

WAREHOUSING AND DEPOSITS

CHAPTER 661

HOUSE BILL NO. 1202
(Committee on Agriculture)
(At the request of the Public Service Commission)

PUBLIC GRAIN WAREHOUSE OPERATION

AN ACT to create and enact a new section to chapter 60-02 of the North Dakota Century Code, relating to a lien in favor of receipt holders of a public grain warehouseman; and to amend and reenact sections 60-02-01, 60-02-07, 60-02-09, 60-02-09.1, 60-02-10.1, 60-02-11, 60-02-19.1, 60-02-23, 60-02-25, 60-02-37, 60-02-40, and 60-02-41 of the North Dakota Century Code, relating to the licensing, bonding, and operation of public grain warehouses.

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

SECTION 1. AMENDMENT. Section 60-02-01 of the 1983 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" 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 or may be paid more than thirty days after the delivery or release of the grain for sale, and includes but is not limited to these contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts and which contains the notice provided in subsection 7 of section 60-02-19.1. Where a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
3. "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. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.

4- 5. "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~~ chapter shall be construed to require ~~any person operating a flour, cereal, or feed mill, a warehouseman~~ doing manufacturing business only, to receive, store, or purchase any kind of grain at said mill.

5- 6. "Public warehouseman" means the person 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- 7. "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 60-02-07 of the 1983 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 nor grant permission to operate any public warehouse other than the one described therein. The annual license fee which must accompany the application for a public warehouse 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 scale tickets, warehouse receipts, 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 3. AMENDMENT. Section 60-02-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-09. Bond filed by public warehouseman. Before any license is issued to any public warehouseman 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 a verification certificate with the commission stipulating that the bond coverage continues in full effect.
3. Run to the state of North Dakota ~~and~~ for the benefit of all persons storing or selling grain in such warehouse.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a public warehouseman.
 - b. For compliance with the provisions of law and the rules of the commission relating to the storage and purchase of grain by such warehouseman.
5. Specify the location of each public warehouse intended to be covered by such bond.
6. 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~~ 60-04 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 a credit-sale contract with a public warehouseman.
8. In no event shall the aggregate liability of the surety under a bond accumulate for each successive annual license renewal period during which such bond is in force but, for losses during any annual license renewal 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 an increase in the amount of any bond, from time to time, as it shall, in its discretion, deem 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 properly will protect the holders of outstanding receipts. One bond only ~~need~~ shall 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 4. AMENDMENT. Section 60-02-09.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-09.1. 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 within sixty days of receipt of the notice of cancellation, 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. When a license is so suspended the warehouseman shall give notice of such suspension to each receipt holder having grain stored in the warehouse. The warehouseman shall further notify each receipt holder having grain stored in the warehouse that the grain must be removed from the warehouse or it will be priced and redeemed in cash in accordance with section 60-02-41.

*** SECTION 5. AMENDMENT.** Section 60-02-10.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-10.1. Revocation and suspension. The commission may suspend or revoke the license of any warehouseman for cause upon notice and

*** NOTE:** Section 60-02-10.1 was also amended by section 81 of Senate Bill No. 2079, chapter 317.

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. During a suspension of a license the warehouseman may, upon the commission's approval, operate the warehouse and purchase or redeliver grain previously received, but may not receive additional grain for purchase, storage, shipping or processing.

SECTION 6. AMENDMENT. Section 60-02-11 of the 1983 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 upon receiving grain into its warehouse, shall issue a uniform scale ticket for each load of grain received. Such tickets shall be numbered consecutively, and ~~provision shall be made for at least one copy of each ticket.~~ One one copy of each ticket shall be retained and 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 scale tickets shall be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts within twenty days after the grain is delivered to the warehouse.

SECTION 7. AMENDMENT. Section 60-02-19.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-19.1. 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.
7. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section

60-02-09, however, if the warehouseman has obtained bond coverage in addition to that required by section 60-02-09 and such coverage extends to the benefit of credit-sale contracts, the warehouseman may state the same in the credit-sale contract along with the extent of such coverage.

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

60-02-23. Records to be kept by public warehouseman. Every public warehouseman shall keep a record of all grain received, stored, and shipped, stating the:

1. Weight;
2. Grade;
3. Dockage for dirt or other causes;
4. Name of owner;
5. Price paid; and
6. Storage charge collected.

Any warehouseman whose principal office or headquarters is located outside the state of North Dakota shall make available, if requested, all books, documents, and records relevant to the North Dakota warehouse for inspection during ordinary business hours at any of its warehouses located in the state of North Dakota or other mutually acceptable place.

SECTION 9. AMENDMENT. Section 60-02-25 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-25. Bailment not a sale. Whenever any grain shall be delivered to any public warehouse and 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 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. In the event of the failure or insolvency of the warehouseman, all the grain in the warehouse, whether the same is stored or not, first shall be applied at all times to the satisfaction of receipts issued by the warehouseman.

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

Receipt holder's lien. Grain contained in a warehouse, including grain owned by the warehouseman, is subject to a first priority lien in favor of outstanding receipt holders storing, selling, or depositing grain in the warehouse. The lien created under this section shall be preferred to any lien or security interest in favor of any creditor of the warehouseman regardless of the time when the creditor's lien or security interest attached to the grain. Notice of the lien created under this section need not be filed in order to perfect the lien. The lien created by this section is discharged as to grain sold by the warehouseman to a buyer in the ordinary course of business. Such sale does not discharge the lien in favor of an individual receipt holder in the remaining grain in the warehouse.

SECTION 11. AMENDMENT. Section 60-02-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-37. Destruction of warehouse - Duty to notify commission. In case of the destruction by fire or other cause of any licensed public warehouse, the licensee thereof shall notify the commission by telegraph or telephone and registered or certified mail within twenty-four hours after such loss.

SECTION 12. AMENDMENT. Section 60-02-40 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-40. Transfer of warehouse - Redemption of receipts. Whenever a public warehouseman desires to transfer a warehouse, either by sale or lease to any other individual, firm, or corporation, the warehouseman shall:

1. Notify the commission first of its intention to transfer 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 the warehouseman pertaining to the storage, inspection, and marketing of grain ~~during the term of the license~~, together with a statement of:
 - a. The number of bushels [cubic meters] of grain of each kind and grade in store in the warehouse;
 - b. The number and amount of receipts outstanding; and
 - c. The names and addresses of the receipt holders.
3. Serve notice by registered or certified mail, at least thirty days before the transfer, upon all receipt holders having claims against the warehouse to call for delivery of the grain covered by 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 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 warehouse receipts to be filed with the commission until called for by the owner.
5. Surrender to the commission 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 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 the lessee or purchaser.

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

SECTION 13. AMENDMENT. Section 60-02-41 of the 1983 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 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 outstanding receipt holders of such closing and redeem all outstanding 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 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.

Approved March 29, 1985

CHAPTER 662

HOUSE BILL NO. 1469
(Representatives Kent, Belter)
(Senators Tweten, Nelson)

DRY EDIBLE BEAN DELIVERY

AN ACT to create and enact a new section to chapter 60-02 of the North Dakota Century Code, relating to delivery of dry edible beans.

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:

Delivery of dry edible beans to warehouse receipt holder. Dry edible beans delivered by a public warehouseman to a warehouse receipt holder must be delivered dry and processed to acceptable standards for canning and packaging use. The receipt holder may choose to receive beans either bagged or in bulk. The receipt holder shall furnish the bag for beans to be bagged. The receipt holder may request grading of the beans. The warehouseman may determine grade by United States department of agriculture standards, northharvest standards, or Michigan bean shippers association standards. The receipt holder shall pay any grading fees.

Approved March 14, 1985

CHAPTER 663

SENATE BILL NO. 2133
(Committee on Agriculture)
(At the request of the Public Service Commission)

COMPLAINTS AGAINST ROVING GRAIN AND HAY BUYERS

AN ACT to amend and reenact sections 60-03-01 and 60-03-09.1 of the North Dakota Century Code, relating to definitions regarding roving grain and hay buyers and the procedure for complaints filed against roving grain and hay buyers.

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

SECTION 1. AMENDMENT. Section 60-03-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-03-01. 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 or may be paid after the delivery or release of the grain for sale, and includes but is not limited to these contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts. Where a part of the sale price of a contract for the sale of grain is to be paid or may be paid after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
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 60-03-09.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-03-09.1. **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 with interest at the weighted average base rate charged by the Bank of North Dakota since the date of the breach or default and to pay the costs incurred by the commission in the administration of this chapter. 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. Upon recovery for the breach or default, or so much thereof as possible or as shall be necessary to pay all claims and costs incurred by the commission in the administration of this chapter, the commission has the power to exonerate the person so paying from further liability growing out of the breach or default.

Approved February 6, 1985

CHAPTER 664

SENATE BILL NO. 2132
(Committee on Agriculture)
(At the request of the Public Service Commission)

INSOLVENT GRAIN WAREHOUSEMAN SURETY JOINER

AN ACT to create and enact a new section to chapter 60-04 of the North Dakota Century Code, relating to the joinder of the surety in a grain warehouseman insolvency proceeding; and to amend and reenact sections 60-04-01, 60-04-04, and 60-04-09 of the North Dakota Century Code, relating to insolvent grain warehousemen and the insolvency proceedings for insolvent grain warehousemen.

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

SECTION 1. AMENDMENT. Section 60-04-01 of the 1983 Supplement to 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" 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 or may be paid more than thirty days 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 and which contains the notice provided in subsection 7 of section 60-02-19.1. Where a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
3. "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. "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 chapter requires~~ any ~~person operating a flour, cereal, or feed mill,~~ warehouseman 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. A new section to chapter 60-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Joinder of surety - Deposit of proceeds. The surety on the warehouseman's bond must be joined as a party to the insolvency proceeding upon a motion by the commission when the commission believes that proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. Where it appears in the best interests of the receipt holders, the court may order the surety to deposit the penal sum of the bond, or so much thereof as may be deemed necessary, into the trustee's trust account pending a final determination of the surety's liability under the bond.

SECTION 3. AMENDMENT. Section 60-04-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-04-04. Notice to receipt holders. Upon its appointment by the district court, the commission shall seek may take possession of all the relevant books and records of the warehouseman. The commission shall also seek the delivery to it of all receipts shown to be outstanding by the books of the warehouseman for the purpose of enforcing the provisions of this chapter. If the commission cannot ascertain the names and addresses of all of the receipt holders, or if it is unable to procure the possession of all the receipts, or

has reason to believe that all the receipts have not been surrendered to it, the commission shall publish a notice in a legal newspaper in the county in which the warehouse is situated for three successive weeks requiring the receipt holders to surrender their receipts. Unless within sixty days after the last publication of the notice the receipts are surrendered to the commission, the holders of any unsurrendered receipts shall be barred from participation in the trust fund. The commission shall cause a notice of its appointment to be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located and may notify by ordinary mail the holders of record of outstanding receipts as shown by the warehouseman's records. The notices must require outstanding receipt holders to file their claims against the warehouseman with the commission along with the receipts or such other evidence of the claims as required by the commission. If an outstanding receipt holder fails to submit a claim within forty-five days after the last publication of the notice or such longer time as prescribed by the commission, the commission is relieved of further duty or action under this chapter on behalf of the receipt holder and the receipt holder may be barred from participation in the trust fund. Outstanding receipt holders are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 4. AMENDMENT. Section 60-04-09 of the 1983 Supplement to 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 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. Upon the receipt and evaluation of claims filed with it, the commission shall file with the court a report showing the amount and validity of each claim after recognizing:

1. Any proper liens or pledges thereon.
2. Assignments thereof.
3. Deductions therefrom by reason of advances or offsets accrued in favor of the warehouseman.
4. In case of cash claims or checks, the amount thereof, with 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 the report should not be approved and distribution of the fund made as outlined therein. Upon such hearing, the court shall approve or modify the report and issue an order directing the distribution of the fund and the discharge of the commission from its trust. The report must also contain a proposed distribution of the trust fund assets, less expenses incurred by the commission in the administration of this chapter, to claimants as their interests are determined. If the trust fund is insufficient to redeem all claims in full, the fund must be shown prorated in the report in the manner the commission deems fair and equitable.

The court shall set a time and place for hearing upon such notice as it prescribes, for interested persons to show cause why the commission's report should not be approved and distribution of the fund be made as outlined therein. Copies of the report and notice of hearing must be served by the commission by registered mail upon the warehouseman and the surety on the bond and by ordinary mail upon all persons having claims filed with the commission.

Any aggrieved person having an objection to the commission's report shall set forth such objection fully and in writing, file it with the court, and serve copies upon the commission, the warehouseman, and the surety on the bond no later than ten days prior to the date of the hearing. Failure to file such objection in the time specified may be deemed as a waiver of the objection by the court.

Following hearing, the court shall approve or modify the report and issue an order directing payment by the surety company of the necessary bond proceeds, distribution of the trust fund, and discharge of the commission from its trust.

Approved March 22, 1985