

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1126

Introduced by

Agriculture Committee

(At the request of the Public Service Commission)

1 A BILL for an Act to amend and reenact sections 60-02-09, 60-02-17, 60-02-35, 60-02-38,
2 60-02-40, 60-02.1-08, 60-02.1-26, 60-02.1-28, 60-02.1-32, 60-02.1-35, 60-02.1-37, 60-02.1-38,
3 60-04-02, 60-04-04, 60-04-07, 60-04-09, 60-04-10, and 60-10-09 of the North Dakota Century
4 Code, relating to public warehouse and grain buyer licensing and insolvencies of public
5 warehouses and grain buyers; and to repeal sections 60-02-39 and 60-02.1-25, of the North
6 Dakota Century Code, relating to warehouse closures.

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

8 **SECTION 1. AMENDMENT.** Section 60-02-09 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **60-02-09. Bond filed by public warehouseman.**

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

- 13 1. Be in a sum not less than five thousand dollars for any one warehouse.
- 14 2. Be continuous, unless the corporate surety by certified mail notifies the licensee and
15 the commission that the surety bond will be canceled ninety days after receipt of the
16 notice of cancellation.
- 17 3. Run to the state of North Dakota for the benefit of all persons storing or selling grain in
18 ~~such~~that warehouse.
- 19 4. Be conditioned:
 - 20 a. For the faithful performance of the licensee's duties as a public warehouseman.
 - 21 b. For compliance with the provisions of law and the rules of the commission
22 relating to the storage and purchase of grain by such warehouseman.
- 23 5. Specify the location of each public warehouse intended to be covered by such bond.
- 24 6. Be for the specific purpose of:

- 1 a. Protecting the holders of outstanding receipts.
- 2 b. Covering the costs incurred by the commission in the administration of chapter
- 3 60-04 in the event of the licensee's insolvency.
- 4 7. Not accrue to the benefit of any person entering into a credit-sale contract with a
- 5 public warehouseman.
- 6 8. ~~In no event shall the~~The aggregate liability of the surety under a bond does not
- 7 accumulate for each successive annual license renewal period during which ~~such~~the
- 8 bond is in force but, for losses during any annual license renewal period, ~~shall be~~is
- 9 limited in the aggregate to the bond amount stated or changed by appropriate
- 10 endorsement or rider.

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

22 **SECTION 2. AMENDMENT.** Section 60-02-17 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery.**

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

27 This grain is received, insured, and stored subject to the laws and rules of the state of North
28 Dakota, the terms of this contract, and the charges and conditions stated herein and as filed
29 with the North Dakota public service commission. Upon surrender of this receipt and
30 payment or tender of all applicable charges, the amount, kind, and grade of grain identified
31 in this receipt will be delivered to the person named above or the person's order as rapidly

1 as due diligence, care, and prudence will permit. At the option of the holder of this receipt,
2 the amount, kind, and grade of grain for which this receipt is issued, upon demand, must be
3 delivered back to the holder at any terminal point customarily shipped to, or at the place
4 where received, upon the payment of any charges for receiving, handling, storage, and
5 insurance and in case of terminal delivery, the payment in addition to the above of the
6 regular freight charges on the gross amount called for by this ticket or in lieu thereof, a
7 receipt issued by a bonded warehouse or elevator company doing business at the terminal
8 point. ~~Nothing in this~~This receipt requires~~does not require~~ the delivery of the identical grain
9 specified herein, but an equal amount of grain of the same kind and grade must be
10 delivered.

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

17 **SECTION 3. AMENDMENT.** Section 60-02-35 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **60-02-35. Grain to be kept insured for benefit of owner by warehouseman.**

20 ~~No~~A public warehouseman license ~~may be issued to a public warehouseman~~is not effective
21 unless all grain in storage or on deposit in the warehouse is kept fully insured at the expense of
22 the warehouseman for the benefit of the owner at the current market value of the grain against
23 loss by fire, lightning, internal explosion, windstorm, cyclone, tornado, and such other risks of
24 direct physical loss as provided by the insurer in a policy approved by the insurance
25 commissioner. ~~No~~An insurance policy covering grain in a public warehouse may not be
26 transferred or assigned to any person for any purpose, except for grain that is not on
27 warehouse receipt or deposit. The insurance policy must be continuous and may only be
28 canceled in accordance with section 60-02-35.1.

29 **SECTION 4. AMENDMENT.** Section 60-02-38 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **60-02-38. Refund of license fee by commission.**

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

8 **SECTION 5. AMENDMENT.** Section 60-02-40 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **60-02-40. Transfer of warehouse - Redemption of receipts.**

11 Whenever a public warehouseman desires to transfer a warehouse, either by sale or lease
12 to any other individual, firm, or corporation, the warehouseman shall:

- 13 1. Notify the commission first of its intention to transfer the warehouse, giving the name
14 and address of the proposed lessee or purchaser.
- 15 2. Furnish a statement of all proper claims that may be filed or pending against the
16 warehouseman pertaining to the storage, inspection, and marketing of grain, together
17 with a statement of:
 - 18 a. The number of bushels [cubic meters] of grain of each kind and grade in store in
19 the warehouse;
 - 20 b. The number and amount of receipts outstanding; and
 - 21 c. The names and addresses of the receiptholders.
- 22 3. Serve notice by registered or certified mail, at least thirty days before the transfer,
23 upon all receiptholders having claims against the warehouse to call for delivery of the
24 grain covered by the receipts, and to pay all storage charges due, the warehouseman
25 in such case to make no charge for redelivery. The commission may waive the
26 thirty-day notice period upon receipt of written consent of all receiptholders.
- 27 4. Transfer all stored grain undelivered at the expiration of such thirty-day period to its
28 successor, if licensed, or to the nearest licensed warehouse for restorage, taking
29 receipts for the same in favor of the owner of the grain so transferred.
- 30 5. Surrender to the commission its license for cancellation and at such time the proposed
31 lessee or purchaser shall ~~apply~~file in due form for a new license and tender a new

1 bond for ~~approval~~review by the commission, whereupon, it first being duly satisfied
2 that all the outstanding receipts have been redeemed, or that the redemption thereof
3 has been provided for, the commission may ~~issue~~permit a new license to become
4 effective for the lessee or purchaser.

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

7 **SECTION 6. AMENDMENT.** Section 60-02.1-08 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **60-02.1-08. Bond filed by grain buyer.**

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

- 12 1. Be in a sum not less than five thousand dollars.
- 13 2. Be continuous, unless the corporate surety by certified mail notifies the licensee and
14 the commission that the surety bond will be canceled ninety days after receipt of the
15 notice of cancellation.
- 16 3. Run to the state of North Dakota for the benefit of all persons selling grain to or
17 through the grain buyer.
- 18 4. Be conditioned:
 - 19 a. For the faithful performance of the licensee's duties as a grain buyer.
 - 20 b. For compliance with the provisions of law and the rules of the commission
21 relating to the purchase of grain by such grain buyer.
- 22 5. For facility-based grain buyers, specify the location of each facility intended to be
23 covered by ~~such~~the bond.
- 24 6. Be for the specific purpose of:
 - 25 a. Protecting the sellers of grain.
 - 26 b. Covering the costs incurred by the commission in the administration of the
27 licensee's insolvency.
- 28 7. Not accrue to the benefit of any person entering into a credit-sale contract with a grain
29 buyer.
- 30 8. ~~In no event shall the~~The aggregate liability of the surety under a bond does not
31 accumulate for each successive annual license renewal period during which ~~such~~the

1 bond is in force but, for losses during any annual license renewal period, ~~shall be~~
2 limited in the aggregate to the bond amount stated or changed by appropriate
3 endorsement or rider.

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

13 **SECTION 7. AMENDMENT.** Section 60-02.1-26 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **60-02.1-26. Transfer of facility - Redemption of receipts.**

16 Whenever a facility-based grain buyer desires to transfer a facility, either by sale or lease to
17 any other individual, firm, or corporation, the grain buyer shall:

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

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

29 **SECTION 8. AMENDMENT.** Section 60-02.1-28 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **60-02.1-28. Insolvency of grain buyer.**

2 A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper written
3 demand, including electronic communications, to make payment for grain purchased or
4 marketed by the licensee or is unable to make redelivery upon proper written demand, including
5 electronic communications. The licensee may not assess receiving or redelivery fees on grain
6 that is redelivered during a suspension, following a revocation, or when the owner of the grain is
7 taking redelivery because the licensee is unable to pay for the grain.

8 **SECTION 9. AMENDMENT.** Section 60-02.1-32 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **60-02.1-32. Notice to receiptholders and credit-sale contract claimants.**

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

28 **SECTION 10. AMENDMENT.** Section 60-02.1-35 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **60-02.1-35. Power of commission to prosecute or compromise claims.**

31 The commission may:

- 1 1. Prosecute any action provided in sections 60-02.1-28 through 60-02.1-38 in any court
- 2 in this state or in any other state.
- 3 2. Appeal from any adverse judgment to the courts of last resort.
- 4 3. Settle and compromise any action when it will be in the best interests of the
- 5 receiptholders .
- 6 4. Settle and compromise any action when it is in the best interests of the credit-sale
- 7 contract claimants.
- 8 5. Upon payment of the amount of any settlement or of the full amount of any bond,
- 9 exonerate the person so paying from further liability growing out of the action.

10 **SECTION 11. AMENDMENT.** Section 60-02.1-37 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **60-02.1-37. Report of trustee to court - Approval - Distribution.**

- 13 1. Upon the receipt and evaluation of claims, the commission shall file with the court a
- 14 report showing the amount and validity of each claim after recognizing:
 - 15 a. Relevant liens or pledges.
 - 16 b. Relevant assignments.
 - 17 c. Relevant deductions due to advances or offsets accrued in favor of the licensee.
 - 18 d. In case of relevant cash claims or checks, the amount of the claim, ~~with interest~~
 - 19 ~~from the date of default at the weighted average prime rate charged by the Bank~~
 - 20 ~~of North Dakota.~~
 - 21 e. In case of a relevant credit-sale contract or noncredit-sale contract, the amount
 - 22 remaining to be paid based on the terms of the contract.
- 23 2. The report must also contain the proposed reimbursement to the commission for the
- 24 expenses of administering the insolvency, the proposed distribution of the trust fund
- 25 assets to receiptholders, less expenses incurred by the commission in the
- 26 administration of the insolvency, and the proposed credit-sale contract indemnity fund
- 27 payments to credit-sale contract claimants. If the trust fund is insufficient to redeem all
- 28 receiptholder claims in full, the report should list the funds as prorated.
- 29 3. The court shall set a hearing and the appropriate notice for interested persons to
- 30 show cause why the commission's report should not be approved and distribution of
- 31 the trust fund be made as proposed. Copies of the report and notice of hearing must

1 be served by the commission by certified mail upon the licensee and the surety and by
2 ordinary mail upon all persons having claims filed with the commission.

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

7 5. Following the hearing, the court shall approve or modify the report and issue an order
8 directing payment of the necessary bond proceeds, distribution of the trust fund,
9 payments from the credit-sale contract indemnity fund, and discharge of the
10 commission from its trust.

11 **SECTION 12. AMENDMENT.** Section 60-02.1-38 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **60-02.1-38. Filing fees and court costs - Expenses.**

14 The commission may not be required to pay any filing fee or other court costs or
15 disbursements. The attorney general may appoint outside legal counsel to assist the
16 commission in the prosecution of the action and the cost of employing outside counsel ~~may~~must
17 be paid from the trust fund and the credit-sale contract indemnity fund as appropriate. All other
18 necessary expenses incurred by the commission in carrying out the provisions of this chapter,
19 including adequate insurance to protect the commission, its employees, and others engaged in
20 carrying out the provisions of sections 60-02.1-28 through 60-02.1-38, ~~may~~must be
21 ~~paid~~reimbursed to the commission from the trust fund and credit-sale contract indemnity funds
22 as appropriate.

23 **SECTION 13. AMENDMENT.** Section 60-04-02 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **60-04-02. Insolvency of warehouseman.**

26 A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper written
27 demand, including electronic communication, to make payment for grain purchased or marketed
28 by the licensee or to make redelivery or payment for grain stored.

29 **SECTION 14. AMENDMENT.** Section 60-04-04 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **60-04-04. Notice to receiptholders and credit-sale contract claimants.**

2 Upon its appointment by the district court, the commission may take possession of relevant
3 books and records of the warehouseman. The commission shall cause a notice of its
4 appointment to be published once each week for two consecutive weeks in a newspaper in the
5 county in which the warehouse is located and may notify by ordinary mail the holders of record
6 of outstanding receipts and those who are potential credit-sale contract claimants, as shown by
7 the warehouseman's records. The notices must require outstanding receiptholders and credit-
8 sale contract claimants to file their claims against the warehouseman with the commission
9 along with the receipts, contracts, or ~~such~~any other evidence of the claims as required by the
10 commission. If an outstanding receiptholder or credit-sale contract claimant fails to submit a
11 claim within forty-five days after the last publication of the notice or ~~such~~a longer time as
12 prescribed by the commission, the commission is relieved of further duty or action under this
13 chapter on behalf of the receiptholder or credit-sale contract claimant and the receiptholder or
14 credit-sale contract claimant may be barred from ~~participation in the trust fund~~payment for any
15 amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the
16 insolvency action unless admitted by the court upon a motion for intervention.

17 **SECTION 15. AMENDMENT.** Section 60-04-07 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **60-04-07. Power of commission to prosecute or compromise claims.**

20 The commission ~~shall have power~~may:

- 21 1. ~~To prosecute~~Prosecute any action provided in this chapter in any court in this state or
22 in any other state.
- 23 2. ~~To appeal~~Appeal from any adverse judgment to the courts of last resort.
- 24 3. ~~To settle~~Settle and compromise any action whenever, ~~in its judgment, this will be for it~~
25 is in the best interests of the receiptholders .
- 26 4. Settle and compromise any action when it is in the best interests of the credit-sale
27 contract claimants.
- 28 5. Upon payment of the amount of ~~such~~the compromise or of the full amount of any
29 insurance policy, bond, or conversion claim, ~~to~~ exonerate the person so compromising
30 or paying in full from further liability growing out of the action.

1 **SECTION 16. AMENDMENT.** Section 60-04-09 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **60-04-09. Report of trustee to court - Approval - Distribution.**

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

- 6 1. Any proper liens or pledges thereon.
- 7 2. Assignments thereof.
- 8 3. Deductions therefrom by reason of advances or offsets accrued in favor of the
9 warehouseman.
- 10 4. In case of cash claims or checks, the amount thereof, ~~with interest at the weighted-~~
11 ~~average prime rate charged by the Bank of North Dakota since the date of the~~
12 ~~insolvency.~~
- 13 5. In the case of scale tickets or warehouse receipts, the amount thereof based upon the
14 market price prevailing on the date of the ~~insolvency, with interest at the weighted-~~
15 ~~average prime rate charged by the Bank of North Dakota since the date of the~~
16 ~~insolvency~~commission first received a copy of the written demand required by section
17 60-04-02.
- 18 6. In the case of a credit-sale or noncredit-sale contract, the amount remaining to be paid
19 based on the terms of the contract.

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

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

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

5 Following hearing, the court shall approve or modify the report and issue an order directing
6 payment of the necessary bond proceeds, distribution of the trust fund, payments from the
7 credit-sale contract indemnity fund, and discharge of the commission from its trust.

8 **SECTION 17. AMENDMENT.** Section 60-04-10 of the North Dakota Century Code is
9 amended and reenacted as follows:

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

11 ~~Upon the application to the district court as provided in this chapter, or in~~In any action in a
12 state court in this state, the commission shall not be required to pay any filing fee or other court
13 costs or disbursements if the fees accrue to the county or to the state. The attorney general
14 may employ outside legal services to assist the commission in the prosecution of such action as
15 in the attorney general's judgment may be necessary and ~~may~~the commission shall deduct the
16 ~~expense~~expenses of the same from the trust fund and the credit-sale contract indemnity fund as
17 appropriate. All other necessary expenses incurred by the commission in carrying out the
18 provisions of this chapter, including adequate insurance to protect the commission, its
19 employees, and others engaged in carrying out the provisions of this chapter, ~~may~~must be
20 ~~deducted~~reimbursed to the commission from the trust fund and credit-sale indemnity funds as
21 appropriate.

22 **SECTION 18. AMENDMENT.** Section 60-10-09 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **60-10-09. Credit-sale contract indemnity fund - Reimbursement for administrative**
25 **expenses.**

26 Any expense incurred by the public service commission in administering the credit-sale
27 contract indemnity fund ~~is reimbursable~~must be reimbursed from the fund before any other
28 claim for indemnity is paid.

29 **SECTION 19. REPEAL.** Sections 60-02-39 and 60-02.1-25 of the North Dakota Century
30 Code are repealed.