

# WAREHOUSING AND DEPOSITS

## CHAPTER 546

### SENATE BILL NO. 2168

(Senators Cook, Tollefson)  
(Representatives R. Kelsch, Porter)

### LOST PROPERTY OWNERSHIP BY FINDER

AN ACT to amend and reenact section 60-01-34 of the North Dakota Century Code, relating to the assumption of lost property or money by a finder.

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

**SECTION 1. AMENDMENT.** Section 60-01-34 of the North Dakota Century Code is amended and reenacted as follows:

**60-01-34. Finder - Depositary for hire - Assumption of ownership by finder.** One who finds a thing lost is not bound to take charge of it but, if the person does so, the person is thenceforward a depositary for the owner with the rights and obligations of a depositary for hire. Notwithstanding chapters 36-22 and 47-30.1 or any other provision of law, an individual who finds lost personal property or money and places the property or money in the custody of a law enforcement agency is entitled to assume ownership of the property or money if the property or money is not claimed by its owner within two years after the property or money was placed in the custody of the law enforcement agency.

Approved March 26, 2003

Filed March 26, 2003

**CHAPTER 547****HOUSE BILL NO. 1157**

(Agriculture Committee)

(At the request of the Public Service Commission)

**WAREHOUSE AND GRAIN AND HAY BUYER  
LICENSING**

AN ACT to create and enact a new section to chapter 60-02 of the North Dakota Century Code, relating to licensed warehouse capacity and condominium storage; and to amend and reenact sections 60-02-07, 60-02-10.1, and 60-02-33, subsection 8 of section 60-02.1-01, sections 60-02.1-07 and 60-02.1-11, subsection 7 of section 60-02.1-14, sections 60-02.1-28, 60-02.1-29, and 60-02.1-32, and subsection 4 of section 60-03-01 of the North Dakota Century Code, relating to licensing of grain warehouses, grain buyers, and hay buyers.

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

**SECTION 1. AMENDMENT.** Section 60-02-07 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-07. Public warehouse license - How obtained - Fee - Financial statement.** An annual license must be obtained from the commission for each public warehouse in operation in this state. The license expires on July thirty-first of each year. An initial license application that becomes effective on or after June first does not expire until July thirty-first of the following calendar year. No license may describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described. The annual license fee for a public warehouse is three hundred dollars for a warehouse of a bushel capacity of two hundred thousand [7047.8 cubic meters] or less, four hundred fifty dollars for a warehouse of a bushel capacity of more than two hundred thousand and not more than five hundred thousand [7047.8 to not more than 17619.54 cubic meters], and five hundred fifty dollars for a warehouse of a bushel capacity of more than five hundred thousand [17619.54 cubic meters]. A license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee per warehouse. 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. Where two or more warehouses are operated under one license, the license fee is based upon the combined bushel capacity of the warehouses. If the commission employs fewer than two full-time equivalent warehouse inspectors, each annual fee under this section is reduced by one hundred dollars.

If required to obtain United States department of agriculture approval of the commission's warehouse inspection program, the commission may require that the applicant 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 2. 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 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 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.

**SECTION 3. AMENDMENT.** Section 60-02-33 of the North Dakota Century Code is amended and reenacted as follows:

**60-02-33. Delivery of grain - Demand terminates storage charge.** On the return and surrender of any receipt and the payment of all lawful charges, the grain represented therein shall be deliverable to the owner, and shall not be subject to any further charge for storage after demand for delivery shall have been made and proper facilities for receiving or shipping the same have been provided. The owner of the receipt shall order the receptacle in which the grain covered by the owner's receipt is to be transported, and the grain shall be delivered when the receptacle so ordered is in proper condition for loading and is placed at the warehouse. The licensee may not assess receiving or redelivery fees on the grain that is redelivered during a suspension, following a revocation, or when the owner of the grain is taking redelivery because the licensee is unable to pay for the grain.

**SECTION 4.** A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

**Licensed warehouse capacity and condominium storage.** Unless an entire warehouse facility is used for nonpublic purposes, all physically connected portions of the facility must be licensed in accordance with this chapter. The warehouseman shall issue receipt memoranda for all grain received. Facilities that are physically connected to the licensed warehouse may be sold under a condominium arrangement or leased to other entities for nonpublic use and sales and lease agreements must be based on the capacity of the bins involved and not on the number of bushels held in the space. The licensee shall provide contents insurance and bond coverage for the space. In case of licensee insolvency, the contents of the space must be considered an asset to the trust fund established under chapter 60-04 and owners and lessees are entitled to trust fund protection in a manner equal to all other valid grain receipt holders.

**SECTION 5. AMENDMENT.** Subsection 8 of section 60-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt, ~~storage~~, or sale of grain except when such memoranda was received as a result of a credit-sale contract.

**SECTION 6. 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 obtain an annual license from the commission. The license expires on July thirty-first of each year. An initial license application that becomes effective on or after June first does not expire until July thirty-first of the following calendar year. A facility-based grain buyer must 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 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. The annual license fee for a roving grain buyer is two hundred dollars; and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee.

If required to obtain United States department of agriculture approval of the commission's grain buyer inspection program, the commission 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 7. 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 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 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.

**SECTION 8. AMENDMENT.** Subsection 7 of section 60-02.1-14 of the North Dakota Century Code is amended and reenacted as follows:

7. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02.1-08. However, if the grain buyer has obtained bond coverage in addition to that required by section ~~60-02.1-15~~ 60-02.1-08 and the coverage extends to the benefit of credit-sale contracts, the grain buyer may state that fact in the credit-sale contract along with the extent of such coverage.

<sup>260</sup> **SECTION 9. AMENDMENT.** Section 60-02.1-28 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-28. Insolvency of grain buyer.** A licensee is insolvent when the licensee defaults in payment for grain purchased or marketed by the licensee or is

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<sup>260</sup> Section 60-02.1-28 was also amended by section 1 of House Bill No. 1197, chapter 548.

unable to make redelivery upon proper demand. The licensee may not assess receiving or redelivery fees on grain that is redelivered during a suspension, following a revocation, or when the owner of the grain is taking redelivery because the licensee is unable to pay for the grain.

<sup>261</sup> **SECTION 10. 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.** Upon the insolvency of any licensee roving grain buyer, 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 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 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.

<sup>262</sup> **SECTION 11. AMENDMENT.** Section 60-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-32. Notice to claimants.** Upon its appointment, the commission may take possession of relevant books and records of the licensee. ~~The~~ If the insolvency involves a roving grain buyer, 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. 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 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 12. AMENDMENT.** Subsection 4 of section 60-03-01 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>261</sup> Section 60-02.1-29 was also amended by section 2 of House Bill No. 1197, chapter 548.

<sup>262</sup> Section 60-02.1-32 was also amended by section 5 of House Bill No. 1197, chapter 548.

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. "Hay" means alfalfa, clover, and any other grain or grass that has been cut and stacked or baled for use as feed for livestock.

Approved March 18, 2003

Filed March 19, 2003

## CHAPTER 548

### HOUSE BILL NO. 1197

(Representatives Pollert, Mueller, Weisz)  
(Senators Erbele, Nichols, Urlacher)

## CREDIT-SALE CONTRACT INDEMNITY FUND

AN ACT to create and enact a new chapter to title 60 of the North Dakota Century Code, relating to the creation of a credit-sale contract indemnity fund; to amend and reenact sections 60-02.1-28, 60-02.1-29, 60-02.1-30, 60-02.1-31, 60-02.1-32, 60-02.1-33, and 60-02.1-34, subsection 3 of section 60-02.1-35, and sections 60-02.1-37, 60-04-02, and 60-04-03.1 of the North Dakota Century Code, relating to insolvencies of grain buyers and warehousemen; and to provide a penalty.

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

<sup>263</sup> **SECTION 1. AMENDMENT.** Section 60-02.1-28 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-28. Insolvency of grain buyer.** A licensee is insolvent when the licensee ~~defaults in~~ refuses, neglects, or is unable upon proper demand to make payment for grain purchased or marketed by the licensee.

<sup>264</sup> **SECTION 2. 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.** 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 60-02.1-30. Upon notice to the licensee as the court ~~shall prescribe~~ 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 ~~claimants~~ receipt holders 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 3. AMENDMENT.** Section 60-02.1-30 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>263</sup> Section 60-02.1-28 was also amended by section 9 of House Bill No. 1157, chapter 547.

<sup>264</sup> Section 60-02.1-29 was also amended by section 10 of House Bill No. 1157, chapter 547.

**60-02.1-30. Trust fund established.** Upon the insolvency of any licensee, a trust fund must be established for the benefit of ~~claimants~~ noncredit-sale receiptholders and to pay the costs incurred by the commission 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 is appointed trustee must be remitted to the commission and included in the trust fund.
3. The proceeds of insurance policies on destroyed grain.
4. 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.
5. The claim for relief, and proceeds therefrom, 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 4. AMENDMENT.** Section 60-02.1-31 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-31. 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~~ receiptholders, 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.

<sup>265</sup> **SECTION 5. AMENDMENT.** Section 60-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-32. Notice to ~~claimants~~ receiptholders.** 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~~ the holders of record of outstanding receipts disclosed by the licensee's records. The notice must require ~~claimants~~ outstanding receiptholders to file their claims with the commission along with the receipts or other evidence of the claims required by the commission. If a ~~claimant~~ an outstanding receiptholder fails to submit a claim within forty-five days after the last publication of the notice or a

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<sup>265</sup> Section 60-02.1-32 was also amended by section 11 of House Bill No. 1157, chapter 547.

longer time set by the commission, the commission is relieved of further duty in the administration of the insolvency on behalf of the ~~claimant~~ receiptholder and the ~~claimant~~ receiptholder may be barred from participation in the trust fund. ~~Claimants~~ Outstanding receiptholders are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

**SECTION 6. AMENDMENT.** Section 60-02.1-33 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-33. Remedy of ~~claimants~~ receiptholders.** No ~~claimant~~ receiptholder 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~~ receiptholder, except through the trustee, unless, upon demand of five or more ~~claimants~~ receiptholders, the commission fails or refuses to apply for its own appointment or unless the district court denies the application. ~~Provisions of this~~ This chapter ~~de~~ does not prohibit any ~~claimant~~ receiptholder, either individually or in conjunction with other ~~claimants~~ receiptholders, from pursuing concurrently any other remedy against the person or property of the licensee.

**SECTION 7. AMENDMENT.** Section 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

**60-02.1-34. Commission to marshall trust assets.** Upon its appointment, the commission shall marshall 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~~ 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 8. AMENDMENT.** Subsection 3 of section 60-02.1-35 of the North Dakota Century Code is amended and reenacted as follows:

3. Settle and compromise any action when it will be in the best interests of the ~~claimants~~ receiptholders.

**SECTION 9. 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 commission shall file with the court a report showing the amount and validity of each claim after recognizing ~~relevant~~ relevant:
- 1- a. ~~Liens~~ Relevant liens or pledges.
- 2- b. ~~Assignments~~ Relevant assignments.
- 3- c. ~~Deductions~~ Relevant deductions due to advances or offsets accrued in favor of the licensee.
- 4- d. In case of relevant 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.

2. 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.
3. 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~~ persons having claims filed with the commission.
4. 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.
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, and discharge of the commission from its trust.

**SECTION 10. AMENDMENT.** Section 60-04-02 of the North Dakota Century Code is amended and reenacted as follows:

**60-04-02. Insolvency of warehouseman.** ~~Whenever any warehouseman, by reason of the destruction of the person's warehouse or for any other cause, shall refuse, neglect, or be unable, upon proper demand, to redeem any receipt issued by the warehouseman, through redelivery or cash payment, such warehouseman shall be deemed to be insolvent within the meaning of this chapter~~ A licensee is insolvent when the licensee refuses, neglects, or is unable, upon proper demand, to redeem any receipt issued by the warehouseman, through redelivery or cash payment, such warehouseman shall be deemed to be insolvent within the meaning of this chapter make payment for grain purchased or marketed by the licensee or to make redelivery or payment for grain stored.

**SECTION 11. 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.** Upon the insolvency of any warehouseman, a trust fund shall be established for the benefit of noncredit-sale receiptholders of the insolvent warehouseman and to pay the costs incurred by the commission in the administration of this chapter. The trust fund must consist of the following:

1. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of such grain.
2. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the commission is appointed trustee must be remitted to the commission and included in the trust fund.
3. The proceeds of insurance policies upon grain destroyed in the elevator.

4. The claims for relief, and proceeds therefrom, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman.
5. The claim for relief, and proceeds therefrom, 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 12.** A new chapter to title 60 of the North Dakota Century Code is created and enacted as follows:

**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 commission no later than thirty days after each calendar quarter. The commission shall deposit the assessments received under this section in the credit-sale contract indemnity fund.

**Credit-sale contract indemnity fund - Creation - Continuing appropriation.** There is created in the state treasury the credit-sale contract indemnity fund. The fund and interest earned on the fund are appropriated to the public service commission on a continuing basis to be used exclusively to carry out the intent and purpose of this chapter.

**Credit-sale contract indemnity fund - Suspension of assessment.** When the credit-sale contract indemnity fund reaches a level of ten million dollars, the public service commission shall suspend collection of the assessment required by this chapter. If after suspension of collection the balance in the fund is less than five million dollars, the public service commission shall require collection of the assessment.

**Credit-sale contract indemnity fund - Eligibility for reimbursement.** A person is eligible to receive indemnity payments from the credit-sale contract indemnity fund if:

1. After August 1, 2003, the person sold grain to a licensed warehouse or a grain buyer in this state under the provisions of a credit-sale contract;
2. The licensed warehouse to which the person sold grain or the grain buyer to whom the person sold grain becomes insolvent; and
3. The licensed warehouse or the grain buyer, as a result of the insolvency, does not fully compensate the person in accordance with the credit-sale contract.

**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 commission serve as the trustee, the public service commission 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.

**Credit-sale contract indemnity fund - Reimbursement limit.** The amount payable to any eligible person from the credit-sale contract indemnity fund may not exceed the lesser of eighty percent of the amount owed to that eligible person in accordance with all of that person's unsatisfied credit-sale contracts or two hundred eighty thousand dollars.

**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 commission shall prorate the claims and pay the prorated amounts. As future assessments are collected, the public service commission shall continue to forward indemnity payments to each eligible person until the person receives the maximum amount payable in accordance with this chapter.

**Reimbursement for later insolvencies.** The public service commission 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.

**Credit-sale contract indemnity fund - Reimbursement for administrative expenses.** Any expense incurred by the public service commission in administering the credit-sale contract indemnity fund is reimbursable from the fund before any other claim for indemnity is paid.

**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 commission for deposit in the credit-sale contract indemnity fund is guilty of a class A misdemeanor.

**Revocation and suspension.** The commission may suspend or revoke the license of any licensee for cause upon notice and hearing for violation of this chapter.

**Cease and desist.** If a person engages in an activity or practice that is contrary to this chapter or rules adopted by the commission, the commission, upon its 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 commission. 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.

**Claims.** A claim concerning a grain buyer must be administered in a manner consistent with chapter 60-02.1. A claim concerning a state licensed grain warehouse must be administered in a manner consistent with chapter 60-04. A payment may not be made from the credit-sale contract indemnity fund for a claim based on losses resulting from the sale of grain to a person not licensed under

chapter 60-02, chapter 60-02.1, or the United States Warehouse Act [Pub. L. 106-472; 114 Stat. 2061; 7 U.S.C. 241 et seq.].

**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 commission 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 interest, if any, to the commission in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the fund.

**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 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.

Approved April 18, 2003  
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