

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2346

That the House recede from its amendments as printed on pages 1397-1427 of the Senate Journal and pages 1594-1624 of the House Journal and that Engrossed Senate Bill No. 2346 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 60-01 of the North Dakota Century Code, relating to the definition of agriculture commissioner; to amend and reenact section 49-02-01, subsection 1 of section 60-02-01, sections 60-02-02, 60-02-03, 60-02-04, 60-02-05.1, 60-02-07, 60-02-07.2, 60-02-09, 60-02-09.1, 60-02-10.1, 60-02-11, 60-02-14, 60-02-17, 60-02-24, 60-02-27, 60-02-35.1, 60-02-38, 60-02-40, 60-02-41, and 60-02-42, subsection 1 of section 60-02.1-01, sections 60-02.1-02, 60-02.1-03, 60-02.1-04, 60-02.1-06, 60-02.1-07, 60-02.1-07.1, 60-02.1-08, 60-02.1-09, 60-02.1-11, 60-02.1-16, 60-02.1-17, 60-02.1-19, 60-02.1-22, 60-02.1-26, 60-02.1-27, 60-02.1-29, 60-02.1-30, 60-02.1-32, 60-02.1-33, 60-02.1-34, 60-02.1-35, 60-02.1-36, 60-02.1-37, 60-02.1-38, and 60-02.1-39, subsection 1 of section 60-04-01, and sections 60-04-03, 60-04-03.1, 60-04-03.2, 60-04-03.3, 60-04-04, 60-04-05, 60-04-06, 60-04-07, 60-04-08, 60-04-09, 60-04-10, 60-05-01, 60-05-02, 60-05-03, 60-05-04, 60-06-05, 60-06-06.1, 60-10-01, 60-10-02, 60-10-03, 60-10-05, 60-10-07, 60-10-08, 60-10-09, 60-10-10, 60-10-11, 60-10-12, 60-10-14, and 60-10-15 of the North Dakota Century Code, relating to moving the authority over grain, grain buyers, warehousing, deposits, and warehousemen from the public service commission to the agriculture commissioner; to provide a penalty; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-02-01 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

6. All heating utilities engaged in the distribution of heat.
7. ~~Warehouse companies engaged in the marketing, storage, or handling of agricultural products.~~
8. All other public utilities engaged in business in this state or in any county, city, township, or other political subdivision of the state.

SECTION 2. A new section to chapter 60-01 of the North Dakota Century Code is created and enacted as follows:

Definition.

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

SECTION 3. AMENDMENT. Subsection 1 of section 60-02-01 of the North Dakota Century Code is amended and reenacted as follows:

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

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

60-02-02. Commissioner - Powers and duties.

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

SECTION 5. AMENDMENT. Section 60-02-03 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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. 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.
5. Make all proper rules for carrying out and enforcing any law in this state regarding public warehouses.

SECTION 6. AMENDMENT. Section 60-02-04 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 7. AMENDMENT. Section 60-02-05.1 of the North Dakota Century Code is amended and reenacted as follows:

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

A public warehouse shall post a notice containing the procedures specified in section 60-02-05 for resolving disputes. The ~~commission~~commissioner 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.

SECTION 8. AMENDMENT. Section 60-02-07 of the North Dakota Century Code is amended and reenacted as follows:

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

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

1. a. ~~The commission shall stagger by lot the expiration date of all licenses issued for the period beginning August 1, 2015, so that one-half of all the licenses issued expire on July 31, 2016, and one-half of all the licenses issued expire on July 31, 2017. Thereafter, all~~All licenses issued under this section must be for a period of two years and terminate on the thirty-first day of July in the year of expiration.
- b. (1) Notwithstanding the provisions of subdivision a, the ~~commission~~commissioner shall license a warehouse annually, for the first six years of the warehouse's operation.
- (2) An initial annual license application that becomes effective on or after June first does not expire until July thirty-first of the following calendar year.
2. No license may describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described.
3. a. The annual license fee for a public warehouse is:
 - (1) ~~Three~~Four hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
 - (2) ~~Four~~Five hundred fifty dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic

meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and

- (3) ~~Five~~Six hundred fifty dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].
- b. The biennial license fee for a public warehouse is:
- (1) ~~Six~~Seven hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
 - (2) ~~Nine hundred~~One thousand dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and
 - (3) One thousand ~~one~~two hundred dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].
- c. An application for an annual license renewal that is received after July fifteenth must include an additional one hundred dollar fee per warehouse. An application for a biennial license renewal that is received after July fifteenth must include an additional two hundred dollar fee per warehouse.
4. 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 keeps one set of books and records for all such warehouses, and issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts for the grain stored and purchased therein, only one license is required for the operation of all such warehouses. When two or more warehouses are operated under one license, the license fee is based upon the combined bushel capacity of the warehouses.
5. If required to obtain United States department of agriculture approval of the ~~commission's~~commissioner's warehouse inspection program, the ~~commission~~commissioner may require that the applicant submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this subsection is a confidential trade secret and is not a public record.

SECTION 9. AMENDMENT. Section 60-02-07.2 of the North Dakota Century Code is amended and reenacted as follows:

60-02-07.2. Receiving stations.

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

1. The station is colocated with another licensed public warehouse, the operator of which will take delivery of the grain on behalf of the warehouseman who established the receiving station.

2. The storage space used by the receiving station is used solely by the receiving station and is not licensed as part of the warehouse that is located at that site.
3. The grain taken in by the receiving station is not commingled with other grain at that site.
4. The warehouseman establishing the station requests and receives ~~commission~~ permission from the commissioner to increase licensed capacity to include the space to be used at the receiving station.
5. Grain received at the receiving station is recorded on scale tickets issued by the warehouseman who established the station and is covered by that warehouseman's bond.
6. Warehouse-receipted grain received at the receiving station is available for redelivery to the receipt holder at that location even if the station has been closed. A charge for redelivery must be stated in the warehouseman's redelivery policy.

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

SECTION 10. AMENDMENT. Section 60-02-09 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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~~commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons storing or selling grain in that 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~~commissioner 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 of:
 - a. Protecting the holders of outstanding receipts.

- b. Covering the costs incurred by the ~~commission~~commissioner in the administration of chapter 60-04 in the event of the licensee's insolvency.
- 7. Not accrue to the benefit of any person entering into a credit-sale contract with a public warehouseman.
- 8. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

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

SECTION 11. AMENDMENT. Section 60-02-09.1 of the North Dakota Century Code is amended and reenacted as follows:

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

The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the ~~commission~~commissioner of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period. Unless the warehouseman files a new bond at least thirty days before liability ceases, the ~~commission~~commissioner, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new bond has been filed and approved by the ~~commission~~commissioner. ~~Whenif~~If 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~~the grain will be priced and redeemed in cash in accordance with section 60-02-41.

SECTION 12. AMENDMENT. Section 60-02-10.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-10.1. Revocation and suspension.

The ~~commission~~commissioner 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 must automatically be

suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license the warehouseman may, upon the ~~commission's~~commissioner's approval, operate the warehouse and purchase or redeliver grain previously received, but may not receive additional grain for purchase, storage, shipping, or processing. Grain may be sold only with the prior approval of the ~~commission~~commissioner.

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

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

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

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

60-02-14. Warehouse receipts - Copy.

Provision shallmust 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.

3. The dockage and net weight of the grain.

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

SECTION 15. AMENDMENT. Section 60-02-17 of the North Dakota Century Code is amended and reenacted as follows:

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

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

This grain is received, insured, and stored subject to the laws and rules of the state of North Dakota, the terms of this contract, and the charges and conditions stated herein and as filed with the North Dakota ~~public service-~~agriculture commissioner. Upon surrender of this receipt and payment or tender of all applicable charges, the amount, kind, and grade of grain identified in this receipt will be delivered to the person named above or the person's order as rapidly as due diligence, care, and prudence will permit. At the option of the holder of this receipt, the amount, kind, and grade of grain for which this receipt is issued, upon demand, must be delivered back to the holder at any terminal point customarily shipped to, or at the place where received, upon the payment of any charges for receiving, handling, storage, and insurance and in case of terminal delivery, the payment in addition to the above of the regular freight charges on the gross amount called for by this ticket or in lieu thereof, a receipt issued by a bonded warehouse or elevator company doing business at the terminal point. This receipt does not require the delivery of the identical grain specified herein, but an equal amount of grain of the same kind and grade must be delivered.

2. A warehouseman shall publish and post, in a conspicuous place in its warehouse, the fees that will be assessed for receiving, storing, processing, or redelivering grain and the termination date of its warehouse receipts. This publication must be filed with the ~~commission~~commissioner as a part of the warehouse license process or annual renewal. The fees and termination date must be stated on the warehouse receipt issued for the grain. The fees or termination date may be changed upon filing a revised publication with the ~~commission~~commissioner.

SECTION 16. AMENDMENT. Section 60-02-24 of the North Dakota Century Code is amended and reenacted as follows:

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

Each licensed and bonded public warehouseman shall:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the ~~commission~~commissioner. The report must contain or be verified by a written declaration ~~that it~~the report is made under the penalties of perjury. The report may be called for more frequently if the ~~commission~~commissioner deems ~~it~~ necessary. Information pertaining

to the volume of grain handled is a confidential trade secret and is not a public record. The ~~commission~~commissioner may make the information available for use by other governmental entities, but the ~~commission~~commissioner may not release the information in a manner that jeopardizes the confidentiality of individual licensees.

2. File the report with the ~~commission~~commissioner 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 the grain business, if the warehouseman is engaged in handling or selling any other commodity, and under no circumstances shall~~may~~ the grain account and other accounts be mixed.

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

SECTION 17. AMENDMENT. Section 60-02-27 of the North Dakota Century Code is amended and reenacted as follows:

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

All public warehousemen shall purchase and store grain except dry edible beans in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in rules and regulations applicable thereto adopted by federal officials pursuant to law. ~~They~~Public warehousemen shall post in a conspicuous place in ~~their~~the public warehousemen's warehouse the official grades so established and also any change that may be made from time to time. Warehousemen of dry edible beans shall purchase, store, and deliver beans in accordance with ~~their~~the policy of the warehousemen which must be filed with the ~~commission~~commissioner and posted in a conspicuous place in ~~their~~the warehouse of the public warehousemen. Other grading standards may be used if mutually agreed to in writing by the warehouseman and the owner of the grain. However, the owner may demand the use of federal grading standards. The ~~commission~~commissioner, after hearing, may prohibit the use of nonfederal grades.

SECTION 18. AMENDMENT. Section 60-02-35.1 of the North Dakota Century Code is amended and reenacted as follows:

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

An insurance company shall give at least sixty days' notice to the ~~commission~~commissioner and the insured by certified mail return receipt requested before cancellation of an insurance policy required in section 60-02-35. Unless the warehouseman files proof of new or renewed insurance at least thirty days before the existing policy ceases, the ~~commission~~commissioner, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new policy has been filed and approved by the ~~commission~~commissioner. ~~When~~if a license is so suspended, the warehouseman shall give notice of ~~such~~the 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 ~~if~~the grain will be priced and redeemed in cash in accordance with section 60-02-41.

SECTION 19. AMENDMENT. Section 60-02-38 of the North Dakota Century Code is amended and reenacted as follows:

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

~~When~~If requested in writing, the ~~commission~~commissioner shall refund the license fee of a public warehouse, or so much as in ~~its~~the commissioner's judgment is just and reasonable, ~~when~~if satisfactory proof is furnished ~~that~~ the warehouse has been transferred to some other person, and the new owner has obtained a license for the same warehouse for the unexpired period for which the original license was issued. ~~When~~If a warehouse is destroyed by fire or other cause, the license fee may be prorated as the ~~commission~~commissioner may determine.

SECTION 20. AMENDMENT. Section 60-02-40 of the North Dakota Century Code is amended and reenacted as follows:

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

~~Whenever~~If 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~~commissioner first of ~~its~~the warehouseman's 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, 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 receiptholders.
3. Serve notice by registered or certified mail, at least thirty days before the transfer, upon all receiptholders 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. The ~~commission~~commissioner may waive the thirty-day notice period upon receipt of written consent of all receiptholders.
4. Transfer all stored grain undelivered at the expiration of such thirty-day period to ~~its~~the warehouseman's 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.
5. Surrender to the ~~commission~~its commissioner ~~the warehouseman's~~ license for cancellation ~~and at such, at which~~ at which time the proposed lessee or purchaser shall file in due form for a new license and tender a new bond for review by the ~~commission, whereupon, it~~ commissioner, at which time, the commissioner, first being duly satisfied ~~that~~ all the outstanding receipts have been redeemed, or that the redemption thereof ~~of all outstanding~~.

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

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

SECTION 21. AMENDMENT. Section 60-02-41 of the North Dakota Century Code is amended and reenacted as follows:

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

~~When~~If a public warehouseman ceases business through the destruction of a warehouse by fire or other cause, or through insolvency, ~~such~~the 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~~shall accept this price and surrender the receipts. Any public warehouseman who voluntarily ceases business or fails to renew an existing warehouse license or whose warehouse license is revoked shall notify the ~~commission~~commissioner and all outstanding receiptholders 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~~must be settled in cash and priced on the market on the day of closing.

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

60-02-42. Cease and desist.

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

SECTION 23. AMENDMENT. Subsection 1 of section 60-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 24. AMENDMENT. Section 60-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

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

1. Exercise general supervision of grain 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.
4. Make all proper rules for carrying out and enforcing any law in this state regarding grain buyers.

SECTION 26. AMENDMENT. Section 60-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 27. AMENDMENT. Section 60-02.1-06 of the North Dakota Century Code is amended and reenacted as follows:

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

A facility-based grain buyer shall post a notice containing the procedures specified in section 60-02.1-05 for resolving disputes. The ~~commission~~commissioner shall prescribe the form of the notice and shall provide a copy of the notice to each facility-based grain buyer. The facility-based grain buyer shall post the notice in the grain inspection room of the facility. 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.

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

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

Grain buyers ~~must~~shall obtain an annual license from the ~~commission~~commissioner. Except as provided in this section, each license expires on July thirty-first of each year. ~~When~~if a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. A facility-based grain buyer ~~must~~shall obtain a license for each receiving location operated in the state. If a grain buyer operates two or more facilities 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 facilities, and scale tickets and checks of but one series are issued for the grain, purchased, only one license is required for

the operation of all such facilities. The annual license fee for a facility-based grain buyer is ~~three~~four hundred dollars and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee per receiving location.

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

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

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

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

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

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

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

1. Be in a sum not less than ~~five~~ten thousand dollars.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the ~~commission~~that commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons selling grain to or through the grain buyer.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a grain buyer.
 - b. For compliance with the provisions of law and the rules of the ~~commission~~commissioner relating to the purchase of grain by such grain buyer.
5. For facility-based grain buyers, specify the location of each facility intended to be covered by the bond.

6. Be for the specific purpose of:
 - a. Protecting the sellers of grain.
 - b. Covering the costs incurred by the ~~commission~~commissioner in the administration of the licensee's insolvency.
7. Not accrue to the benefit of any person entering into a credit-sale contract with a grain buyer.
8. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The ~~commission~~commissioner may require an increase in the amount of any bond, from time to time, as ~~it~~the commissioner deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commission~~commissioner, and authorized to do business within the state. The ~~commission~~commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in ~~its~~the commissioner's judgment, cash, a negotiable instrument, or a personal surety bond properly will protect the holders of outstanding receipts. Only one bond may be required for any series of facilities operated by a facility-based grain buyer, and the bond must be construed to cover those facilities as a whole and not a specific amount for each.

SECTION 31. AMENDMENT. Section 60-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 32. AMENDMENT. Section 60-02.1-11 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-11. Revocation and suspension.

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

shipping, or processing. Grain may be sold only with the prior approval of the ~~commission~~commissioner.

SECTION 33. AMENDMENT. Section 60-02.1-16 of the North Dakota Century Code is amended and reenacted as follows:

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

Each grain buyer shall keep such accounts, records, and memoranda concerning the buyer's dealing as such grain buyer as from time to time may be required by the ~~commission~~commissioner and shall make such reports of purchases of grain as may be required by the rules ~~made~~adopted by the ~~commission~~commissioner. The ~~commission~~commissioner at all times shall ~~shall~~must have access to such accounts, records, and memoranda.

SECTION 34. AMENDMENT. Section 60-02.1-17 of the North Dakota Century Code is amended and reenacted as follows:

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

Each licensed and bonded grain buyer shall:

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

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

SECTION 35. AMENDMENT. Section 60-02.1-19 of the North Dakota Century Code is amended and reenacted as follows:

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

All grain buyers shall purchase grain, except dry edible beans, in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in applicable rules and regulations ~~applicable thereto~~ adopted by federal officials pursuant to law. A facility-based grain buyer shall post in a conspicuous place in the buyer's facility the official grades so established and also any change that may be made from time to time. A grain buyer of

dry edible beans shall purchase and deliver beans in accordance with the buyer's policy, which must be filed with the ~~commissioner~~ and, if applicable, posted in a conspicuous place in the buyer's facility. Other grading standards may be used if mutually agreed to in writing by the grain buyer and the owner of the grain. However, the owner may demand the use of federal grading standards. After hearing, the ~~commissioner~~ may prohibit the use of nonfederal grades.

SECTION 36. AMENDMENT. Section 60-02.1-22 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

~~Whenever~~^{If} a facility-based grain buyer desires to transfer a facility, either by sale or lease to any other individual, firm, or corporation, the grain buyer shall:

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

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

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

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

~~When~~^{If} a facility-based grain buyer ceases business through closure, the destruction of a facility by fire or other cause, or through insolvency, ~~such~~^{the} grain buyer shall redeem all outstanding receipts at the price prevailing on the date the

facility was closed, destroyed, or became insolvent. The holder of ~~such~~the receipts, upon due notice, ~~must~~shall accept this price and surrender the receipts. Any facility-based grain buyer who voluntarily ceases business or fails to renew an existing grain buyer license or whose grain buyer license is revoked shall notify the ~~commission~~commissioner and all receiptholders of such closing and redeem all such receipts at the price prevailing on the date the business closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein ~~shall~~must be settled in cash and priced on the market on the day of closing.

SECTION 39. AMENDMENT. Section 60-02.1-29 of the North Dakota Century Code is amended and reenacted as follows:

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

Upon the insolvency of any roving grain buyer, the ~~commission~~commissioner shall apply to the district court of Burleigh County for authority to take all action necessary to act as trustee of the trust fund described in section 60-02.1-30. If the insolvency involves a facility-based grain buyer, application must be to the district court of a county in which the licensee operates a licensed facility. Upon notice to the licensee as the court prescribes, 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 receiptholders that the ~~commission~~commissioner secure and execute the trust, the court shall issue an order granting the application, without bond, and the ~~commission~~commissioner shall proceed to exercise ~~its~~the commissioner's authority without further direction from the court.

Upon the filing of the ~~commission's~~commissioner'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~~an order granting or denying the application.

SECTION 40. AMENDMENT. Section 60-02.1-30 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-30. Trust fund established.

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

1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds obtained from the conversion of such grain.
2. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the ~~commission~~commissioner is appointed trustee must be remitted to the ~~commission~~commissioner and included in the trust fund.
3. The proceeds of insurance policies on destroyed grain.

4. The claims for relief, and proceeds ~~therefrom~~from the claims for relief, for damages upon bond given by the licensee to ensure faithful performance of the duties of a licensee.
5. The claim for relief, and proceeds ~~therefrom~~from the claim for relief, for the conversion of any grain stored in the warehouse.
6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency.
7. Unencumbered equity in grain hedging accounts.
8. Unencumbered grain product assets.

SECTION 41. AMENDMENT. Section 60-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

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

Upon ~~its~~the commissioner's appointment, the ~~commissioner~~commissioner may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the ~~commissioner~~commissioner shall publish a notice of ~~its~~the commissioner's appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, disclosed by the licensee's records. If the insolvency involves a facility-based grain buyer, the notice must be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located. The notice must require outstanding receiptholders and credit-sale contract claimants to file their claims with the ~~commissioner~~commissioner along with the receipts, contracts, or other evidence of the claims required by the ~~commissioner~~commissioner. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time set by the ~~commissioner~~commissioner, the ~~commissioner~~commissioner is relieved of further duty in the administration of the insolvency on behalf of the receiptholder or credit-sale contract claimant and the receiptholder may be barred from participation in the trust fund, and the credit-sale contract claimant may be barred from payment for any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 42. AMENDMENT. Section 60-02.1-33 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-33. Remedy of receiptholders.

~~No~~A receiptholder ~~has~~does not have a separate claim for relief upon any insolvent licensee's bond, nor for insurance, nor against any person converting grain, nor against any other receiptholder, except through the trustee, unless, upon demand of five or more receiptholders, the ~~commissioner~~commissioner fails or refuses to apply for ~~its~~the commissioner's own appointment or unless the district court denies the application. This chapter does not prohibit any receiptholder, either individually or in conjunction with other receiptholders, from pursuing concurrently any other remedy against the person or property of the licensee.

SECTION 43. AMENDMENT. Section 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 44. AMENDMENT. Section 60-02.1-35 of the North Dakota Century Code is amended and reenacted as follows:

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

The ~~commissioner~~commissioner may:

1. Prosecute any action provided in sections 60-02.1-28 through 60-02.1-38 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~~if it will be in the best interests of the receiptholders.
4. Settle and compromise any action ~~when~~if it is in the best interests of the credit-sale contract claimants.
5. 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 45. AMENDMENT. Section 60-02.1-36 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 46. AMENDMENT. Section 60-02.1-37 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

SECTION 47. AMENDMENT. Section 60-02.1-38 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 48. AMENDMENT. Section 60-02.1-39 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-39. Cease and desist.

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

SECTION 49. AMENDMENT. Subsection 1 of section 60-04-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "~~Commissioner~~ Commissioner" means the ~~public-service-~~ agriculture commissioner.

SECTION 50. AMENDMENT. Section 60-04-03 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03. Appointment of ~~commissioner~~ commissioner.

Upon the insolvency of any warehouseman, the ~~commissioner~~ commissioner shall apply to the district court of a county in which the warehouseman 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 the warehouseman as the court shall prescribe, but not exceeding twenty days, or upon waiver of such notice in writing by the warehouseman, the court shall proceed to hear and determine such application in a summary manner. If it shall appear to the court ~~that~~ such the warehouseman is insolvent within the meaning of this chapter and ~~that~~ it would be for the best interests of the receipt holders that the ~~commissioner~~ commissioner secure and execute such trust, the court shall issue an order granting the application, without bond, ~~whereupon~~ at which time the ~~commissioner~~ commissioner shall proceed to exercise ~~its~~ the commissioner's authority without further direction from the court.

Upon the filing of the ~~commission's~~ commissioner'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~~ of the trust fund, until the court issues ~~its~~ an order granting or denying the application.

SECTION 51. AMENDMENT. Section 60-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.1. Trust fund established.

1. Upon the insolvency of any warehouseman, a trust fund ~~shall~~ must be established:
 - a. For the benefit of noncredit-sale receipt holders of the insolvent warehouseman, other than those who have waived their rights as beneficiaries of the trust fund in accordance with section 60-02-11; and
 - b. To pay the costs incurred by the ~~commissioner~~ commissioner in the administration of this chapter.

2. The trust fund consists of the following:
 - a. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of such grain;
 - b. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the ~~commission~~commissioner is appointed trustee;
 - c. The proceeds of insurance policies upon grain destroyed in the elevator;
 - d. The claims for relief, and proceeds ~~therefrom~~from the claims for relief, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman;
 - e. The claims for relief, and proceeds ~~therefrom~~from the claims for relief, for the conversion of any grain stored in the warehouse;
 - f. Unencumbered accounts receivable for grain sold ~~prior to~~before the filing of the claim that precipitated an insolvency;
 - g. Unencumbered equity in grain hedging accounts; and
 - h. Unencumbered grain product assets.

SECTION 52. AMENDMENT. Section 60-04-03.2 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.2. Possession of grain.

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

SECTION 53. AMENDMENT. Section 60-04-03.3 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.3. 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 commissioner if the ~~commission~~commissioner believes that proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. ~~When~~If 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~~of the sum as may be deemed necessary, into the trustee's trust account pending a final determination of the surety's liability under the bond.

SECTION 54. AMENDMENT. Section 60-04-04 of the North Dakota Century Code is amended and reenacted as follows:

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

Upon ~~its~~ the commissioner's appointment by the district court, the ~~commission~~ commissioner may take possession of relevant books and records of the warehouseman. The ~~commission~~ commissioner shall cause a notice of ~~its~~ the commissioner's 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 and those who are potential credit-sale contract claimants, as shown by the warehouseman's records. The notices must require outstanding receiptholders and credit-sale contract claimants to file their claims against the warehouseman with the ~~commission~~ commissioner along with the receipts, contracts, or any other evidence of the claims as required by the ~~commission~~ commissioner. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time as prescribed by the ~~commission~~ commissioner, the ~~commission~~ commissioner is relieved of further duty or action under this chapter on behalf of the receiptholder or credit-sale contract claimant and the receiptholder or credit-sale contract claimant may be barred from payment for any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 55. AMENDMENT. Section 60-04-05 of the North Dakota Century Code is amended and reenacted as follows:

60-04-05. Remedy of receiptholders.

~~No~~ A receiptholder ~~has~~ does not have a separate claim for relief upon the warehouseman's bond, nor for insurance, nor against any person converting grain, nor against any other receiptholder, except through the trustee, unless, upon demand of five or more receiptholders, the ~~commission~~ commissioner fails or refuses to apply for ~~its~~ the commissioner's own appointment from the district court or unless the district court denies the application for appointment. This chapter does not prohibit or prevent any receiptholder, either individually or in conjunction with other receiptholders, from pursuing concurrently such other remedy against the person or property of ~~such~~ the warehouseman, for the whole, or any deficiency occurring in the redemption, of the receipts.

SECTION 56. AMENDMENT. Section 60-04-06 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

for the purpose of marshalling all of the trust fund assets and distributing the same among the receiptholders. The ~~commission~~commissioner 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 grain ~~shall~~must be exhausted before recourse is had against the bond, and against the bond before recourse is had against the person honestly converting grain, unless the ~~commission~~commissioner deems it necessary to the redemption of the receipts that all the above remedies be pursued at the same time.

SECTION 57. AMENDMENT. Section 60-04-07 of the North Dakota Century Code is amended and reenacted as follows:

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

The ~~commission~~commissioner may:

1. Prosecute any action provided in this chapter 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 ~~whenever~~if it is in the best interests of the receiptholders.
4. Settle and compromise any action ~~when~~if it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of the compromise or of the full amount of any insurance policy, bond, or conversion claim, exonerate the person so compromising or paying in full from further liability growing out of the action.

SECTION 58. AMENDMENT. Section 60-04-08 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 59. AMENDMENT. Section 60-04-09 of the North Dakota Century Code is amended and reenacted as follows:

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

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

1. Any proper liens or pledges ~~thereon~~on the claims.
2. Assignments ~~thereof~~of the claims.

3. Deductions ~~therefrom~~ from the claims by reason of advances or offsets accrued in favor of the warehouseman.
4. In case of cash claims or checks, the amount ~~thereof~~ of the claims or checks.
5. In the case of scale tickets or warehouse receipts, the amount ~~thereof~~ based upon the market price prevailing on the date the ~~commission~~ commissioner first received a copy of the written demand required by section 60-04-02.
6. In the case of a credit-sale or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.

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

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

Any aggrieved person having an objection to the ~~commission's~~ commissioner's report shall file the objection with the court and serve copies on the ~~commission~~ commissioner, the warehouseman, and the surety at least twenty 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, payments from the credit-sale contract indemnity fund, and discharge of the ~~commission~~ commissioner from ~~its~~ the commissioner's trust.

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

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

In any action in a state court in this state, the ~~commission shall~~ commissioner may not be required to pay any filing fee or other court costs or disbursements if the fees accrue to the county or to the state. The attorney general may employ outside legal services to assist the ~~commission~~ commissioner in the prosecution of such action as in the attorney general's judgment may be necessary and the ~~commission~~ commissioner shall deduct the expenses of the same from the trust fund and the credit-sale contract indemnity fund as appropriate. All other necessary

expenses incurred by the ~~commission~~commissioner in carrying out the provisions of this chapter, including adequate insurance to protect the ~~commission, its~~commissioner, the commissioner's employees, and others engaged in carrying out the provisions of this chapter, must be reimbursed to the ~~commission~~commissioner from the trust fund and credit-sale indemnity funds as appropriate.

SECTION 61. AMENDMENT. Section 60-05-01 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 62. AMENDMENT. Section 60-05-02 of the North Dakota Century Code is amended and reenacted as follows:

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

The ~~commission~~commissioner may install, and ~~when~~if requested by not less than fifteen percent of the partners, stockholders, or members of any association, copartnership, corporation, or limited liability company conducting such public elevator or warehouse, shall install, the uniform system of accounting mentioned in section 60-05-01. The ~~commission~~commissioner on ~~its~~the commissioner's own motion may, or on request of the required percentage of partners, stockholders, or members, the ~~commission~~commissioner shall, send a competent examiner to examine the books and financial accounts of ~~such~~the elevator or warehouse. ~~Whenever~~If a request for the examination of the accounts of any association, copartnership, corporation, or limited liability company has been made to the ~~commission~~commissioner, as provided for in this section, ~~an examination thereafter shall~~subsequent examinations must be made at least once every year until the ~~commission shall be~~commissioner is requested to discontinue such examination by resolution adopted by the partners, stockholders, or members at any annual meeting. ~~When~~If such examination has been made, the examiner shall report immediately the results ~~thereof~~of the examination to the president and the secretary of such association, copartnership, corporation, or limited liability company and to the ~~commission~~commissioner.

SECTION 63. AMENDMENT. Section 60-05-03 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

SECTION 64. AMENDMENT. Section 60-05-04 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 65. AMENDMENT. Section 60-06-05 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 66. AMENDMENT. Section 60-06-06.1 of the North Dakota Century Code is amended and reenacted as follows:

60-06-06.1. Determination - Appropriation.

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

SECTION 67. AMENDMENT. Section 60-10-01 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 68. AMENDMENT. Section 60-10-02 of the North Dakota Century Code is amended and reenacted as follows:

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

There is created in the state treasury the credit-sale contract indemnity fund. The state treasurer shall invest available moneys in the fund in accordance with section 21-10-07 and in cooperation with the ~~public service commissioner~~commissioner and shall deposit any income earned through the investments into the fund. The fund and earnings of the fund are appropriated to the ~~public service commissioner~~commissioner on a continuing basis to be used exclusively to carry out the intent and purpose of this chapter.

SECTION 69. AMENDMENT. Section 60-10-03 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 70. AMENDMENT. Section 60-10-05 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 71. AMENDMENT. Section 60-10-07 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 72. AMENDMENT. Section 60-10-08 of the North Dakota Century Code is amended and reenacted as follows:

60-10-08. Reimbursement for later insolvencies.

The ~~public service commissioner~~commissioner shall ensure that all persons eligible for payment from the indemnity fund as a result of an insolvency are fully compensated to the extent permitted by this chapter before any payments from the indemnity fund are initiated as a result of a later insolvency. The chronological order of

insolvencies is determined by the date the ~~public service commissioner~~commissioner is appointed trustee under section 60-02.1-29 or 60-04-03.

SECTION 73. AMENDMENT. Section 60-10-09 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 74. AMENDMENT. Section 60-10-10 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 75. AMENDMENT. Section 60-10-11 of the North Dakota Century Code is amended and reenacted as follows:

60-10-11. Revocation and suspension.

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

SECTION 76. AMENDMENT. Section 60-10-12 of the North Dakota Century Code is amended and reenacted as follows:

60-10-12. Cease and desist.

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

SECTION 77. AMENDMENT. Section 60-10-14 of the North Dakota Century Code is amended and reenacted as follows:

60-10-14. Subrogation.

Money paid from the credit-sale contract indemnity fund in satisfaction of a valid claim constitutes a debt obligation of the person against whom the claim was made. The ~~commissioner~~commissioner may take action on behalf of the fund against a person to recover the amount of payment made, plus costs and attorney's fees. Any recovery

for reimbursement to the fund must include interest computed at the weight average prime rate charged by the Bank of North Dakota. Upon payment of a claim from the credit-sale contract indemnity fund, the claimant shall subrogate ~~its~~the interest of the claimant, if any, to the ~~commission~~commissioner in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the fund.

SECTION 78. AMENDMENT. Section 60-10-15 of the North Dakota Century Code is amended and reenacted as follows:

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

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

Renumber accordingly