

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2346

Introduced by

Senators Wanzek, Dotzenrod, Klein, Luick

Representatives D. Johnson, Kempenich

1 A BILL for an Act to create and enact a new section to chapter 60-02, a new section to chapter
2 60-02.1, and a new section to chapter 60-10 of the North Dakota Century Code, relating to
3 records confidentiality for warehousemen and grain buyers and assessment refunds for grain
4 producers; to amend and reenact subsection 5 of section 60-02-07 and sections 60-02-11,
5 60-02.1-07, 60-02.1-37, 60-02.1-38, 60-04-09, 60-04-10, 60-10-01, 60-10-02, 60-10-03,
6 60-10-04, 60-10-05, 60-10-06, 60-10-07, 60-10-09, 60-10-10, 60-10-13, 60-10-14, and 60-10-15
7 of the North Dakota Century Code, relating to warehouse and grain buyer licensing, scale ticket
8 conversions, claims distributions, assessments and refunds, subrogation, and unlicensed grain
9 buyers; to provide a penalty; to provide a continuing appropriation; and to provide for reports.

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

11 **SECTION 1. AMENDMENT.** Subsection 5 of section 60-02-07 of the North Dakota Century
12 Code is amended and reenacted as follows:

13 5. ~~If required to obtain United States department of agriculture approval of the~~
14 ~~commission's warehouse inspection program, the~~The commission may require that
15 the applicant to submit a current financial statement prepared in accordance with
16 generally accepted accounting principles. A financial statement furnished under this
17 subsection is a confidential trade secret and is not a public record.

18 **SECTION 2. AMENDMENT.** Section 60-02-11 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **60-02-11. Scale ticket - Contents - Conversion.**

21 1. a. Every public warehouseman, upon receiving grain into the warehouse, shall
22 issue a uniform scale ticket for each load of grain received. The scale tickets
23 must be numbered consecutively, and one copy of each ticket must be retained

- 1 and remain as a permanent record. The original ticket must be delivered to the
2 person from whom the grain is received, upon receipt of each load of grain.
- 3 b. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale
4 contracts, or warehouse receipts, within ~~forty-five~~thirty days after the grain is
5 delivered to the warehouse, unless:
- 6 (1) The person to whom the scale ticket is issued signs a form waiving all rights
7 to trust benefits under section 60-04-03.1;
- 8 (2) The form identifies by number each scale ticket to which the waiver applies;
9 and
- 10 (3) The form is signed by the warehouseman.
- 11 c. The commission shall prepare the waiver form required by subdivision b and
12 make the form available to each warehouse.
- 13 d. The warehouseman shall keep one copy of the signed waiver form with the
14 records of the warehouse, provide one copy to the person who was issued the
15 scale ticket and signed the form, and file one copy with the commission.
- 16 e. If a warehouseman becomes insolvent under chapter 60-04, a claimant who
17 failed to convert the claimant's grain or sign a waiver under subdivision b, and
18 files a claim pursuant to chapter 60-04 must be treated as a credit-sale contract
19 claimant.
- 20 2. Nothing in this chapter requires a warehouseman to receive grain for storage. A
21 warehouseman shall publish and post, in a conspicuous place in the warehouse, a
22 publication identifying whether storage will be available to patrons or whether grain will
23 be accepted via cash or a credit-sale contract arrangement.

24 **SECTION 3.** A new section to chapter 60-02 of the North Dakota Century Code is created
25 and enacted as follows:

26 **Release of records - Confidentiality.**

- 27 1. As a condition of licensure under section 60-02-07, an applicant shall agree to provide
28 to the commission, upon request, any financial record the commission deems relevant
29 for purposes related to:
- 30 a. The issuance or renewal of a public warehouse license; or
- 31 b. An investigation after issuance or renewal of a public warehouse license.

- 1 2. As a condition of licensure, an applicant shall file a records release with the
2 commission, authorizing the commission to obtain from any source any financial
3 record the commission deems relevant for purposes related to:
4 a. The issuance or renewal of a public warehouse license; or
5 b. An investigation after issuance or renewal of a public warehouse license.
6 3. Any information obtained by the commission under this section is confidential and may
7 be provided only:
8 a. To federal authorities in accordance with federal law;
9 b. To the attorney general, state agencies, and law enforcement agencies, for use in
10 the pursuit of official duties; and
11 c. As directed by an order of a court pursuant to a showing of good cause.

12 **SECTION 4. AMENDMENT.** Section 60-02.1-07 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement.**

15 Grain buyers must obtain an annual license from the commission. Except as provided in
16 this section, each license expires on July thirty-first of each year. When a licensee's initial
17 license is issued effective after May thirty-first, ~~that~~the license expires on July thirty-first of the
18 following year. A facility-based grain buyer must obtain a license for each receiving location
19 operated in the state. If a grain buyer operates two or more facilities in the same city or siding,
20 in conjunction with each other and with the same working force, ~~and where~~ but one set of books
21 and records is kept for all such facilities, and scale tickets and checks of but one series are
22 issued for the grain, purchased, only one license is required for the operation of all such
23 facilities. The annual license fee for a facility-based grain buyer is three hundred dollars and a
24 license renewal application that is received after July fifteenth must be assessed an additional
25 one hundred dollar fee per receiving location.

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

1 **SECTION 5. AMENDMENT.** Section 60-02.1-37 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **60-02.1-37. Report of trustee to court - Approval - Distribution.**

- 4 1. Upon the receipt and evaluation of claims, the commission shall file with the court a
5 report showing the amount and validity of each claim after recognizing:
- 6 a. Relevant liens or pledges.
 - 7 b. Relevant assignments.
 - 8 c. Relevant deductions due to advances or offsets accrued in favor of the licensee.
 - 9 d. In case of relevant cash claims or checks, the amount of the claim.
 - 10 e. In case of a relevant credit-sale contract or noncredit-sale contract, the amount
11 remaining to be paid based on the terms of the contract.
- 12 2. The report must also contain the proposed reimbursement to the commission for the
13 expenses of administering the insolvency, the proposed distribution of the trust fund
14 assets to receiptholders, less expenses incurred by the commission in the
15 administration of the insolvency, and the proposed ~~credit-sale contract~~grain indemnity
16 fund payments to credit-sale contract claimants. If the trust fund is insufficient to
17 redeem all receiptholder claims in full, the report should list the funds as prorated.
- 18 3. The court shall set a hearing and the appropriate notice for interested persons to show
19 cause why the commission's report should not be approved and distribution of the
20 trust fund be made as proposed. Copies of the report and notice of hearing must be
21 served by the commission by certified mail upon the licensee and the surety and by
22 ordinary mail upon all persons having claims filed with the commission.
- 23 4. Any aggrieved person having an objection to the commission's report shall file the
24 objection with the court and serve copies on the commission, the licensee, and the
25 surety at least twenty days before the hearing. Failure to file and serve objections in
26 the time set is a waiver of the objection.
- 27 5. Following the hearing, the court shall approve or modify the report and issue an order
28 directing payment of the necessary bond proceeds, distribution of the trust fund,
29 payments from the ~~credit-sale contract~~grain indemnity fund, and discharge of the
30 commission from its trust.

- 1 6. If the trust fund is insufficient to redeem all receiptholder claims in full, a receiptholder
2 is eligible to receive reimbursement of the remaining amount from the grain indemnity
3 fund, subject to the limitations under section 60-10-06.

4 **SECTION 6. AMENDMENT.** Section 60-02.1-38 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **60-02.1-38. Filing fees and court costs - Expenses.**

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

16 **SECTION 7.** A new section to chapter 60-02.1 of the North Dakota Century Code is created
17 and enacted as follows:

18 **Release of records - Confidentiality.**

- 19 1. As a condition of licensure under section 60-02.1-07, an applicant shall agree to
20 provide to the commission, upon request, any financial record the commission deems
21 relevant for purposes related to:
22 a. The issuance or renewal of a grain buyer license; or
23 b. An investigation after issuance or renewal of a grain buyer license.
24 2. As a condition of licensure, an applicant shall file a records release with the
25 commission, authorizing the commission to obtain from any source any financial
26 record the commission deems relevant for purposes related to:
27 a. The issuance or renewal of a grain buyer license; or
28 b. An investigation after issuance or renewal of a grain buyer license.
29 3. Any information obtained by the commission under this section is confidential and may
30 be provided only:
31 a. To federal authorities in accordance with federal law;

- 1 b. To the attorney general, state agencies, and law enforcement agencies for use in
2 the pursuit of official duties; and
3 c. As directed by an order of a court pursuant to a showing of good cause.

4 **SECTION 8. AMENDMENT.** Section 60-04-09 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **60-04-09. Report of trustee to court - Approval - Distribution.**

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

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

19 The report must also contain the proposed reimbursement to the commission for the
20 expenses of administering the insolvency, a proposed distribution of the trust fund assets, less
21 expenses incurred by the commission in the administration of this chapter, and the proposed
22 ~~credit-sale contract~~ grain indemnity fund payments to credit-sale contract claimants as their
23 interests are determined. If the trust fund is insufficient to redeem all receiptholder claims in full,
24 the fund must be shown prorated in the report in the manner the commission deems fair and
25 equitable. If the trust fund is insufficient to redeem all receiptholder claims in full, a receiptholder
26 is eligible to receive reimbursement of the remaining amount from the grain producers
27 indemnity fund, subject to the limitations under section 60-10-06.

28 The court shall set a hearing and the appropriate notice for interested persons to show
29 cause why the commission's report should not be approved and ~~credit-sale contract~~ grain
30 indemnity fund payments and distribution of the trust fund be made as proposed, and payments
31 from the credit-sale contracts be made as proposed. Copies of the report and notice of hearing

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

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

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

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

12 **60-04-10. Filing fees and court costs - Expenses.**

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

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

25 **60-10-01. ~~Credit-sale contracts~~ - Assessment on grain - Submission of assessment.**

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

1 quarter. The commission shall deposit the assessments received under this section in the
2 ~~credit-sale-contract~~grain indemnity fund.

3 **SECTION 11. AMENDMENT.** Section 60-10-02 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **60-10-02. ~~Credit-sale-contract~~Grain indemnity fund - Creation - Continuing**
6 **appropriation.**

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

13 **SECTION 12. AMENDMENT.** Section 60-10-03 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **60-10-03. ~~Credit-sale-contract~~Grain indemnity fund - Suspension of assessment.**

16 ~~At the end of the calendar quarter~~On the thirtieth day of June in years in which the
17 ~~credit-sale-contract~~grain indemnity fund reaches a level of six million dollars by March
18 thirty-first, the public service commission shall suspend collection of the assessment required
19 by this chapter. If after suspension of collection, in years in which the balance in the fund is less
20 than three million dollars by March thirty-first, the public service commission shall require
21 collection of the assessment to resume on June thirtieth.

22 **SECTION 13. AMENDMENT.** Section 60-10-04 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **60-10-04. ~~Credit-sale-contract~~Grain indemnity fund - Eligibility for reimbursement.**

25 A person is eligible to receive indemnity payments from the ~~credit-sale-contract~~grain
26 indemnity fund if:

- 27 1. After August 1, 2003, the person sold grain to a licensed warehouse or a grain buyer
28 in this state under the provisions of a credit-sale contract;
- 29 2. After August 1, 2019, the person delivered or sold grain to a licensed warehouse or a
30 grain buyer in the state;

1 3. The licensed warehouse to which the person sold grain or the grain buyer to whom the
2 person sold grain becomes insolvent; and

3 ~~3.4.~~ The licensed warehouse or the grain buyer, as a result of the insolvency, does not fully
4 compensate the person in accordance with the credit-sale contract, noncredit-sale
5 contract, sale, or storage contract.

6 **SECTION 14. AMENDMENT.** Section 60-10-05 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **60-10-05. ~~Credit-sale contract~~Grain indemnity fund - Availability of money.**

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

15 **SECTION 15. AMENDMENT.** Section 60-10-06 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **60-10-06. ~~Credit-sale contract~~Grain indemnity fund - Reimbursement limit.**

18 The amount payable to any eligible person from the ~~credit-sale contract~~grain indemnity fund
19 for each insolvency may not exceed the lesser of eighty percent of the amount owed to that
20 eligible person in accordance with all of that person's unsatisfied credit-sale contracts, storage
21 contracts, noncredit-sale contracts, or sales or two hundred eighty thousand dollars.

22 **SECTION 16. AMENDMENT.** Section 60-10-07 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **60-10-07. ~~Credit-sale contract~~Grain indemnity fund - Prorated claims.**

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

30 **SECTION 17. AMENDMENT.** Section 60-10-09 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **60-10-09. ~~Credit-sale contract~~Grain indemnity fund - Reimbursement for**
2 **administrative expenses.**

3 Any expense incurred by the public service commission in administering the ~~credit-sale-~~
4 ~~contract~~grain indemnity must be reimbursed from the fund before any other claim for indemnity
5 is paid.

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

8 **60-10-10. ~~Credit-sale contract~~Grain indemnity fund assessment - Failure to collect**
9 **assessment - Penalty.**

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

14 **SECTION 19. AMENDMENT.** Section 60-10-13 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **60-10-13. Claims.**

17 A claim concerning a grain buyer must be administered in a manner consistent with chapter
18 60-02.1. A claim concerning a state licensed grain warehouse must be administered in a
19 manner consistent with chapter 60-04. A payment may not be made from the ~~credit-sale-~~
20 ~~contract~~grain indemnity fund for a claim based on losses resulting from the sale of grain to a
21 person not licensed under chapter 60-02, chapter 60-02.1, or the United States Warehouse Act
22 [Pub. L. 106-472; 114 Stat. 2061; 7 U.S.C. 241 et seq.].

23 **SECTION 20. AMENDMENT.** Section 60-10-14 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **60-10-14. Subrogation.**

26 Money paid from the ~~credit-sale contract~~grain indemnity fund in satisfaction of a valid claim
27 constitutes a debt obligation of the person against whom the claim was made. The commission
28 may take action on behalf of the fund against a person to recover the amount of payment made,
29 plus costs and attorney's fees. Any recovery for reimbursement to the fund must include interest
30 computed at the weight average prime rate charged by the Bank of North Dakota. Upon
31 payment of a claim from the ~~credit-sale contract~~grain indemnity fund, the claimant shall

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

3 **SECTION 21. AMENDMENT.** Section 60-10-15 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **60-10-15. Unlicensed facility-based grain buyer.**

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

14 **SECTION 22.** A new section to chapter 60-10 of the North Dakota Century Code is created
15 and enacted as follows:

16 **Refund of assessment - Form.**

- 17 1. To receive a refund of any assessment paid in accordance with this chapter, a grain
18 producer shall submit to the commission a written request for a refund application
19 within one year after the date of the assessment or final settlement.
- 20 2. The producer shall complete the refund application and return the application to the
21 commission, together with a record of the assessment collected, within ninety days
22 after the date of the request for the refund application. The commission shall refund to
23 the producer the net amount of the assessment collected from the producer.
- 24 3. If a request for a refund is not submitted to the commission within the prescribed time
25 period, the producer is presumed to have agreed to the assessment.
- 26 4. A producer who receives a refund of an assessment under this section waives all
27 rights to protection under the grain indemnity fund, unless the producer applies for and
28 is granted reinstatement, as determined by the commission. An applicant for
29 reinstatement must pay back all previous refund amounts to the commission to be
30 considered for reinstatement.

- 1 5. A producer who receives a refund of an assessment under this section will continue to
2 be assessed on each subsequent sale, pursuant to section 60-10-01. A producer who
3 received a refund of an assessment under this section, but who did not request a
4 refund of the assessment amount on subsequent sales, may not receive protection
5 under the grain indemnity fund, unless the producer applies for and is granted
6 reinstatement under subsection 4.