a receipt, for all grains except dry edible beans, if the receipt holder elects to continue the storage contract, the warehouseman then shall issue a new storage warehouse receipt to the owner and shall cancel the former receipt by endorsing thereon the words: "Canceled by the issuance of storage warehouse receipt no. \_\_\_\_\_," inserting the number of the reissue storage warehouse receipt thereafter, and the holder's name shall be signed thereto by

himself or by his authorized agent. The reissue ~~storage warehouse~~ receipt shall be so designated by stamping thereon: "Reissue of ~~storage warehouse~~ receipt no. \_\_\_\_\_".

SECTION 19. AMENDMENT. Section 60-02-35 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-35. Grain to be kept insured for benefit of owner by warehouseman - Proof filed with commission. ~~All grain, whether on storage ticket or deposit with the warehouseman, shall be kept insured at the expense of such warehouseman for the benefit of the owner. No license may be issued to a public warehouseman unless all grain in storage or on deposit in the warehouse is kept fully insured at the expense of the warehouseman for the benefit of the owner at the current market value of the grain against loss by fire, lightning, internal explosion, windstorm, cyclone, tornado, and such other risks of direct physical loss as provided by the insurer in a policy approved by the commissioner of insurance. No insurance policy covering grain in a public warehouse shall be transferred or assigned to any person for any purpose whatever, except insofar as the same shall cover grain in the warehouse which is not kept on storage ticket warehouse receipt or deposit. Proof of such insurance shall be filed with the public service commission annually.~~

SECTION 20. A new section to chapter 60-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Insurance - Cancellation - Suspension of license. Upon the existence of an effective policy of insurance as required in section 60-02-35, the insurance company involved shall give thirty days' advance notice to the commission and the insured by registered or certified mail return receipt requested of any cancellation of the policy. In the event of any insurance cancellation or expiration, the commission, without hearing, shall immediately suspend the license of such warehouseman, and the suspension shall not be removed until satisfactory evidence of the existence of an effective policy of insurance has been submitted to the commission.

SECTION 21. AMENDMENT. Section 60-02-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-36. Destruction of grain in public warehouse - First lien by owner of ~~storage ticket~~ outstanding receipt. The ~~owner~~ holder of a ~~storage ticket~~ an unconverted scale ticket or warehouse receipt issued by any public warehouseman shall have a first lien, to the extent of the value of the grain at the time of ~~destruction~~ loss at the place where stored held, on all insurance of the warehouse for any loss ~~or injury~~ sustained by him the receipt holder, on account of the ~~destruction or injury loss~~ of such grain by fire, tornado, or any other cause covered by such insurance policy.

SECTION 22. AMENDMENT. Section 60-02-39 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-39. Warehouse not to be closed without permission from commission. Every licensed warehouse shall be kept open for business in order to serve the public. Upon application and sufficient cause shown, the commission may allow any warehouse to be closed for such length of time as may be stated in the order issued therein. An application to close shall make provision for the redemption of outstanding ~~storage tickets~~ receipts satisfactory to the commission. Any such public warehouseman who shall close ~~his~~ a warehouse without first having received permission from the commission to close shall be guilty of a class A misdemeanor and the license issued may be revoked by the commission.

SECTION 23. AMENDMENT. Section 60-02-40 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-40. Transfer of warehouse - Redemption of ~~storage tickets~~ receipts. Whenever the owner, lessee, or manager of a public ~~elevator or warehouse~~ licensed to do business in this state warehouseman desires to transfer said ~~elevator or~~ a warehouse, either by sale or lease to any other individual, firm, or corporation, ~~he~~ the warehouseman shall:

1. Notify the commission first of ~~his~~ its intention to transfer said ~~elevator or~~ the warehouse, giving the name and address of the proposed lessee or purchaser,.
2. Furnish a statement of all proper claims that may be filed or pending against ~~said person, firm, corporation, or association~~ the warehouseman pertaining to the storage, inspection, and marketing of grain during the term of ~~said~~ the license, together with a statement of:
  - a. The number of bushels of grain of each kind and grade in store in ~~said elevator or~~ the warehouse;
  - b. The number and amount of ~~storage tickets~~ receipts outstanding; and
  - c. The names and addresses of ~~such ticket~~ the receipt holders,.
3. Serve notice by registered or certified mail, at least thirty days before the transfer, upon all ~~storage~~ receipt holders having claims against ~~his~~ the warehouse to call for delivery of the grain covered by ~~such storage~~ the receipts, and to pay all storage charges due, the warehouseman in such case to make no charge for redelivery,.

4. Transfer all stored grain undelivered at the expiration of such thirty-day period to ~~his~~ its successor, if licensed, or to the nearest licensed warehouse for restorage, taking receipts for the same in favor of the owner of the grain so transferred, such ~~restorage~~ warehouse receipts to be filed with the commission until called for by the owner, and.
5. Surrender to the commission ~~his~~ its license for cancellation and at such time the proposed lessee or purchaser shall apply in due form for a new license and tender a new bond for approval by the commission, whereupon, it first being duly satisfied that all the outstanding ~~storage tickets~~ receipts have been redeemed, or that the redemption thereof has been provided for, the commission may issue a new license for the unexpired portion of the license period to ~~said~~ the lessee or purchaser.

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

SECTION 24. AMENDMENT. Section 60-02-41 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-41. Going out of business - Redemption of receipts. When a public warehouseman ceases business through the destruction of a warehouse by fire or other cause, or through insolvency, such warehouseman shall redeem all outstanding storage unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse was destroyed or closed because of insolvency. The holder of such receipts, upon due notice, must accept this price and surrender the receipts. Any public warehouseman who voluntarily ceases business or fails to renew an existing warehouse license on its expiration or whose warehouse license is revoked shall notify the commission and all warehouse outstanding receipt holders of such closing and redeem all outstanding storage unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse closed or at the option of the owner of the warehouse receipt redeliver the kind, grade, and quantity of grain called for by the unconverted scale ticket or warehouse receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein shall be settled in cash and priced on the market on the day of closing.

SECTION 25. REPEAL. Sections 60-02-06, 60-02-08, 60 02-15, and 60-02-19 of the North Dakota Century Code are hereby repealed.

Approved March 3, 1983

## CHAPTER 673

HOUSE BILL NO. 1215  
 (Committee on Agriculture)  
 (At the request of the Public Service Commission)

### ROVING GRAIN OR HAY BUYER REGULATIONS

AN ACT to create and enact three new sections to chapter 60-03 of the North Dakota Century Code, relating to duties of the public service commission, credit-sale contracts, and complaint procedures against roving grain or hay buyers; to amend and reenact sections 60-03-01, 60-03-02, 60-03-03, 60-03-04, 60-03-06, and 60-03-08 of the North Dakota Century Code, relating to the licensing, bonding, and regulation of roving grain or hay buyers; to repeal sections 60-03-07 and 60-03-09 of the North Dakota Century Code, relating to rules and the revocation procedure governing roving grain or hay buyers; and to provide a penalty.

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

SECTION 1. AMENDMENT. Section 60-03-01 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-03-01. Roving grain or hay buyer - Definition. The term "roving grain or hay buyer", when used in this chapter, unless the context thereof otherwise requires, shall mean any person, copartnership, association, agent, or corporation, other than licensed warehousemen and track buyers, who shall buy grain or hay from the owner for resale and delivery within or without the state or for resale in the local markets. Nothing contained in this chapter shall apply to public warehouses or public warehousemen and track buyers as defined in chapter 60-02.

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

1. "Commission" means the public service commission.
2. "Credit-sale contract" means a contract for the sale of grain pursuant to which the sale price is to be paid after the delivery or release of the grain for sale, and includes but is not limited to those contracts commonly

referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.

3. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown domestic grain or grass seed.
4. "Roving grain or hay buyer" means any person, other than a public warehouseman, who buys grain or hay from the owner for resale or markets grain or hay on behalf of the owner. "Roving grain or hay buyer" does not include a person buying grain or hay from a licensed warehouse in this state, nor shall it include any producer of grain or hay who purchases grain or hay from other producers to complete a carload or truckload in which the greater portion of the load is grain or hay grown by the producer.

SECTION 2. AMENDMENT. Section 60-03-02 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-03-02. License - How obtained - Fee. Each roving grain or hay buyer operating within this state must obtain a license through the commission to expire at midnight on July thirty-first of each year. Each license so issued shall designate the business address of the licensee, and each licensee shall have and maintain an agent for process within this state. The license fee which must accompany the application for license shall be ~~thirty~~ fifty dollars. ~~The commission may require a separate license for each truck or tractor-trailer unit used in such grain or hay buying.~~

SECTION 3. AMENDMENT. Section 60-03-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-03-03. Rules and duties governing roving grain or hay buyers Subject to public warehouse laws. Each roving grain or hay buyer shall-

- 1- ~~Procure a license before transacting any business;~~
- 2- ~~Pay cash for all grain and hay purchased; and~~
- 3- ~~Be be subject to the laws, and rules, and regulations which govern public warehouses, insofar as they apply, for the protection of sellers of grain and hay; but nothing herein shall be construed to classify as a roving grain or hay buyer any producer of grain or hay who purchases grain or hay from other producers to complete a carload in which a portion of said carload is grain or hay grown by said producer.~~

Not shall this chapter apply to anyone purchasing grain or hay for his own use or to any person who engages in the purchase of grain or hay for his own use or consumption, but the word "use" or the word "consumption," as used herein, shall not be construed to include the sale of such grain or hay at retail or wholesale, provided that nothing herein contained shall apply to persons, firms, or corporations or their employees buying or selling grain or hay in any chamber of commerce, board of trade, or grain exchange.

SECTION 4. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Duties and powers of the commission. The commission shall have the power to:

1. Exercise general supervision of the roving grain or hay buyers of this state.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect during ordinary business hours, any books, documents, and records of any roving grain or hay buyer.
4. Make all proper rules for carrying out and enforcing any law in this state regarding roving grain or hay buyers.

SECTION 5. AMENDMENT. Section 60-03-04 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-03-04. Bond filing by roving grain or hay buyer --~~Complaint procedure--Orders~~. Before any license is issued to any roving grain or hay buyer, the applicant shall file with the commission a bond in such sum as the commission shall prescribe, but not less than fifteen fifty thousand dollars for each license. Such bond shall:

1. Cover the period of the license.
2. Run to the state of North Dakota for the use and benefit of all persons selling grain or hay to or through the licensee.
3. Be conditioned for the faithful performance of the duties of the licensee as a roving grain or hay buyer, and be for the specific purpose of protecting persons dealing with the licensee or his or their agent or agents within the state of North Dakota from loss or damage by reason of any violation of this chapter.
4. Not cover transactions wherein it appears to the commission that the sale was made upon any other terms

except than for cash. Not accrue to the benefit of any person entering into a credit-sale contract with a roving grain or hay buyer.

5. Be governed by all of the provisions of law applicable to the business of a roving grain or hay buyer and the rules and regulations of the commission relating thereto.

Any person claiming to be injured or damaged by a breach of the conditions of the bond given by a licensee under the provisions of this chapter may file a complaint with the commission within six months from the date of the breach of the conditions of the bond. After a hearing, held upon notice to the respondent and to the bonding company, the commission shall be empowered to order the respondent or the bonding company, or both, to pay to the complainant any loss or damage suffered by reason of the breach of the conditions of the bond. If more than one person has been damaged, and the bond is insufficient to pay the entire liability, the penalty of the bond as against the surety shall be ordered to be apportioned among the damaged persons.

The commission shall set the amount of the bond at a level it, in its discretion, deems necessary to accomplish the purposes of this section. The surety on such a bond must be a corporate surety company, approved by the commission, and authorized to do business within the state. The commission may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in its judgment, such cash, negotiable instrument, or personal surety bond will properly protect persons dealing with the licensee or its agent within the state of North Dakota.

SECTION 6. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Credit-sale contracts. A roving grain or hay buyer is prohibited from purchasing or marketing grain or hay by a credit-sale contract unless all of the following are complied with:

1. The roving grain or hay buyer shall file with the commission a bond in addition to that required by section 60-03-04 and in such sum as the commission may prescribe, but not less than fifty thousand dollars. The bond must cover the period of the license and run to the state of North Dakota for the use and benefit of all persons selling grain or hay to or through the licensee by credit-sale contract. The commission shall set the amount of the bond at a level it, in its discretion, deems necessary to accomplish the purposes of this section. The surety on such a bond must be a corporate surety company, approved by the commission, and authorized to do business within the state. The commission may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in its judgment, such cash, negotiable instrument, or personal surety bond

- will properly protect persons selling grain or hay by credit-sale contracts.
2. The roving grain or hay buyer shall file with the commission a current financial statement setting forth its financial position and results in operations for the most recent fiscal period of the licensee and prepared in conformity with generally accepted accounting principles.
  3. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing the contract. A copy of the printed form used for the credit-sale contract must be filed with and approved by the commission at the beginning of each license period. A series of consecutively numbered contracts approved for use by the commission shall not be used in any other state.
  4. The roving grain or hay buyer shall maintain an accurate record of all credit-sale contract numbers including the disposition of each numbered form, whether by execution, destruction, or otherwise.
  5. Each credit-sale contract must contain or provide for all of the following:
    - a. The seller's name and address.
    - b. The conditions of delivery.
    - c. The amount and kind of grain or hay delivered.
    - d. The price per unit or basis of value.
    - e. The date payment is to be made which must not exceed one hundred twenty days from the date the grain or hay is delivered.
    - f. The duration of the credit-sale contract, which must not exceed twelve months from the date the contract is executed.
  6. The contract must be signed by both parties and executed in duplicate. One copy shall be retained by the licensee and one copy shall be delivered to the seller.
  7. Upon revocation, termination, or cancellation of a roving grain or hay buyer's license, the payment date for all credit-sale contracts shall, at the seller's option, be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain shall be determined as of the effective date of

revocation, termination, or cancellation in accordance with all other provisions of the contract.

SECTION 7. AMENDMENT. Section 60-03-06 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-03-06. Penalty. Any person who shall violate any provisions of this chapter or any rule adopted pursuant to this chapter, where punishment is not otherwise provided for, shall be guilty of an infraction.

SECTION 8. AMENDMENT. Section 60-03-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-03-08. Grounds for revocation of roving grain or hay buyer's license by commission Revocation and suspension. The commission may revoke any or suspend the license granted as provided in section 60-03-02 when it shall be satisfied that the licensee has-

- 1- Violated any of the laws of this state governing the handling, shipment, or transportation of grain or hay;
- 2- Been guilty of deceit, fraud, dishonesty, forgery, or theft committed in or about the business of a roving grain or hay buyer; or
- 3- Failed or refused to furnish the information required under the terms of this chapter or the rules and regulations made by the commission.

of any roving grain or hay buyer for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a roving grain or hay buyer shall automatically be suspended for failure at any time to have or to maintain a bond in the amount and type required.

SECTION 9. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Complaint procedure. Any person claiming to be injured or damaged by a breach of the conditions of a bond given by a licensee under the provisions of this chapter, or by the default of the licensee in the payment for any grain or hay purchased or marketed by the licensee, may file a complaint with the commission within six months from the date of the breach or the default. After a hearing, held upon notice to the licensee and the bonding company, the commission shall be empowered to order the licensee or the bonding company, or both, to pay to the complainant for any loss or damage suffered by reason of the breach of the conditions of the bond or the default in payment. Where it appears to the commission that more than one person may have been damaged by reason of breach of the conditions of the bond or default in payment, the commission may

require that all such damaged persons submit their claims to the commission within sixty days of notice in such manner as the commission deems appropriate. Failure to submit a claim within the specified time may bar the damaged person from participating in the bond proceeds. If more than one person has been damaged, and the bond is insufficient to pay the entire liability, the proceeds from the bond shall be ordered to be apportioned among the damaged persons.

SECTION 10. REPEAL. Section 60-03-07 of the 1981 Supplement to the North Dakota Century Code and section 60-03-09 of the North Dakota Century Code are hereby repealed.

Approved March 4, 1983

## CHAPTER 674

HOUSE BILL NO. 1216  
(Committee on Agriculture)  
(At the request of the Public Service Commission)

## INSOLVENT WAREHOUSEMEN

AN ACT to create and enact a new section to chapter 60-04, and section 60-04-03.1 of the North Dakota Century Code, relating to possession of grain of an insolvent warehouseman and establishment of a trust fund; and to amend and reenact sections 60-04-01, 60-04-02, 60-04-03, 60-04-04, 60-04-05, 60-04-06, 60-04-07, 60-04-08, 60-04-09, and 60-04-10 of the North Dakota Century Code, relating to insolvent warehousemen and the marshaling of the trust assets of an insolvent grain warehouseman.

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

SECTION 1. AMENDMENT. Section 60-04-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-04-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" shall mean means the public service commission.
2. "Receipts" shall mean grain warehouse storage receipts, scale tickets, and cash slips or checks given in redemption thereof; "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid after the delivery or release of the grain for sale, and includes but is not limited to those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.
3. "Warehouseman" shall mean all public elevators licensed under the laws of this state to store grain; "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially, grown domestic grain or grass seed.

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

4. "Person" shall include any firm, partnership, or corporation. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility in which grain is received from the public for storing, buying, selling, or shipping for compensation. Provided, however, that nothing in this subsection may be construed to require any person operating a flour, cereal, or feed mill, doing manufacturing business only, to receive, store, or purchase any kind of grain at said mill.
5. "Public warehouseman" means the person owning or operating a public warehouse which is located or doing business within this state, whether such owner or operator resides within this state or not.
6. "Receipts" means grain warehouse receipts, scale tickets, checks, or other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain except where such memoranda was received as a result of a credit-sale contract.

SECTION 2. AMENDMENT. Section 60-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-04-02. Insolvency of warehouseman --Trust fund established. Whenever any warehouseman, by reason of the destruction of his warehouse or for any other cause, shall refuse or neglect, or be unable, upon proper demand, to redeem any receipt issued by him, through redelivery or cash payment, such warehouseman shall be deemed to be insolvent within the meaning of this chapter, and a trust fund for the redemption of outstanding storage receipts of such warehouseman shall consist of the following:

- 1- All the grain in said warehouse;
- 2- The proceeds of insurance policies upon stored grain destroyed in said warehouse;
- 3- The cause of action for damages upon any bond given by said warehouseman to the state of North Dakota to insure faithful performance of his duties as a warehouseman; and
- 4- The cause of action for the conversion of grain stored in said warehouse.

SECTION 3. AMENDMENT. Section 60-04-03 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-04-03. Appointment of commission as trustee. Upon the insolvency of any warehouseman, the commission shall apply to the district court of the a county in which the warehouseman maintains his principal place of business for appointment of itself as trustee of the trust fund defined in section 60-04-02 operates a licensed warehouse for authority to take all action necessary and appropriate to secure and act as trustee of the trust fund described in section 60-04-03.1. Upon such notice to said the warehouseman as the court shall prescribe, but not exceeding ten twenty days, or upon waiver of such notice in writing by said the warehouseman, the court shall proceed to hear and determine such application in a summary manner. If it shall appear to the court or to the judge thereof, that such warehouseman is insolvent within the meaning of this chapter and that it would be for the best interests of the receipt holders that the commission shall secure and execute such trust, he the court shall issue an order appointing the commission trustee granting the application, without bond, of said fund, whereupon the commission shall proceed to perform its duties as such trustee exercise its authority without further direction from said the court.

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

SECTION 4. Section 60-04-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

60-04-03.1. Trust fund established. Upon the insolvency of any warehouseman, a trust fund shall be established for the benefit of receipt holders of the insolvent warehouseman and to pay the costs incurred by the commission in the administration of this chapter. The trust fund shall consist of the following:

1. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of such grain.
2. The proceeds of insurance policies upon grain destroyed in the elevator.
3. The cause of action, and proceeds therefrom, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman.
4. The cause of action, and proceeds therefrom, for the conversion of any grain stored in the warehouse.

SECTION 5. A new section to chapter 60-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Possession of grain. Upon its appointment by the district court, the commission shall seek possession of the grain to be included in the trust fund. Upon its possession of any grain in the warehouse, the commission shall sell such grain and apply the proceeds to the trust fund.

SECTION 6. AMENDMENT. Section 60-04-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-04-04. Notice to receipt holders. Upon its appointment as trustee by the district court, the commission shall be entitled to the seek possession of all the relevant books and records of such the warehouseman required by law to be kept by him and shall take possession peacefully or by appropriate action of such books and records and of all grain on hand in such warehouse and thereupon shall procure. The commission shall also seek the delivery to it of all receipts shown to be outstanding by the books of said the warehouseman for the purpose of enforcing the provisions of this chapter. If the commission cannot ascertain the names and addresses of all of such the receipt holders, or if it shall be is unable to procure the possession of all said the receipts, or shall have has reason to believe that all such the receipts have not been surrendered to it, the commission shall publish a notice in a legal newspaper in the county in which such the warehouse is situated for three successive weeks requiring such the receipt holders to surrender their receipts. Unless within ninety sixty days after the last publication of the notice such the receipts are surrendered to the commission, such receipt the holders of any unsurrendered receipts shall be barred from participation in said the trust fund, and the commission may proceed as though it were the owner of all the stored grain in such warehouse.

SECTION 7. AMENDMENT. Section 60-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-04-05. Remedy of receipt holders. No receipt holder shall have a separate cause of action upon the warehouseman's bond, nor for insurance, nor against any person converting said stored grain, nor against any other receipt holder, except through such the trustee, unless, upon demand of five or more receipt holders, the commission shall fail or refuse to apply for its own appointment as trustee from the district court or unless the district court shall deny the application for appointment. Nothing contained in this chapter shall be construed to prohibit or prevent any receipt holder, either individually or in conjunction with other receipt holders, from pursuing concurrently such other remedy as he may have against the person or property of such warehouseman, for the whole, or any deficiency occurring in the redemption, of said the receipts.

SECTION 8. AMENDMENT. Section 60-04-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-04-06. Commission to marshal trust assets. The Upon its appointment by the district court, the commission, in its capacity

as trustee, upon the delivery to it of the receipts issued by the insolvent warehouseman, may maintain suits at law or in equity, or any special proceeding, in the name of the state of North Dakota, upon its own relation, but for the benefit of all such receipt holders against:

1. The insurers of said stored grain;
2. The warehouseman's bond;
3. Any person who may have converted any of such stored grain; or
4. Any receipt holder who shall have received more than his its just and pro rata share of said stored grain,

for the purpose of marshaling all of the trust fund assets of said insolvent warehouseman and distributing the same among said the receipt holders. The commission shall seek possession of any grain in the warehouse before recourse is had against the insurers of grain, and the remedy against the insurers of such stored grain shall be exhausted first before recourse is had against said the bond, and against such the bond before recourse is had against the person honestly converting such grain, unless the commission shall deem it necessary to the redemption of said storage the receipts that all the above remedies be pursued at the same time.

SECTION 9. AMENDMENT. Section 60-04-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-04-07. Power of commission to prosecute or compromise claims. The commission shall have power:

1. To prosecute any action provided in sections 60-04-05 and 60-04-06 this chapter in any court in this state or in any other state<sub>7</sub>.
2. To appeal from any adverse judgment to the courts of last resort<sub>7</sub>.
3. To settle and compromise any such action whenever, in its judgment, this will be for the best interests of the receipt holders; and.
4. Upon payment of the amount of such compromise or of the full amount of any insurance policy, bond, or conversion claim, to exonerate the person so compromising or paying in full from further liability growing out of said the action.

SECTION 10. AMENDMENT. Section 60-04-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-04-08. Money received by trustee - Deposited in Bank of North Dakota. All moneys collected and received by the commission as trustee as is provided in section 60-04-03 under this chapter, pending the marshaling of said the fund, shall be deposited in the Bank of North Dakota.

SECTION 11. AMENDMENT. Section 60-04-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-04-09. Report of trustee to court - Approval - Distribution. Upon recovery of the trust fund mentioned in section 60-04-06 described in this chapter, or so much thereof as possible or as shall be necessary to redeem all outstanding receipts with interest and pay the costs incurred in the administration of this chapter, the commission shall file its report in court showing the amount payable upon each receipt after recognizing:

1. Any proper liens or pledges thereon;.
2. Assignments thereof;.
3. Deductions therefrom by reason of advances or offsets by said according to the market prices as of the day of the insolvency, with legal interest thereon, or accrued in favor of the warehouseman.
4. In case of cash slips claims or checks, the amount thereof, with legal interest at the weighted average prime rate charged by the Bank of North Dakota since the date of the insolvency.
5. In the case of scale tickets or warehouse receipts, the amount thereof based upon the market price prevailing on the date of the insolvency, with interest at the weighted average prime rate charged by the Bank of North Dakota since the date of the insolvency.

In the event that the fund shall prove insufficient to redeem all receipts in full, the same shall be prorated among them in such manner as the trustee shall deem fair and equitable. Thereupon, the court shall cite such receipt holders, upon such notice by mail as it shall prescribe, to appear upon a day fixed in the notice and show cause why such the report should not be approved and distribution of said the fund made as outlined therein. Upon such hearing, the court shall approve or modify such the report and issue an order directing the distribution of said the fund and the discharge of the commission from its trust.

SECTION 12. AMENDMENT. Section 60-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-04-10. Filing fees and court costs - Attorney may be employed Expenses. Upon the application as trustee for an insolvent warehouse to the district court as provided in this chapter, or in

any action in a state court in this state, the commission shall not be required to pay any filing fee or other court costs or disbursements where the fees accrue to the county or to the state. The attorney general may employ such outside legal services to assist the commission in the prosecution of such action as in his judgment may be necessary and may deduct the expense of the same from said the trust fund. All other necessary expenses incurred by the commission in carrying out the provisions of this chapter, including adequate insurance to protect the commission, its employees, and others engaged in carrying out the provisions of this chapter, may be deducted from the trust fund.

Approved March 4, 1983

## CHAPTER 675

SENATE BILL NO. 2436  
(Erickson)

## ARBITRATION OF GRAIN WAREHOUSE LEASE RENEWAL

AN ACT to create and enact a new section to chapter 60-06 of the North Dakota Century Code, relating to arbitration by the public service commission of proceedings for renewing grain warehouse leases on railroad rights of way; and to amend and reenact section 32-29-01 of the North Dakota Century Code, relating to authorization of arbitration; and to provide an appropriation.

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

SECTION 1. AMENDMENT. Section 32-29-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-29-01. When arbitration authorized.

1. Persons capable of contracting may submit to the decision of one or more arbitrators any controversy which might be the subject of a civil action between them, ~~except.~~
2. Except as otherwise provided in this section, the question of title to real property in fee or for life. ~~This qualification does not include~~ may not be the subject of arbitration.
3. Parties may submit to arbitration the question of the claiming of an easement to erect or maintain a public warehouse on a railroad right of way that is otherwise governed by chapter 60-06.
4. Parties may submit to arbitration questions relating ~~merely~~ to the partition or boundaries of real property.

SECTION 2. A new section to chapter 60-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Arbitration by public service commission - Appropriation. On agreement of all parties concerned, the parties may petition the public service commission to serve as an arbitrator of rights

governed under this chapter. The commission shall serve as an arbitrator in accordance with chapter 32-29 and the parties' rights of appeal are as limited by chapter 32-29. The parties requesting the arbitration proceeding shall pay the expense of the proceeding, the compensation of any experts, and actual expenses of any employees of the commission while engaged in the proceeding. The commission shall ascertain such costs and expenditures and, after giving the parties notice and opportunity to be heard, and after a hearing to determine the amount of cost and expenditures if a hearing is demanded by either of the parties, shall render a bill and make an order for payment by registered or certified mail. Upon order for payment, the parties, within ten days after receipt of the order, shall pay to the commission the amount of the costs and expenses. The commission shall deposit all costs and expenses collected under this section in the public utility valuation revolving fund in the state treasury. All moneys transferred or deposited in the public utility valuation revolving fund for the payment of costs and expenses incurred under this section are hereby appropriated. These moneys are not subject to section 54-44.1-11.

\* SECTION 3. TRANSFER AND APPROPRIATION. There is hereby transferred and appropriated to the public utility valuation revolving fund in the state treasury the sum of \$2,500 from the general fund in the state treasury.

Approved March 18, 1983

\* NOTE: Section 3 was vetoed by the Governor.