

WAREHOUSING AND DEPOSITS

CHAPTER 740

SENATE BILL NO. 2031
(Legislative Council)
(Interim Agriculture Committee)

GRAIN DISPUTE RESOLUTION

AN ACT to create and enact a new section to chapter 60-02 of the North Dakota Century Code, relating to the posting of a notice of grain dispute resolution procedures; and to amend and reenact section 60-02-05 of the North Dakota Century Code, relating to the resolution of disputes concerning grain.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-02-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-05. Duties of inspector Grain marketing - Procedure for resolving disputes.

1. If any dispute or disagreement arises between the person receiving and the person delivering grain at any public warehouse in this state as to the proper grade or, dockage, or both; moisture content, or protein content of any grain, an average sample of at least three pints of said the grain in dispute may be taken together by both parties interested. Such The sample must be certified by both the owner and the warehouseman each party as being a true and representative sample of the grain in dispute on the day upon which the grain was delivered. Such The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties, to the commission; for inspection by the a federal licensed inspector, or a mutually agreed upon third party, who will examine said the grain and adjudge what grade or, dockage, or both; said moisture content, or protein content the sample of grain is entitled to under the inspection rules and grades as promulgated adopted by the secretary of agriculture of the United States. The person requesting the inspection service must pay for the inspection. If the grain in question is damp or, otherwise out of condition, or if moisture content is in dispute, such the sample must be placed in an airtight container. Payment for the grain involved in the dispute must be made and accepted on the basis of the determination made by the federal licensed inspector or third party. However, all other quality factors may also be considered in determining the price of the grain. An appeal of the determination made by a third party other than a federal licensed inspector may be made to a federal licensed inspector. An appeal of the determination made by a federal licensed inspector may be made as provided under the United States Grain Standards Act [Pub. L. 90-487; 82 Stat. 764; 7 U.S.C. 79(c)] and under 7 CFR 800.125-800.140. A person not abiding by a

final determination is liable for damage resulting from not abiding by the determination.

2. If any dispute or disagreement arises between the person delivering grain and the person receiving grain as to the determination of quality factors of grain purchased or delivered in the state for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States, an average sample of at least three pints of the grain in dispute may be taken together by the parties interested. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was delivered. If the grain is damp or otherwise out of condition, the sample must be placed in an airtight container. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties, for inspection by a federal licensed inspector, or a mutually ~~agreeable~~ agreed upon third party, who may examine the grain and determine the quality factors in dispute. The person requesting the inspection service must pay for the inspection. The determination made by the inspector, or the third party, must be used in the settlement of the dispute.

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

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

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 741

SENATE BILL NO. 2159
(Committee on Agriculture)
(At the request of the Public Service Commission)

GRAIN AND SEED WAREHOUSES

AN ACT to amend and reenact sections 60-02-07, 60-02-09.1, 60-02-11, 60-02-22, 60-02-35, 60-02-35.1, and 60-04-09 of the North Dakota Century Code, relating to grain and seed warehouses and insolvent grain warehousemen.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-02-07 of the 1987 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 An annual license must be obtained through the commission for each public warehouse in operation in this state, and the license expires on July thirty-first of each year. 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 for a public warehouse shall be one hundred thirty dollars for a warehouse of a bushel capacity of two hundred thousand [7047.8 cubic meters] or less, two hundred sixty 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 17,619.54 cubic meters], and three hundred forty dollars for a warehouse of a bushel capacity of five hundred thousand and one [17,619.57 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 2. AMENDMENT. Section 60-02-09.1 of 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 or on a later date specified by the surety. This provision shall not operate to relieve, release, or discharge the surety from any liability accrued or which shall accrue before the expiration of the ninety-day period. Unless the warehouseman shall file files a new bond within sixty at least thirty days of receipt of

the notice of cancellation before liability ceases, 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 receiptholder having grain stored in the warehouse. The warehouseman shall further notify each receiptholder 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 3. AMENDMENT. Section 60-02-11 of 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 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 thirty days after the grain is delivered to the warehouse.

SECTION 4. AMENDMENT. Section 60-02-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-22. Liability of warehouseman. A public warehouseman shall be liable to the owner for the delivery of the kind, grade, quality, and quantity of grain called for by the warehouse receipt. Unless otherwise agreed, the value of any difference in kind, grade, quality, and quantity must be settled at the price on the local market on the day the warehouseman receives written request for delivery. The warehouseman may withhold from delivery a sufficient quantity of grain, based upon the local market price, to satisfy the value of any difference in kind, grade, or quality.

SECTION 5. AMENDMENT. Section 60-02-35 of 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. 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 for grain in the warehouse which that is not kept on warehouse receipt or deposit. Proof of such insurance shall be filed with the public service commission annually. The insurance policy must be continuous and may only be canceled in accordance with section 60-02-35.1.

SECTION 6. AMENDMENT. Section 60-02-35.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-35.1. Insurance - Cancellation - Suspension of license. ~~Upon the existence of an effective insurance policy as required in section 60-02-35, the An~~ insurance company involved shall give at least thirty days' advance notice to the commission and the insured by registered certified mail return receipt requested of any before cancellation of the an insurance policy required in section 60-02-35. ~~in event of any If insurance cancellation or expiration is canceled,~~ the commission, without hearing, shall immediately suspend the license of the warehouseman, ~~and the suspension may not be removed until satisfactory evidence of the existence of an effective insurance policy has been submitted to the commission.~~

SECTION 7. 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 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.

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 and the appropriate 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 proposed. Copies of the report and notice of hearing must be served by the commission by registered certified 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 file the objection fully and in writing, file it with the court, and serve copies upon on the commission, the warehouseman, and the surety on the bond no later than at least ten days prior to before the date of the hearing. Failure to file such objection and serve objections in the time specified may be deemed as set is 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.

CHAPTER 742

HOUSE BILL NO. 1665
(Representatives Aarsvold, Myrdal, Vander Vorst)
(Senators Thane, Wogsland)
(Approved by the Committee on Delayed Bills)

BEAN STORAGE CONTRACT TERMINATION

AN ACT to amend and reenact sections 60-02-30 and 60-02-31 of the North Dakota Century Code, relating to termination of public grain warehouse storage contracts on edible beans; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-02-30 of 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 in storage at public grain warehouses 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 warehouse receipt, together with a demand for delivery of such the grain in storage, or notice to the warehouseman to sell the same stored grain. 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 amounts of said the stored grain to satisfy all accrued storage charges thereon and warehouseman's advances upon such the storage contract, and shall issue a new warehouse receipt for the balance of said the grain in storage to the owner thereof upon the surrender of the old 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 2. AMENDMENT. Section 60-02-31 of 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 the termination of the storage contract on June thirtieth and the warehouseman's intention to sell a sufficient amount of ~~such~~ the stored 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~~ the warehouseman's intention to terminate the storage contract on April thirtieth, or at a later date pursuant to an agreement between the warehouseman and the receipt holder for the storage of dry edible beans after 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 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 743

HOUSE BILL NO. 1502
(Representatives Gunsch, Laughlin)
(Senator W. Meyer)

ROVING GRAIN OR HAY BUYERS

AN ACT to create and enact eleven new sections to chapter 60-03 of the North Dakota Century Code, relating to the insolvency of roving grain or hay buyers; to amend and reenact sections 60-03-01, 60-03-02, 60-03-04, 60-03-04.1, and 60-03-06 of the North Dakota Century Code, relating to roving grain or hay buyers; to repeal section 60-03-09.1 of the North Dakota Century Code, relating to complaint procedure for roving grain or hay buyers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-03-01 of 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. "Claimant" means any person claiming to be injured by the default of the licensee in the payment for any grain or hay purchased or marketed by the licensee.
2. "Commission" means the public service commission.
- ~~2-~~ 3. "Credit-sale contract" means a written contract for the sale of grain pursuant to or hay under which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain or hay for sale and which contains the notice required in subdivision g of subsection 5 of section 60-03-04.1. Where a part of the sale price of a contract for the sale of grain or hay is to be paid or may be paid more than thirty days after the delivery or release of the grain or hay for sale, only such that part of the contract is a credit-sale contract.
- ~~3-~~ 4. "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.
5. "Licensee" means a roving grain or hay buyer licensed under this chapter.
- ~~4-~~ 6. "Roving grain or hay buyer" means any person, other than a public warehouseman, who buys is in the business of buying 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 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~~ must 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 fifty~~ is seventy-five dollars.

SECTION 3. AMENDMENT. Section 60-03-04 of 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. Before ~~any a~~ license is issued to any roving grain or hay buyer, the applicant shall file with the commission a bond in ~~such sum as an amount set by the commission shall prescribe~~, but not less than fifty one hundred thousand dollars for each license. Such, except when the licensee pays cash for ninety percent of all grain or hay at the time of delivery and the remaining ten percent within twenty-four hours of the time of delivery to the licensee in which case the bond amount may not be less than fifty thousand dollars. The 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~~ its agent or agents within the state of North Dakota from loss or damage by reason of any violation of this chapter.
4. Not accrue to the benefit of any person entering into a credit-sale contract with ~~a roving grain or hay buyer~~ the licensee.
5. Be governed by all of the provisions of law and rules applicable to the business of a roving grain or hay buyer ~~and the rules of the commission relating thereto~~.

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~~ each bond must be a corporate surety company, approved by the commission, and authorized to do business ~~within~~ in 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 the~~ 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 4. AMENDMENT. Section 60-03-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-03-04.1. Credit-sale contracts. A roving grain or hay buyer ~~is prohibited from purchasing or marketing~~ may not purchase or market 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 an amount set by the commission may prescribe,~~ but not less than fifty one hundred 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~~ the cash, negotiable instrument, or personal surety bond will properly protect persons selling grain or hay to or through the licensee by credit-sale contracts.
2. The ~~roving grain or hay buyer licensee~~ shall file with the commission a current financial statement setting forth ~~its the licensee's~~ financial position and results in operations for the ~~licensee's~~ most recent fiscal period ~~of the licensee and prepared in conformity with.~~ The financial statement must conform to 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 approved contracts ~~approved for use by the commission~~ shall not be used in any other state.
4. The ~~roving grain or hay buyer licensee~~ shall maintain an accurate record of ~~all the disposition of each credit-sale contract numbers including the disposition of each numbered form; whether by execution, destruction, or otherwise form.~~
5. Each credit-sale contract must contain or provide for all of the following:
 - a. The seller's name and address.
 - b. The terms and 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.
 - g. Notice in a clear and prominent manner that the sale is by credit-sale contract which is not protected by the bond coverage provided for in section 60-03-04 and that an additional bond covering credit-sale contracts is required by section 60-03-04.1.
6. The contract must be ~~signed~~ executed in duplicate 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 5. AMENDMENT. Section 60-03-06 of 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~~ is guilty of an infraction a class B misdemeanor.

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

Insolvency of roving grain or hay buyer. A licensee is insolvent when the licensee defaults in payment for grain or hay purchased or marketed by the licensee.

SECTION 7. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Appointment of commission. Upon the insolvency of any licensee, the commission shall apply to the district court of Burleigh County, North Dakota for authority to take all action necessary to act as trustee of the trust fund described in section 8 of this Act. Upon notice to the licensee as the court shall prescribe, but not exceeding twenty days, or upon waiver of notice in writing by the licensee, the court shall hear and determine the application in a summary manner. If the court determines that the licensee is insolvent within the meaning of this chapter and that it would be in the best interests of the claimants that the commission secure and execute the trust, the court shall issue an order granting the application, without bond, and the commission shall proceed to exercise its authority without further direction from the court.

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

SECTION 8. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Trust fund established. Upon the insolvency of any licensee, a trust fund must be established for the benefit of claimants and to pay the costs incurred by the commission in the administration of the insolvency. The trust fund must consist of the following:

1. Grain of the insolvent licensee held in storage or the proceeds obtained from the conversion of stored grain.
2. The proceeds of insurance policies on grain destroyed in storage.
3. The claims for relief, and proceeds therefrom, for damages upon bond given by the licensee to ensure faithful performance of the duties of a licensee.

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

Joinder of surety - Deposit of proceeds. Each surety on the insolvent licensee's bonds must be joined as a party to the insolvency proceeding. If it is in the best interests of the claimants, the court may order a surety to deposit some or all of the penal sum of the bond into the trustee's trust account pending determination of the surety's liability under the bond.

SECTION 10. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Notice to claimants. Upon its appointment the commission may take possession of relevant books and records of the licensee. The commission shall publish a notice of its appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, potential claimants disclosed by the licensee's records. The notice must require claimants to file their claims with the commission along with the receipts or other evidence of the claims required by the commission. If a claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time set by the commission, the commission is relieved of further duty in the administration of the insolvency on behalf of the claimant and the claimant may be barred from participation in the trust fund. Claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 11. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Remedy of claimants. No claimant has a separate claim for relief upon any insolvent licensee's bond, nor for insurance, nor against any person converting grain, nor against any other claimant, except through the trustee, unless, upon demand of five or more claimants, the commission fails or refuses to apply for its own appointment or unless the district court denies the application. Sections 6 through 16 of this Act do not prohibit any claimant, either individually or in conjunction with other claimants, from

pursuing concurrently any other remedy against the person or property of the licensee.

SECTION 12. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

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

SECTION 13. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Power of commission to prosecute or compromise claims. The commission may:

1. Prosecute any action provided in sections 6 through 16 of this Act in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action when it will be in the best interests of the claimants.
4. Upon payment of the amount of any settlement or of the full amount of any bond, exonerate the person so paying from further liability growing out of the action.

SECTION 14. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Money received by trustee - Deposited in Bank of North Dakota. All funds received by the commission as trustee must be deposited in the Bank of North Dakota.

SECTION 15. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Report of trustee to court - Approval - Distribution. Upon the receipt and evaluation of claims the commission shall file with the court a report showing the amount and validity of each claim after recognizing relevant:

1. Liens or pledges.
2. Assignments.
3. Deductions due to advances or offsets accrued in favor of the licensee.
4. In case of cash claims or checks, the amount of the claim, with interest from the date of default at the weighted average prime rate charged by the Bank of North Dakota.

The report must also contain the proposed distribution of the trust fund assets, less expenses incurred by the commission in the administration of the insolvency. If the trust fund is insufficient to redeem all claims in full, the report should list the funds as prorated.

The court shall set a hearing and the appropriate notice for interested persons to show cause why the commission's report should not be approved and distribution of the fund be made as proposed. Copies of the report and notice of hearing must be served by the commission by certified mail upon the licensee and the surety and by ordinary mail upon all claimants.

Any aggrieved person having an objection to the commission's report shall file the objection with the court and serve copies on the commission, the licensee, and the surety at least ten days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.

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

SECTION 16. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Filing fees and court costs - Expenses. The commission may not be required to pay any filing fee or other court costs or disbursements. The attorney general may appoint outside legal counsel to assist the commission in the prosecution of the action and the cost of employing outside counsel may be paid from 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 sections 6 through 16 of this Act, may be paid from the trust fund.

SECTION 17. REPEAL. Section 60-03-09.1 of the North Dakota Century Code is hereby repealed.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 744

HOUSE BILL NO. 1131
(Representatives Mertens, Whalen, Martin)
(Senators Vosper, Krauter, Maixner)

RAILROAD RIGHT OF WAY WAREHOUSES

AN ACT to amend and reenact section 60-06-15 of the North Dakota Century Code, relating to warehouse leases on railroad rights of way; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-06-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-06-15. Application to existing leaseholds. The provisions of this chapter ~~shall~~ apply to the renewal of existing leaseholds on railroad rights of way, and to existing leaseholds on lands that have ceased to be used for railroad rights of way after the leasehold was first created, and so long thereafter as the lease site remains under the ownership or control of the railroad or an entity that was or is under common ownership or control of the railroad. The value of a leaseholder's improvements may not be considered in determining annual rental or the gross sum for the right, privilege, and easement sought.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 29, 1989
Filed March 30, 1989