

FISCAL NOTE
Requested by Legislative Council
04/24/2019

Amendment to: Engrossed SB 2346

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$43,600	\$0	\$43,600	\$0
Expenditures	\$0	\$0	\$486,465	\$0	\$486,465	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill transfers the statutory authority over grain, grain buyers, warehousing, deposits, warehousemen from the Public Service Commission to the agriculture commissioner.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The agriculture commissioner's budget bill (SB 2009) includes the appropriation for the transfer of the the program referenced in Section 2A. Specific details of the appropriation are contained in Section 3C.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The revenue projection accounts for the following license fee changes and additions:

- 61 warehouse facilities under 250,000 bushels: \$6,100
- 52 warehouse facilities between 250,000 to 500,000 bushels: \$5,200
- 112 warehouse facilities over 500,000 bushels: \$22,400
- 99 roving grain buyers: \$9,900

- TOTAL: \$43,600

All revenue will be deposited in the general fund.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditures match the appropriations as described in Part C below.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The appropriation for transfer of the grain warehouse and license inspection program from the Public Service Commission to the agriculture commissioner is included in the SB 2009. The appropriation includes the following:

- Salaries and Wages: \$728,499
- Operating: \$125,000
- TOTAL: \$853,499

The Public Service Commission indicated that the program expenditures for the 17-19 biennium are \$367,034 for salaries and operating for 1.75 FTEs. Based on the Public Service Commission data, the fiscal impact will be \$486,465.

Name: Junkert/Baumiller

Agency: Agriculture

Telephone: 701-328-2231

Date Prepared: 04/09/2019

FISCAL NOTE
Requested by Legislative Council
04/08/2019

Amendment to: SB 2346

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$83,200	\$0	\$83,200	\$0
Expenditures	\$0	\$0	\$486,465	\$0	\$486,465	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill transfers the statutory authority over grain, grain buyers, warehousing, deposits, warehousemen from the Public Service Commission to the agriculture commissioner.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The agriculture commissioner's budget bill (SB 2009) includes the appropriation for the transfer of the the program referenced in Section 2A. Specific details of the appropriation are contained in Section 3C.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The revenue projection accounts for the following license fee changes and additions:

- 102 warehouse facilities under 250,000 bushels: \$10,200
- 69 warehouse facilities between 250,000 to 500,000 bushels: \$6,900
- 241 warehouse facilities over 500,000 bushels: \$48,200
- 99 roving grain buyers: \$9,900
- 15 cash grain brokers: \$3,000
- 25 grain processors: \$5,000
- TOTAL: \$83,200

All revenue will be deposited in the general fund.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditures match the appropriations as described in Part C below.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The appropriation for transfer of the grain warehouse and license inspection program from the Public Service Commission to the agriculture commissioner is included in the SB 2009. The appropriation includes the following:

- Salaries and Wages: \$728,499
- Operating: \$125,000
- TOTAL: \$853,499

The Public Service Commission indicated that the program expenditures for the 17-19 biennium are \$367,034 for salaries and operating for 1.75 FTEs. Based on the Public Service Commission data, the fiscal impact will be \$486,465.

Name: Junkert/Baumiller

Agency: Agriculture

Telephone: 701-328-2231

Date Prepared: 04/09/2019

FISCAL NOTE
Requested by Legislative Council
02/08/2019

Amendment to: SB 2346

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$6,200,000	\$0	\$6,200,000
Expenditures	\$0	\$0	\$294,281	\$0	\$294,281	\$0
Appropriations	\$0	\$0	\$294,281	\$0	\$294,281	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Revises indemnity fund assessments to a lower rate and applies to all transactions, under certain conditions; requires financial statements of license applicants and authorizes the commission to require other financial documents when needed, and provides disclosure protection for those filings.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The current fund assessment is suspended. Under the bill, when assessment is reinstated, it will be for all sales, at a lower rate. The credit sale contract indemnity fund will be renamed, and all assessments will be deposited into this same special fund. This will result in revenue to the fund once it is reinstated.

The bill's specific requirement for financial statements from applicants, the specific authority given the commission to obtain financial documents when necessary, and the specific protection for these documents from open records disclosure permit the commission to conduct more robust financial reviews of licensees at the time of application and at whatever other time needed. To implement this, the commission will request one additional FTE for the program's inspection staff, and associated salary and operating appropriations for that FTE, plus fully funding the existing inspection staff FTE that is currently funded only at the 3/4 level. This will increase expenditures and appropriations for the upcoming biennium and the following biennium.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The current fund assessment is suspended. Under the bill, when assessment is reinstated, it will be for all sales, at a lower rate. The credit sale contract indemnity fund will be renamed, and all assessments will be deposited into this same special fund. This will result in revenue to the fund once it is reinstated.

There is no way to predict when the assessment will reach the statutory minimum causing the assessments to be reinstated. The fund balance is currently approximately 4,470,000. The revenue numbers provided assume that the

assessment will resume and be applied to all transactions at the beginning of the biennium, but there is really no way to accurately predict when the fund will be reinstated, how much it will be used, or when assessments will be suspended again.

The revised proposed new assessment is 1/20th of 1% of the value of all grain sold. A three year average of all jurisdictional grain sold in North Dakota in 2015 through 2017 was \$6.2 billion. 1/20th of 1% of \$6.2 billion is \$3.1 million. Biennial collections, to be deposited into the indemnity fund, are therefore estimated at \$6.2 million. This estimate is dependent on grain values and sales being comparable to the three-year average. The fiscal note shows the same estimate for each biennium, although this, too, depends on grain values and trade volume.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The bill's specific requirement for financial statements from applicants, the specific authority given the commission to obtain financial documents when necessary, and the specific protection for these documents from open records disclosure permit the commission to conduct more robust financial reviews of licensees at the time of application and at whatever other time needed. To implement this, the commission will request one additional FTE for the program's inspection staff, and associated salary and operating appropriations for that FTE, plus fully funding the existing inspection staff FTE that is currently funded only at the 3/4 level. This will increase expenditures and appropriations for the upcoming biennium and the following biennium.

Estimated expenditures for a biennium for 1.25 additional inspector FTEs are \$245,281 in salaries and benefits, and \$49,000 in operating funds. This results in a total estimated expenditure impact of \$294,281 for the 2019-2021 biennium. The same number is used for the 2021-2022 biennium, as the only additional expenditures for that biennium would be general salary increases and increases in state travel costs, which are unknown at this time.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Increase in appropriations will be necessary regarding the expenditures noted in Part B.

The bill's specific requirement for financial statements from applicants, the specific authority given the commission to obtain financial documents when necessary, and the specific protection for these documents from open records disclosure permit the commission to conduct more robust financial reviews of licensees at the time of application and at whatever other time needed. To implement this, the commission will request one additional FTE for the program's inspection staff, and associated salary and operating appropriations for that FTE, plus fully funding the existing inspection staff FTE that is currently funded only at the 3/4 level. This will increase expenditures and appropriations for the upcoming biennium and the following biennium.

Appropriation will be necessary to fund the estimated expenditures for a biennium for 1.25 additional inspector FTEs are \$245,281 in salaries and benefits, and \$49,000 in operating funds. This results in a total estimated expenditure impact of \$294,281 for the 2019-2021 biennium. The same number is used for the 2021-2022 biennium, as the only additional expenditures for that biennium would be general salary increases and increases in state travel costs, which are unknown at this time. Increased appropriation of \$294,281 would be required.

Name: Illona Jeffcoat-Sacco

Agency: PSC

Telephone: 701-328-2407

Date Prepared: 02/11/2019

FISCAL NOTE
Requested by Legislative Council
01/21/2019

Bill/Resolution No.: SB 2346

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$12,400,000	\$0	\$12,400,000
Expenditures	\$0	\$0	\$294,281	\$0	\$294,281	\$0
Appropriations	\$0	\$0	\$294,281	\$0	\$294,281	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Reinstates indemnity fund assessments (up to a certain level) at a lower rate and applies to all transactions, requires financial statements of license applicants and authorizes the commission to require other financial documents when needed, and provides disclosure protection for those filings.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The current fund assessment is suspended. Under the bill, assessment will be reinstated for credit sale contract sales, at a lower rate, and initiated for all other sales, at the same lower rate. The credit sale contract indemnity fund will be renamed, and all assessments will be deposited into this same special fund. This will result in revenue to the fund.

The bill's specific requirement for financial statements from applicants, the specific authority given the commission to obtain financial documents when necessary, and the specific protection for these documents from open records disclosure permit the commission to conduct more robust financial reviews of licensees at the time of application and at whatever other time needed. To implement this, the commission will request one additional FTE for the program's inspection staff, and associated salary and operating appropriations for that FTE, plus fully funding the existing inspection staff FTE that is currently funded only at the 3/4 level. This will increase expenditures and appropriations for the upcoming biennium and the following biennium.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The assessment will be reinstated for credit sale contract sales, at a lower rate, and initiated for all other sales, at the same lower rate. The credit sale contract indemnity fund will be renamed, and all assessments will be deposited into this special fund. This will result in revenue to the fund.

The proposed new assessment is 1/10th of 1% of the value of all grain sold. An amendment will likely be proposed

to include stored grain in the assessment, so storage claimants can participate in the event of an insolvency. A three year average of all jurisdictional grain sold in North Dakota in 2015 through 2017 was \$6.2 billion. 1/10th of 1% of \$6.2 billion is \$6.2 million. Biennial collections, to be deposited into the indemnity fund, are therefore estimated at \$12.4 million. This estimate is dependent on grain values and sales being comparable to the three-year average. The fiscal note shows the same estimate for each biennium, although this, too, depends on grain values and trade volume.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The bill's specific requirement for financial statements from applicants, the specific authority given the commission to obtain financial documents when necessary, and the specific protection for these documents from open records disclosure permit the commission to conduct more robust financial reviews of licensees at the time of application and at whatever other time needed. To implement this, the commission will request one additional FTE for the program's inspection staff, and associated salary and operating appropriations for that FTE, plus fully funding the existing inspection staff FTE that is currently funded only at the 3/4 level. This will increase expenditures and appropriations for the upcoming biennium and the following biennium.

Estimated expenditures for a biennium for 1.25 additional inspector FTEs are \$245,281 in salaries and benefits, and \$49,000 in operating funds. This results in a total estimated expenditure impact of \$294,281 for the 2019-2021 biennium. The same number is used for the 2021-2022 biennium, as the only additional expenditures for that biennium would be general salary increases and increases in state travel costs, which are unknown at this time.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Increase in appropriations will be necessary regarding the expenditures noted in Part B.

The bill's specific requirement for financial statements from applicants, the specific authority given the commission to obtain financial documents when necessary, and the specific protection for these documents from open records disclosure permit the commission to conduct more robust financial reviews of licensees at the time of application and at whatever other time needed. To implement this, the commission will request one additional FTE for the program's inspection staff, and associated salary and operating appropriations for that FTE, plus fully funding the existing inspection staff FTE that is currently funded only at the 3/4 level. This will increase expenditures and appropriations for the upcoming biennium and the following biennium.

Appropriation will be necessary to fund the estimated expenditures for a biennium for 1.25 additional inspector FTEs are \$245,281 in salaries and benefits, and \$49,000 in operating funds. This results in a total estimated expenditure impact of \$294,281 for the 2019-2021 biennium. The same number is used for the 2021-2022 biennium, as the only additional expenditures for that biennium would be general salary increases and increases in state travel costs, which are unknown at this time. Increased appropriation of \$294,281 would be required.

Name: Illona Jeffcoat-Sacco

Agency: PSC

Telephone: 701-328-2407

Date Prepared: 01/25/2019

2019 SENATE AGRICULTURE COMMITTEE

SB 2346

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2346
1/31/2019
Job # 31874 (1:10:46)

- Subcommittee
- Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 60-02, a new section to chapter 60-02.1, and a new section to chapter 60-10 of the North Dakota Century Code, relating to records confidentiality for warehousemen and grain buyers and assessment refunds for grain producers; to amend and reenact subsection 5 of section 60-02-07 and sections 60-02-11, 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, 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 of the North Dakota Century Code, relating to warehouse and grain buyer licensing, scale ticket conversions, claims distributions, assessments and refunds, subrogation, and unlicensed grain buyers; to provide a penalty; to provide a continuing appropriation; and to provide for reports.

Minutes:

4 Attachments

Chairman Luick opened the hearing on SB 2346.

Senator Terry Wanzek, testifies in favor (see attachment #1)

Senator Wanzek: For the record, we need to take a look at the roving grain buyer license. As we work through this bill, we need more emphasis on oversight on the front-end. The bill is, as presented, raising the fund limits from \$6M to \$10M when the assessment fee would kick off. Under current law, it's \$6M law and there is no assessment fee being collected. When it triggers under today's law, it's \$3M. I don't want to be accused of growing the indemnity fund, so I have proposed amendments that would revert this bill back to what current law is.

(20:25) Senator Klein: We've been here at the advent of the first indemnity fund. We had set a limit and brought that limit down. Where are we at with that fund right now, and would there be an assessment right away?

Senator Wanzek: We are at roughly \$4.5M in the credit sale contract indemnity fund. If we pass this bill, it would be transferred into the grain indemnity fund, so we would not be

assessed yet. The only way we would be assessed is if this speculative insolvency that's out there needs to indemnify some of those claims and we spend it down below \$3M.

Senator Klein: The current indemnity fund does not allow for a refund. Under the new program, everyone that is being assessed will have an opportunity to get a refund.

Senator Wanzek: Yes. We looked into what Indiana does. They have a similar indemnity fund, but they do allow their producers to opt out of it. To be able to manage that efficiently, everybody's has to be collected but you appeal to the regulating agency, this case the Public Service Commission (PSC), and you can, under the new language of this bill, opt out of the indemnity fund. People can opt out and get their assessment fee back, but if their grain is ever in an insolvency, they aren't going to get any benefits.

Senator Klein: Under this new proposal, there would be an opportunity to get a refund, even if you couldn't in the old program? Now you can.

Senator Wanzek: I hear, "all we're doing here is bailing out bad actors". We're encouraging more risk-taking. I don't see it that way because you're not going to be made 100% whole and you're limited to how much you can be indemnified. It's not about bailing the bad actor out; it's about trying to protect the innocent folks who get caught in the middle. I've seen situations like that in the community, and it's devastating when the local farmer doesn't get paid and can't pay his bills. It trickles down and effects everybody.

Senator Klein: Some years ago, we had an issue where prepaid fertilizer and chemicals and the company went insolvent.

Senator Wanzek: This would not provide any protection for them. In an insolvency, the PSC comes in and takes receivership, liquidates the trust assets and makes sure everybody that has a claim gets paid rightfully within the law. However, after they're done with them, it probably goes to bankruptcy court, and those who prepaid for fertilizer seed, their claim might be addressed there. That's another thing I would recommend to my producer and farm friends. You want to make sure you're dealing with a reputable company.

Senator Hogan: In light of the vulnerable position that the entire Agriculture economy is in the state in is right now, is the likelihood of insolvency higher right now? We have been in bad positions before, has the insolvencies gotten higher?

Senator Wanzek: I would probably say no in the sense that a grain buyer or a public warehouse grain buyer, they take a margin, so the market does not affect them as much. Whether corn is \$3 or \$8, they take a margin, and good operators manage that. Good grain buyers are careful not to get into a speculative position. Usually when we buy beans from some local producer, and he wants to sell them at a certain price, we most likely have it sold down the line at a price with our margin locked in. We don't usually like to speculate, that's when people get into trouble. We're here trying to address the minority situation. The majority is we have a lot of good operators that are doing a good job of marketing our farmers' grains, commodities and products.

Chairman Luick: I think most of the laws that we pass are for probably 10% of the population, 10% of the situations.

Senator Hogan: So this isn't really market-driven?

Senator Wanzek: I would say not. The market affects the farmer. We don't set our margin or prices. As a farmer, we're more at the mercy of the global markets.

(31) Randy Christman, Commissioner of Public Service Commission, testifies in favor (see attachment #2)

Senator O. Larsen: Can we have a little bit of history about where this indemnity came about? I know that a couple of session back, we tweaked it a little bit.

Christman: The overall model is over 125 years' old; that is one of the problems. It is built on farmers taking their grain to the warehouse and keeping it there until they sold it to a miller or someone around town then go get it out of the warehouse. That's changed dramatically. The biggest change in recent times was in 2003 when that credit sale contract indemnity fund was created. Up until that time, if you had credit sale contracts, you had no coverage at all. Those people, through the legislature, said they were going to pay that assessment and create that protection for themselves. Insolvency cases it has worked pretty well. We have brought some changes trying to do more to avoid these situations and trying to do more to protect the producers when that happens. Both of them were turned down; however, in part of our process 2 years ago, part of that bill did pass that made some minor verbiage changes and allowed us to do some electronic licensing and also switching the licensing to 2-year periods instead of 1.

Chairman Luick: Does this change in any way the bonding requirements?

Christman: No, it does not.

Senator Hogan: Over the last 5 years, how many insolvencies have you been involved in?

Christman: In the last 6 years, there have been two. There's a new case that we have recently requested the court to appoint us as trustee. That just came in the last couple of days; we have not been able to get the financial records yet even.

Senator Hogan: Do you anticipate any increases in light of the Agriculture economy situation?

Christman: I think Senator Wanzek summed that up pretty well. In one case, the insolvent person said what really collapsed him was the markets had improved considerably over a long period of time, and his farmer customers wanted out of their contracts.

(41:55) Scott Rising, North Dakota Soy Bean Growers, testifies in favor

Rising: We are particularly attracted by the attempt to strengthening the licensing process in this bill, and we urge a Do Pass.

(42:25) Bart Schott, Farmer and Representative for ND Corn Growers, testifies in favor

Schott: We support this bill. It makes sense and adds cash grain sales to a credit sale as well.

(43:40) Pete Hanebutt, ND Farm Bureau, testifies in favor

Hanebutt: I've been involved with this discussion. Our fund in Indiana worked well to my knowledge, and there's a lot of good things about this. I know it needs some work yet, but we'll trust you to get it right in the end. I would just agree with the previous speakers and urge a Do Pass.

Senator O. Larsen: What is the amount in that fund down there?

Hanebutt: I'm not sure. I've been here for 6 years, so at this point, I haven't kept track of it. However, my friends there says it still works fine.

(45:15) Doug Goehring, ND Agriculture Commissioner, testifies as neutral party (see attachment #3)

Senator Hogan: What is CCC?

Goehring: Commodity Credit Corporation; it's a federal program.

Senator Hogan: How many roving grain buyers do we currently have in the state and how is that industry growing? How do you monitor it?

Goehring: I don't have the program, so I can't tell you how many we have in the state, but we have some.

Chairman Luick: We were told earlier from the PSC's office that it averages between 90-93 a year and fluctuates 2-3 per year.

Goehring: Some states don't allow roving grain buyers at all unless there are some stipulations on how they do business in the state.

Chairman Luick: Do you know if South Dakota has roving grain buyer applications?

Goehring: I assume that they don't even deal with roving grain buyers there.

Chairman Luick: I believe in the organic farming industry because they have this organic conference that goes on in Aberdeen, I know that some of those purchases of that organic product don't have physical presence in South Dakota. I'm assuming that they have to have some, but I don't know if they're treated the same way as what we do in North Dakota.

Goehring: That would suggest that if you're dealing with a buyer in South Dakota that is not an elevator, then you're right. Maybe it's because of the oversight that they're providing, how they're managing it, maybe they're doing a better job of curtailing it. They shared that they've had 3 insolvencies since 2000. One was intent to fraud.

Chairman Luick: Would you be comfortable if we took some of your information here about your proposed ideas and run with them if we so choose?

Goehring: That is the reason for my testimony.

(56:35) Konrad Crockford, Director of Compliance for NDPSC, neutral party

Crockford: I oversee the grain licensing program for PSC. Regarding the number of roving grain buyers in the state, we currently have 99. A large majority of the buyers we have are companies that have brick and mortar facilities outside of the state but want to be able to purchase grain within ND. They are existing elevators within Minnesota, South Dakota, Montana and also Canada. South Dakota has roving grain buyers. They divide their licenses between two types: class a and class b. They have all the categories that we have under each license type- public warehouse, facility-based and roving grain buyer. If you operate under a class a license, you're authorized to purchase more than \$5M in grain assets in the state per year and required to submit quarterly financial statements to the commission. It's a public utilities commission in South Dakota who oversees their program. If you have a class b license, you're only authorized to purchase up to \$5M and not authorized to use voluntary credit sale contracts. South Dakota does not have an indemnity fund that we have here for the protection of credit sale contracts.

(58:55) Rick Clayburgh, President and CEO of the ND Bankers Association, testifies in favor with proposed amendments (see attachment #4)

Clayburgh: At the end of my testimony is 4 sections of code that we were looking to propose in a bill ourselves to address a number of these issues. We believe that the indemnity fund should be addressed and that the \$6M might be too low. We think that numbers could be close to \$8M of folks that have been defrauded; there are certainly concerns there. There are a number of sections that we provide suggestions for amendments.

Chairman Luick: How does your association feel about the premium of the fund?

Clayburgh: We don't have a direct opinion on that; that is the opinion of the policy branch of government to decide.

Senator Hogan: Have you looked at Senator Wanzek's amendments and if so, do they address some of these issues?

Clayburgh: We have not, but I don't believe they do.

(1:07:05) Mark Hovland, President of ND Grain Dealers Association, neutral party

Hovland: I am testifying on behalf of our Director Stu Richter. I believe we're talking about the grain licensing in response to the latest insolvency case involving a roving grain buyer. We agree with some of the changes this bill proposes and disagree with some others, but we believe there's a bigger issue to be addressed. There are distinct sectors of the general grain industry that current licensing does not address nor do we feel that they would be addressed by this bill. The grain industry is changing more and more. We have other entities moving in as roving grain buyers. Roving grain buyers are different entities from the grain warehouses and processors who operate differently. We feel a whole-sale review of the entire grain licensing law is in order and would suggest a thorough study to examine the current law and make recommendations to address the challenges of the industry today. We feel a careful review is better than reactionary legislative changes. We believe a robust inspection program must be a vital part of the general grain license division.

Senator Hogan: Are the roving grain dealers members of your association?

Hovland: Some are.

Senator Hogan: Is your grain dealers association a voluntary group?

Hovland: Yes.

Chairman Luick closes the hearing on SB 2346.

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2346
2/1/2019
Job # 31942 (11:45 – 23:27)

- Subcommittee
 Conference Committee

Committee Clerk: Carie Winings

Explanation or reason for introduction of bill/resolution:

A BILL 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.

Minutes:

No Attachments

Chairman Luick: Opened SB 2346 for committee discussion.

Senator Klein: I missed some of this bill. I did overhear Senator Wanzek visiting with one of the grain elevator folks out there. Is he preparing some amendments other than the one he proposed?

Chairman Luick: I think where we were sitting on that is that we were kind of rushed for testimony. There was an individual that wanted a study, and I wanted to visit with the committee about that. I don't know that we want a study. (Listed those that testified in favor of the bill and in a neutral capacity on the bill. There were none against the bill.)

Vice Chair Myrdal: I thought the most compelling neutral testimony came from the Ag Commissioner as far as specific concerns that he had. He did not bring amendments. He just laid out concerns. He mentioned South Dakota as a model in how they deal with it. We did not get detailed information on how they dealt with it. It is certainly a complicated issue. He felt like there needed to be some more regulations like South Dakota.

Senator Hogan: There are two amendments that were pretty different. One was to ban roving. The first one was to require applicants to submit annual financial reviews, and that seemed like common sense to me.

Chairman Luick: Committee we also have the amendments from Senator Wanzek. Those are something that we are just going to need to go through and sort that out. It is an important bill here. Does everyone have those amendments?

Senator Klein: I just caught in the conversation in the hall with Senator Wanzek, and maybe his amendments would change before we adopt those if the study thing is important. This is his bill, and in visiting with all the powers that be, I know there is another bill in the House that could be a little more drastic. Certainly we can fix it when it comes over. We have the opportunity to do what we want once the bills come over to the other side if the language seems to be a bit stronger than what we think it should be. I would like to visit with Senator Wanzek quickly and maybe we can come to some agreement. I know he was out in the hall with a bunch of those folks. If a study is good with him, then maybe. In my years here, this is like the 3rd time that there has been an insolvency and then we are looking for what we should have done, and then it is too late. This has been an issue for a while. We kind of are reactive sometimes and whether that is the right way to legislate, I don't know. It is a sad state when these things happen. How do we stop this?

Chairman Luick: Wasn't there an insolvency also with Harvey?

Senator Klein: The organic flour mill. That indemnity fund covered some of that I think. That was purchased on cents to the dollar by a Canadian company and I think they are doing pretty good. They made it look like a real mill now.

Senator Hogan: I was surprised to hear that we had 99. Ten years ago, how many did we have? Is this a growing trend that we might need to monitor?

Chairman Luick: In the meeting that I had with the public service commission earlier this year, they gave me the report of 90-93 and it fluxuates. This 99 is actually more since then.

Senator Hogan: Do you have any sense it was 10 years ago?

Chairman Luick: I do not.

Senator Hogan: If it is something new, then we should look at how we are regulating it.

Chairman Luick: What is happening across the state is that is getting to be more specialized crops as well, so you will have roving grain buyers coming in for a specific type of crop. It could be very small producers of that crop, but still they can walk away just like anyone else can. Then indemnity fund that we are looking at has had in the past – the crops that are covered in the indemnity funds – are we talking about pulse crops (canola, sugar beets, potatoes, etc.).

Senator Klein: I do not know the answer to that. As I recall, this always basically revolved around the credit sales and at that time it was wheat. That is where everyone got burned on back when we got this thing started and how we bring all of these in I would have to do a little research.

Senator Larsen: I was curious to know what the other states fund level was. The guy from Farm Bureau didn't know what his was. There should be something.

Senator Klein: We got that \$3 million base and at one point we had a \$10 million cap that was lowered to \$6 million because we do not want producers to think they have invested in something that isn't being used. Really, it is at around \$4 million, so we are in that middle. The idea is not to over tax basically. I like the idea that it is refundable with Senator Wanzek. If you don't pay, you don't get to play in the end. That is what we do with most of our commodities. Check offs are mostly all refundable.

Chairman Luick: I will do a little bit more checking on this. Closed the discussion on SB 2346.

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2346
2/7/2019
Job# 32406 (14:54)

- Subcommittee
- Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 60-02, a new section to chapter 60-02.1, and a new section to chapter 60-10 of the North Dakota Century Code, relating to records confidentiality for warehousemen and grain buyers and assessment refunds for grain producers; to amend and reenact subsection 5 of section 60-02-07 and sections 60-02-11, 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, 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 of the North Dakota Century Code, relating to warehouse and grain buyer licensing, scale ticket conversions, claims distributions, assessments and refunds, subrogation, and unlicensed grain buyers; to provide a penalty; to provide a continuing appropriation; and to provide for reports.

Minutes:

1 Attachment

Chairman Luick begins discussion on SB 2346.

(see attachment #1)

Senator Wanzek: I've handed out an amendment. Throughout the amendment, we change "may" with "shall" to be consistent with the other parts of the law. We also change "producer" with "claimant" because it's not just producers that are involved in the insolvency. Page 2 line 16-19 relates to if a warehouseman becomes insolvent and a claimant who failed to convert the claimant's grain. The amendment adds "or signs a waiver". We're saying that a person who delivers grain under the current law would in 45 days have to decide whether it's cashed, stored or goes into a credit sale contract. This new bill will say after 30 days if they don't sign it, they automatically go into the credit sale category. Bottom of page 2 we add "or renewal". We're going to give the authority to PSC to ask for additional pertinent financial information when they issue a license plus when they try to renew.

A lot of this amendment is about world changes. The release of records and confidentiality- that is language borrowed from the way we handle livestock auction barns. The purpose of the PSC to ask for pertinent financial information is not to make a public record, but to use it to make decisions on licensure. Page 7 line 9 is taking the assessment

from one-tenth to one-twentieth. The original bill was going to up the \$6M cap to \$10M, but we'll leave there. We're really not changing the indemnity fund levels or triggers; it will continue on the way it is. The only thing we're changing is the assessment in which grain is assessed. Every sale is assessed now if the trigger is on.

Chairman Luick: and that's 1/25th?

Senator Wanzek: That's 1/20th of 1% which would generate about \$3M. If you sell half a million dollars' worth of grain on your farm, you will be assessed \$250. If you sell a million, you will be assessed \$500. Under current law, if you're being assessed, it would be 4x that.

Going back to the amendment, there's added language in who's eligible for the indemnity fund. The law said it used to be the credit sale contracts; we're adding noncredit-sale contract or storage contracts. It's going to cover them all. The last section is the refund; we didn't change anything there. We mirrored that after the way Indiana handles their indemnity fund. We're giving people the option to opt out and ask for a refund if they don't like it.

Chairman Luick: Can they opt back in?

Senator Wanzek: That's not addressed; we may need to. We could have put some language in there that if an insolvency is declared and you're part of it, you cannot go back and pay up all the back assessments and qualify. It's not addressed. We're giving them an opportunity to buy back in, but the way it's worded, they'd have to pay all of the assessments to do so.

Senator Hogan: We followed Indiana? Maybe we should look at what they're doing on opting back in.

Senator Wanzek: Commissioner Christman said he looked, and this may be where he got the language from. We've already dressed the FTEs and fiscal note. We're going to add 1.5 more grain inspectors. There's already 2 there, but they're not fully funded. We're going to fund those 2 fully, add another one and add a specialized accountant that recognizes how to read financial statements and knows a bit about the industry to help prevent this situation. We're not just doing this for the one incident; we've had other insolvencies. Maybe we would have identified a problem if we would have given them some authority and a few more inspectors.

Senator Hogan moves to adopt amendment 19.1148.01002.

Senator O. Larsen Seconds.

A Roll Call Vote was Taken: 6 yeas, 0 nays, 0 absent. Amendment is adopted.

Senator Myrdal moves a Do Pass as Amended and Rerefered to Appropriations.

Senator O. Larsen Seconds.

A Roll Call Vote was Taken: 6 yeas, 0 nays, 0 absent. Amendment is adopted.

Chairman Luick will carry the bill.

February 6, 2019

SK
1/24

PROPOSED AMENDMENTS TO SENATE BILL NO. 2346

Page 1, line 1, after "60-02" insert ", a new section to chapter 60-02.1,"

Page 1, line 14, remove the overstrike over "~~may~~"

Page 1, line 14, remove "shall"

Page 2, line 16, replace "producer" with "claimant"

Page 2, line 17, replace "producer's" with "claimant's"

Page 2, line 17, after "grain" insert "or sign a waiver"

Page 2, line 17, after "subdivision b" insert an underscored comma

Page 2, line 26, replace "sections" with "section"

Page 2, line 26, remove "or 60-02.1-07"

Page 2, line 26, replace "must" with "shall"

Page 2, line 29, after "issuance" insert "or renewal"

Page 2, line 29, remove "or grain buyer"

Page 2, line 30, after "issuance" insert "or renewal"

Page 2, line 30, remove "or grain buyer"

Page 3, line 4, after "issuance" insert "or renewal"

Page 3, line 4, remove "or grain buyer"

Page 3, line 5, after "issuance" insert "or renewal"

Page 3, line 5, remove "or grain buyer"

Page 3, line 27, remove the overstrike over "~~may~~"

Page 3, line 27, remove "shall"

Page 4, line 15, remove "producers"

Page 4, line 30, remove "producers"

Page 5, line 2, remove "producers"

Page 5, line 10, remove "producers"

Page 5, line 15, remove "producers"

Page 5, after line 15, insert:

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

Release of records - Confidentiality.

1. As a condition of licensure under section 60-02.1-07, an applicant shall agree to provide to the commission, upon request, any financial record the commission deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
2. As a condition of licensure, an applicant shall file a records release with the commission, authorizing the commission to obtain from any source any financial record the commission deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
3. Any information obtained by the commission under this section is confidential and may be provided only:
 - a. To federal authorities in accordance with federal law;
 - b. To the attorney general, state agencies, and law enforcement agencies for use in the pursuit of official duties; and
 - c. As directed by an order of a court pursuant to a showing of good cause."

Page 6, line 4, remove "producers"

Page 6, line 12, remove "producers"

Page 6, line 22, remove "producers"

Page 7, line 1, remove "producers"

Page 7, line 5, remove "producers"

Page 7, line 8, overstrike "**Credit-sale contracts -**"

Page 7, line 9, replace "one-tenth" with "one-twentieth"

Page 7, line 16, remove "producers"

Page 7, line 19, remove "**producers**"

Page 7, line 21, overstrike "There is created" and insert immediately thereafter "The grain indemnity fund is a special fund"

Page 7, line 21, overstrike the second "the"

Page 7, line 21, remove "grain producers"

Page 7, line 21, overstrike "indemnity"

Page 7, line 22, overstrike the first "fund"

Page 8, line 1, remove "**producers**"

Page 8, line 4, remove "producers"

Page 8, line 4, remove the overstrike over "six"

Page 8, line 4, remove "ten"

Page 8, line 6, remove ", if there is no large claim anticipated against the fund, as determined by"

Page 8, line 7, remove "the public service commission"

Page 8, line 8, remove the overstrike over "three"

Page 8, line 8, remove "six"

Page 8, line 12, remove "producers"

Page 8, line 15, remove "producers"

Page 8, line 18, after "2." insert "After August 1, 2019, the person delivered or sold grain to a licensed warehouse or a grain buyer in the state;

3."

Page 8, line 20, overstrike "3." and insert immediately thereafter "4."

Page 8, line 21, after "contract" insert ", noncredit-sale contract, sale, or storage contract"

Page 8, line 24, remove "producers"

Page 8, line 27, remove "producers"

Page 8, line 28, after "who" insert "delivered or"

Page 8, line 29, overstrike "under a credit-sale contract"

Page 8, line 30, after "contract" insert ", sale, or storage contract"

Page 9, line 3, remove "producers"

Page 9, line 4, remove "producers"

Page 9, line 7, after "contracts" insert ", storage contracts, noncredit-sale contracts, or sales"

Page 9, line 10, remove "producers"

Page 9, line 11, remove "producers"

Page 9, line 18, remove "producers"

Page 9, line 21, remove "producers"

Page 9, line 25, remove "producers"

Page 9, line 30, remove "producers"

Page 10, line 7, remove "producers"

Page 10, line 13, remove "producers"

Page 10, line 18, remove "producers"

Page 10, line 28, remove "producers"

Page 11, line 14, remove "producers"

Page 11, line 22, remove "producers"

Renumber accordingly

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2346**

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: 19.1148.01002

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Senator Hogan Seconded By Senator Larsen

Senators	Yes	No	Senators	Yes	No
Senator Luick-Chairman	X		Senator Hogan		X
Senator Myrdal- Vice Chair	X				
Senator Klein	X				
Senator Larsen	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
replaces technical language; changes assessment rate from one-tenth to one-twentieth; etc.

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2346**

Senate Agriculture Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Myrdal Seconded By Senator Larsen

Senators	Yes	No	Senators	Yes	No
Senator Luick-Chairman	X		Senator Hogan		X
Senator Myrdal- Vice Chair	X				
Senator Klein	X				
Senator Larsen	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Chairman Luick

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2346: Agriculture Committee (Sen. Luick, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2346 was placed on the Sixth order on the calendar.

Page 1, line 1, after "60-02" insert ", a new section to chapter 60-02.1,"

Page 1, line 14, remove the overstrike over "~~may~~"

Page 1, line 14, remove "shall"

Page 2, line 16, replace "producer" with "claimant"

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Page 5, line 15, remove "producers"

Page 5, after line 15, insert:

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Release of records - Confidentiality.

1. As a condition of licensure under section 60-02.1-07, an applicant shall agree to provide to the commission, upon request, any financial record the commission deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
2. As a condition of licensure, an applicant shall file a records release with the commission, authorizing the commission to obtain from any source any financial record the commission deems relevant for purposes related to:
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3. Any information obtained by the commission under this section is confidential and may be provided only:
 - a. To federal authorities in accordance with federal law;
 - b. To the attorney general, state agencies, and law enforcement agencies for use in the pursuit of official duties; and
 - c. As directed by an order of a court pursuant to a showing of good cause."

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Page 6, line 22, remove "producers"

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Page 7, line 16, remove "producers"

Page 7, line 19, remove "**producers**"

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Page 8, line 1, remove "**producers**"

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Page 8, line 4, remove the overstrike over "six"

Page 8, line 4, remove "ten"

Page 8, line 6, remove ", if there is no large claim anticipated against the fund, as determined by"

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Page 10, line 28, remove "producers"

Page 11, line 14, remove "producers"

Page 11, line 22, remove "producers"

Renumber accordingly

2019 SENATE APPROPRIATIONS

SB 2346

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

SB 2346
2/14/2019
Job # 32717

- Subcommittee
 Conference Committee

Committee Clerk: Rose Laning / Florence Mayer

Explanation or reason for introduction of bill/resolution:

Relating to records confidentiality for warehousemen and grain buyers and assessment refunds for grain producers.

Minutes:

Testimony attached # 1.

Legislative Council: Alex Cronquist
OMB: Becky Keller

Chairman Holmberg: Called the committee to order on SB 2346. Roll call was taken. All members were present.

Senator Terry Wanzek, District 29: (No written testimony.) Introduced the bill and gave a brief description.

We've already in PSC budget, adopted language and resources to implement this bill. This provides front end authority to review grain buyers licensing. We want to prevent a situation that we have in the state, but this is revealing a few glitches in our system that we have right now. We need to look at the system as a whole. We need more thorough analysis before a license is issued to a grain buyer. We've already addressed this issue, but we need the bill to solidify.

Senator G. Lee: You're referring to the additional FTEs for grain inspection?

Senator Wanzek: In the current PSC budget, we funded 1 $\frac{3}{4}$ FTEs for those who do inspections. Our farm is bonded and licensed, in our side business we purchase specialty crops from other producers and we've gone through some of those audits. In the budget, we've funded those two now, we added funding for another grain inspector, so the PSC will have 3 grain inspectors also repurposing of another employee that would be a budget accountant. If the PSC was allowed to ask for a financial statement or could requested additional information, maybe it would have led to a license not being given.

Senator Oehlke: I see places where there are fees in here, but I don't see an appropriation or a fiscal note?

Senator Wanzek: There are expenditures of \$294,000 in the fiscal note. I somewhat disagree with the revenue number. It would generate that kind of money if it didn't have a cap on it. But the indemnity fund is capped at \$6M. Once it hits that the assessment fees charged on grain sales go away. The only way they are reintroduced is if the fund gets utilized in an insolvency and it pulls the resources down below \$3M, then the trigger kicks on again. Currently assessments only apply to credit sale contracts. There are 4 different positions you can have as a farmer and a grain elevator. You can be in the cash position where your grain has been sold, but you haven't been given the check and an insolvency happens. The second is, you have your scale tickets, but you haven't put it in a storage or credit sale contract. The third is you signed a storage agreement with the elevator. The fourth one would be you created a credit sale contract where you sold the grain, all the terms are agreed to, but you deferred the payment or maybe you have a delayed pricing contract. At that point you're an unsecured creditor. The way our current law works, it assesses an indemnity fee on those credit sale contracts. When I put my grain in a credit sale contract, when I sell it there is an assessment charge. It is 2/10ths of 1% of the value. In this bill we're going to go away from just assessing credit sales, we are going to assess all four of those situations - any grain sold. But we are going to cut the assessment by ¼. Instead of 2/10ths, it is 1/20th of a 1% of the value. So if I sell \$1M worth of grain throughout the year, my assessment fee would be \$500. That is pretty reasonable assessment to protect me from an insolvency. With this current situation, the sad thing is, I've heard stories where some young farmers sold their whole crop to this individual. Can you imagine the impact that will have on them? They'll be filing bankruptcy. Some in the House say all I'm doing is bailing out a bad actor. At the point of insolvency, I'm not worried about the bad actor anymore, the damage is done. There are a lot of innocent people hurt in a rural community when there's an insolvency. The indemnity fund will not make you whole. It is 80% of your claim and it is capped at \$280,000. If you have a lot of grain sold and you never got the check, you will lose money. It helps to alleviate the pain. Some people who dislike it, I asked them, so you have fire insurance on your home. If you have a fire claim, you will get 80% and capped at \$280,000. You might take a lot more money to rebuild that home, so are you still hoping the house burns down? You don't want to see an insolvency. This indemnity fund will not make anybody whole, but it will help reduce some of the pain when they don't get paid for their commodities.

(10:47) Chairman Holmberg: Who wants to tell us about the fiscal impact?

Randy Christmann, Commissioner, North Dakota Public Service Commission: Testified in support of SB 2346. Provided Attachment #1.

(15:01) Senator Oehlke: Do you think the \$6.2M should have an inflation adjuster, so you can still keep collecting funds years down the road?

Randy Christmann: I think it should be raised some. These numbers were created in 2003 when we created the fund which was strictly for credit sale contract people. There is resistance to the idea too. I don't want to see this unravel because of criticism that we're expanding the fund. I also think it is not often realized that if there is an insolvency with \$10M of viable claims, we would distribute that \$4.5M proportionately but that wouldn't be the end of it. It would kick in again and occasionally as the revenues come in, we would send that out to those people. It would be late, but they wouldn't be out of it as they are now under existing law.

Senator Wanzek: The reason for not wanting to increase that number, is the criticism is you're piling up a bunch of money and it's unnecessary. The largest insolvency was around \$3M. If there was insolvency that would be wipe that out, the trigger will go on and it will continue to be collected and continue to pay out that insolvency until it's paid. Then it will start building back up. We don't want a huge amount of money there, just a mechanism in place. It's more about the mechanism being in place and having an adequate cushion if we should see an insolvency.

(18:18) Senator Bekkedahl: Working with the subcommittee on our budget bill, the resources necessary to carry out the requirements of SB 2346 have been provided. I believe Senator Wanzek talked about the need for both the policy bill and the changes in the PSC budget. Does that mean the 1.25 FTEs in this bill with this fiscal note are also in the PSC budget? Do we still need both?

Randy Christmann: I don't know the status of our budget bill. The subcommittee voted it out, but I don't know that the whole committee has taken action on it yet.

Senator Wanzek: There's not duplication. This bill gives us a fiscal note. It's saying if you implement this policy, we will need money to carry out policy. If we don't do both of them, you could put the money there and if we don't pass the bill, we don't have the policy to do the job. They're not duplicative, we need both.

Senator Bekkedahl: So there is no appropriation in this bill? It is the fiscal note tied to those positions that will be in the PSC budget. (That was confirmed.)

Chairman Holmberg: This is the policy bill that creates the necessity for the financial additions into the PSC budget. They both need to pass. This is here because it reflects on a fiscal note. The fiscal note issues have been taken care of in the PSC budget. We should pass the bill.

Senator Hogue: This may be a policy question. Do you contemplate that after you get this additional financial information concerning the dealer, that you'll have different level of sales or once they meet a standard they'll be able to sell unlimited amounts of grains?

Randy Christmann: Roving grain buyers estimate how much they are going to buy and cap themselves. Warehouses don't have limits on how much they can buy, that is based on their capacity of holding. They could ship it out and turn it over many, many times. At the end of the fiscal year this financial info will be used to see who needs to be inspected. Who is more solid, who is shaky. We are kind of copying livestock sales; they have a similar program.

Chairman Holmberg: Anyone else wanting to testify in favor or opposition to this bill?

Rick Clayburgh, President and CEO, North Dakota Bankers Association: No written testimony, but fully in support of SB 2346. We bank with the warehouse side and farmer's side. From standpoint of giving PSC their FTEs to have a deeper look, is important. We have been in difficult times for the past 6 or 7 years. We have had good yields, but if we have a situation where we have a drought and low commodity prices, we could see some real pressure. We stand fully in support of this legislation.

(23:54) Senator Wanzek: Answering Senator Hogue's question, under the current legislation, all I have to do is find an insurance company who will give me a bond. The hope is that the insurance company is scrutinizing your business plan. We have been in business for 10-15 years, we have never given any financial info to the PSC, this would give them that right.

Phil Murphy, representing 3 different commodity groups: Me too.

Chairman Holmberg: Closed the hearing on SB 2346.

Senator Wanzek: Moved a Do Pass on SB 2346.

Senator Grabinger: Seconded the motion.

A Roll Call Vote Was Taken: 14 yeas, 0 nays, 0 absent.

Motion Carried.

The bill goes back to the Agriculture committee and Senator Luick will carry the bill.

Date: 2-14-19

Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2346**

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Wanzek Seconded By Grabinger

Senators	Yes	No	Senators	Yes	No
Senator Holmberg	✓		Senator Mathern	✓	
Senator Krebsbach	✓		Senator Grabinger	✓	
Senator Wanzek	✓		Senator Robinson	✓	
Senator Erbele	✓				
Senator Poolman	✓				
Senator Bekkedahl	✓				
Senator G. Lee	✓				
Senator Dever	✓				
Senator Sorvaag	✓				
Senator Oehlke	✓				
Senator Hogue	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Ag Comm. Luick

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2346: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2346 was placed on the Eleventh order on the calendar.

2019 HOUSE AGRICULTURE

SB 2346

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2346
3/15/2019
Job #33828

- Subcommittee
 Conference Committee

Committee Clerk: ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to warehouse and grain buyer licensing, scale ticket conversions, claims distributions, assessments and refunds, subrogation, and unlicensed grain buyers; to provide a penalty; to provide a continuing appropriation; and to provide for reports.

Minutes:

Attachments #1 and 2

Senator Wanzek, Sponsor: (Attachment #1)

(11:50)

Maybe the financial information can be exclusive to roving grain buyers who don't have the infrastructure. It is more difficult to assess what they have.

Can the bonding requirements be improved? The bonding brings a review of the financial statements and provides the financial security. Maybe we need to look at the ratings of the bonding companies that are doing it.

How can we make the broker accountable?

Representative Headland: If I submit to the commission a request for a refund, will I still be covered by the indemnity fund? I already have paid into the fund but I choose to refund for this expansion. Am I still covered on the credit-sale loss?

Senator Wanzek: We would have to work that out. It is like fire insurance for your house.

Representative Satrom: There are two components. I wish this would be two bills.

Senator Wanzek: That would be an amendment. The indemnity fund doesn't encourage risk. Insolvency pays 80 percent. You should never be made whole.

Representative Headland: You have to take responsibility on the business side of knowing who you are doing business with.

Vice Chair Wayne Trottier: You are buying increased coverage under this program?

Senator Wanzek: Yes. We could think of a solution. This is a work in progress.

Randy Christmann, Commissioner, Public Service Commission: (Attachment #2)

(39:00)

Representative Headland: Why use the indemnity fund for this new fund? Why not just create a new fund and start assessing?

Randy Christmann: I would not be opposed to that. It would be cumbersome and take a while to build the fund. The next large insolvency will bring the fund down and cause the assessments to start again. With this bill they would have a choice. No fees have been collected for over a decade.

Representative Headland: Is there a collection cap on this new fund?

Randy Christmann: The cap and bottom stay the same. Assessments would begin if it gets below \$3 million. The assessments would be suspended if it gets past \$6 million. The only change is if it gets below \$3 million they have to start collecting immediately.

Chairman Dennis Johnson: The number of grain facilities over \$1 million, where would they fit into this indemnity fund?

Randy Christmann: There is no change. In North Dakota a licensed grain dealer is protected by the trust fund. If they have a credit-sale contract, they are protected by the indemnity fund just like a grain producer.

Chairman Dennis Johnson: So the elevator is out. They have not paid into the fund.

Randy Christmann: Under current law, they are in and they stay in. If the bill passes, they would start paying into the fund when they sell.

Chairman Dennis Johnson: They would generate their money from the producer.

Randy Christmann: They can request a refund and not be protected.

Chairman Dennis Johnson: Will continue March 21, 2019.

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2346--Continuation
3/21/2019
Job #34151

- Subcommittee
 Conference Committee

Committee Clerk: ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to warehouse and grain buyer licensing, scale ticket conversions, claims distributions, assessments and refunds, subrogation, and unlicensed grain buyers; to provide a penalty; to provide a continuing appropriation; and to provide for reports.

Minutes:

Attachments #1-6

Rick Clayburgh, North Dakota Bankers Association: Introduced Tracy Kennedy.

Tracy Kennedy, Counsel for North Dakota Bankers Association: (Attachment #1)

Amend to strike the written language in the definition of a credit sale and a receipt holder lien.

(8:00)

How can we finance the local elevator when we can't take the grain inventory into consideration as collateral? It limits the amount of capital the local elevators can get from their banks. It is very heartbreaking for our members when one of their farm customers has lost a year's crop because of grain insolvency in which they sold grain to a licensed dealer and then not received payment.

The credit-sale indemnity fund will hopefully be changed to the grain indemnity fund. This indemnity fund was started in 2003 at the same time as the claims for Wimbledon Grain were a little over \$4,250,000. We have the amount in the indemnity fund sitting at \$6 million. The maximum amount that a grower can claim is set at \$280,000. Many other states have higher amounts. I think the amount should be around \$400,00.

(11:41)

Representative Headland: The credit-sale indemnity fund was set up to cover a risky endeavor for a later sale. Now we are going to change the focus with this bill into all grain. When producers pay specifically for something, do you think it is right that the focus of the fund shifts to covering everybody who hasn't paid? With the new language it also gives the choice to opt out. If you choose to opt out but you have already paid for a certain contract to be covered, you will no longer be covered for what you paid for.

Does the Bankers Association have any issues with that?

Tracy Kennedy: The bill still covers credit-sale contracts. You are still getting what you paid for but providing broader coverage.

Representative Headland: I believe that is incorrect. If you opt out of contributing, you would no longer be covered for your credit-sale contract.

Tracy Kennedy: In 2019 you have the ability to opt out. This is from 2019 going forward. The payments that create the fund may not be required. If they are required, those payments go down for people selling grain because it is spread out over more people. The statute before was a requirement. Now the grower can decide to participate in or not. There is some work to be done on the bill in regard to the warehouse statutes.

Representative Headland: The credit-sale indemnity fund was paid for by people who entered credit sale contracts. Now they want to take those dollars and apply them to every bushel of grain sold. If you choose to not be assessed for the new fund, you are no longer covered for what you already paid.

Tracy Kennedy: There wasn't an option when this fund was created. Most grain growers do market their grain on a credit sale. The problem now is the coverage isn't there. Are you asking to eliminate this? Do you want only credit sales being covered by the indemnity fund?

Representative Headland: I am asking if you think it is proper to take a fund that has been paid for a purpose and then take away the opportunity to be covered because they choose not to fund a larger fund?

Rick Clayburgh: That is a policy decision for the legislature. I have heard discussion on holding those funds separate. There are many different ways to handle this. We believe this tool is important to protect our future.

Paul Thomas, North Dakota Corn Growers Association: (Attachment #2)

(22:44)

We would be in favor of not having the refund provision. Most of our members have expressed an interest to just pay the amount. We thought this would create another fund. It would be a cash-sale indemnity fund. We would also support that.

Scott Rising, North Dakota Soybean Growers Association: (Attachment #3)
We wouldn't have a problem with two separate funds.

(25:35)

Dave Spickler, President, Lighthouse Commodities: (Attachment #4)

(31:00)

We would like to see the committee consider, as it relates to new grain licensees, additional financial oversight. We would support requiring third party audited financials as a condition precedent to getting a new roving grain buyer license in North Dakota.

We also would want cash grain brokers to be a new license class. We would also support not having the opt out provision.

(33:50)

Chairman Dennis Johnson: Are brokers licensed in other states. They do business in more than one state.

Dave Spickler: I don't know about other states.

Mike Clemens, Wimbledon, North Dakota: Wimbledon was the start of the process of the grain indemnity fund. I buy insurance for my farm and crops. We spend \$62,000 every year. For property and casualty, we spend \$42,000. Life insurance is \$25,000. Health insurance is \$17,000 plus a year. Property taxes of \$26,000 plus. This indemnity fund for \$1.8 million generated on our farm would cost us \$900 per year. This is the cheapest insurance to cover the risk on our farm.

Page 3 says financial statements are a confidential trade secret and not a public record. How can a farmer check financial condition if it is not a public record?

The cap of \$6 million on the fund may not be high enough to pay losses today. The current insolvency is at \$7.5 million. 1/20th of a percent to pay in is small. \$100,000 worth of grain sales is \$50. Other insurances have a deductible. This is 80% collection.

I don't think anyone will ask for a refund. The banker would wonder about a farmer backing out of the fund for protection.

Representative Tveit: You don't think there should be a refund?

Mike Clemens: Correct.

Representative Headland: Is there anywhere else in business that asks everybody else to fund the insurance policy for the individual business?

Mike Clemens: I guess crop insurance is an opt out and the farm programs are an opt out.

Representative Headland: Do you think it is appropriate that everyone has to pay and choose to opt out. You could have the choice to opt in at the time of sale. There would be less farmers participating if you did it that way.

Mike Clemens: I got stung 17 years ago in the Wimbledon Grain case. Many farmers don't always know about the indemnity fund or what the licensing and bonding requirements are for an elevator. If they would have known about the fund, they probably wouldn't have chosen to pay into it.

Dana Bohn, Executive Director, North Dakota Farm Credit Council: (Attachment #5)

(48:25)

Representative Headland: Do lending agencies have any type of fund they pay in to protect them in case a farmer goes insolvent?

Dana Bohn: I am not aware of that.

Opposition:

Dan Wogsland, Executive Director, North Dakota Grain Growers Association:

This bill doesn't get to the core problem of the current issue. Grain inspections in the State of North Dakota are not a priority of the agency that is supposed to take care of this issue.

We have heard many excuses. The one solution is to take a fund that we have and expand it. If we still don't regulate correctly, then we have more money to pay out to cover up all the problems and issues created from a lack of responsibility in conducting this program. This has been the only solution.

We have four solutions:

1. Move this to the North Dakota Department of Agriculture. They have the expertise and the willingness to do grain inspections the way they are supposed to be done.
2. Hoghouse HB 1467 into this legislation as a way to move this issue forward.
3. Provide the North Dakota Department of Agriculture with the resources necessary to carry out this regulatory effort. We don't want any more problems like the current \$7 million one.
4. Study the issue after moving this to the Department of Agriculture.

Chairman Dennis Johnson: What about the broker?

Dan Wogsland: That can be accomplished in a study. It is time for a change.

Stu Letcher, Executive Vice President, North Dakota Grain Dealers Association:

We don't think this legislation solves the problem. A good grain regulatory starts with inspections in the field. We would like to see the issue studied. The industry is changing.

Page 2 of the bill, letter e is new language. If they failed to convert their scale ticket, they become a credit-sale claimant. On page 8, line 24, it says a person is eligible to receive indemnity fund payments from the grain producers' indemnity fund; but it still has three stipulations. If we pass this in its current form, we will get different interpretations from the State Supreme Court.

According to the Public Service website, there have been 42 insolvencies since 1975 including the current case. Twenty-three of the insolvencies paid the producers back 100%. Four of the cases, the claimants were paid between 90 to 100%. Three of the cases received 70 to 80%. One case received 60-70%. There are nine cases where the claimants were paid back at less than a 50% rate. Of those nine, two were roving grain buyers. Six were specialty-type processors or grains. One was undetermined what type of

business. The worst one on the list happened in 2009. Claimants were paid back at a rate of 5.8%. There was \$880,000 in claims that were paid \$50,000.

Processors, warehouses, brokers, and roving grain buyers all operate differently. This bill doesn't do enough to address that.

Chairman Dennis Johnson: Do you have thoughts on brokers? Is there a way they can be regulated in the state when they do business in other states also?

Stu Letcher: The broker in the current case had a good reputation. He has no liability in the case. He never took possession of the grain. He saw both sides of the transaction. He should have noticed the red flags.

Representative Tveit: Your suggestion to study will take two years. How do we protect those involved during that study?

Stu Letcher: A good bond program can be done administratively within the PSC. A bond is not insurance. It gives a financial opinion of the organization. A \$500,000 bond has a premium of \$4,000. If you increase the bonding amount, you will increase the scrutiny. The minimum bond for a roving grain buyer is \$50,000. Maybe it should be more.

Representative Tveit: If we do the study, are you comfortable with leaving this with the PSC?

Stu Letcher: We want a strong inspection program by whoever has it. Now we have three categories of licenses. If a grain elevator knows they are going broke, some say they are going to sell the grain and leave the producer out. The person who makes the decision if the grain elevator is insolvent or not is the creditor. Should there be a look back in the law?

Representative Headland: If we study this, is there a reason we would want to carve out Section 3 and pass that?

Stu Letcher: If it is a new applicant, ask for the financial statements. We get into issue with financial statements if it is an existing business. All businesses can go through a rough patch. If the business is bonded and they have a business plan that the bonding agency and the bank is willing to back, who from the PSC is going to look at the financials and are they in sync with the bank. If word gets out that the PSC is taking a look, it could create an insolvency.

Representative Tveit: If we require the financial statements on everyone, it wouldn't create a flag for what you are talking about?

Stu Letcher: No it wouldn't. If you required financial statements on everyone, there are 373 licensed warehouses and 99 roving buyers in the state. There is only 1 FTE in the PSC. If it is known that the financial statements are required, is the agency regulating willing to accept that liability. If there is an insolvency, who is to blame?

Randy Christmann, Public Service Commissioner: We talked about a study in 2015 and it was never studied. We have 59 claimants in insolvency right now. We have made it a priority for four years. Let's talk about for whom it is a priority. We have been bringing this issue to you and then were denied.

The calls I have received from the current insolvency fall into two categories.

1. How did you give this person a license? Didn't you check their financials?
 - a. My response is because the Grain Dealers Association has convinced the legislators that the bonding company should look at the financials. That is not for us to do.
2. What do you think will be available for recovery for these producers?
 - a. If they have a credit-sale contract, they will get 80% up to \$280,000. If not, it will be a small percentage.

There were comments made about hoghouseing this bill into HB 1467 and then give the Agriculture Commissioner the resources that they need. So it is understood that we don't have the resources that we need. We don't need more employees if we can't look at their financials and keep them confidential. That is what we have been asking that we need the inspectors for.

It was implied that it is not a priority for us. This committee has stopped it two sessions in a row. Just last week Dan Wogsland marked down that first he was for the bill and then changed it to neutral. I guess his priority was for a week. Mine has been for four years.

Doug Goehring, Agriculture Commissioner: (Attachment #6)
Handed to committee but did not present.

Chairman Dennis Johnson: Closed the hearing

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2346—Committee Work
4/4/2019
Job# 34543

- Subcommittee
- Conference Committee

Committee Clerk: ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to warehouse and grain buyer licensing, scale ticket conversions, claims distributions, assessments and refunds, subrogation, and unlicensed grain buyers; to provide a penalty; to provide a continuing appropriation; and to provide for reports.

Minutes:

Attachment #1

Chairman Dennis Johnson: The bill I had in the House was to move the grain inspection from the PSC to the Agriculture Department. This bill broadens the scope of the indemnity fund. It was also to have something in law to have financials as confidential information which should have always been there.

This amendment #19.1148.02001 (Attachment #1) takes out the ability to broaden the scope of the indemnity fund. It stays the way it has been on credit sales. It keeps in the financials being confidential. It puts back in what was in the House bill to move the ability to do the licensing and inspection service from the PSC to the Agriculture Department.

There is one more amendment being worked on to address the brokers. A broker that does business in North Dakota has to be bonded and pay a licensing fee. The one in the amendment is \$300. Also the 373 warehouse and 99 roving grain buyers fee was raised by \$100 to raise some money to put into the inspection service. That would be for whichever agency does the inspection. We had the hearing on this idea with the House bill.

Representative Satrom: I have a concern about the move to another agency. Maybe we didn't provide the tools or the funding. We need to make the decision based on good information.

Another concern is that we are putting grain buyers and brokers under the Agriculture Department. They are also the people that handle trade deals. Is that a conflict of interest?

Chairman Dennis Johnson: When you look at the grain inspection service in other states, there are 38 states that have the service. Thirty-four of them handle the inspections through the Agriculture Department. The four states where it isn't in the Agriculture Department are North Dakota, South Dakota, Nebraska, and New Mexico.

The Agriculture Commissioner sits on a lot of commodity groups which would be mostly the commodities on the trade mission. I don't foresee a problem. It would be a better chance to expedite a sale.

Representative Satrom: Then we need to give the Agriculture Department the tools and finances to do this right.

Chairman Dennis Johnson: This isn't an easy decision. I haven't seen the desire to regulate the industry over the last four to six years. The farmers filing bankruptcy in the current case are done. They don't get a second chance.

Chairman Dennis Johnson: Continue tomorrow.

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2346—Committee Work
4/5/2019—a.m.
Job #34572

- Subcommittee
- Conference Committee

Committee Clerk: ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to warehouse and grain buyer licensing, scale ticket conversions, claims distributions, assessments and refunds, subrogation, and unlicensed grain buyers; to provide a penalty; to provide a continuing appropriation; and to provide for reports.

Minutes:

Attachment #1

Chairman Dennis Johnson: We now have amendment #19.1148.02002 (Attachment #1). What is different from yesterday is that brokers are included. They have to be bonded and licensed to do business in North Dakota. The indemnity fund still covers credit sales. The financials are kept confidential. The oversight of grain dealers is moved from the PSC to the Agriculture Department.

This would raise all the fees by \$100. There are 373 warehouses in North Dakota. That would help toward what is in this bill. We can't keep having happen what is like the current situation.

There is also another amendment needed. The Grain Dealers will explain.

Stu Letcher, North Dakota Grain Dealers Association: We don't now consider a processor as a separate license. A processor may not have a lot of storage in sight. In the Northwood Mills case, their warehouse bond was \$50,000. There was \$880,000 worth of claims. All the grain had been processed into oil. So there was no grain to be pulled for the producers' benefit. Claimants were paid at 5%.

We need a license for a processor. On page 15 it would be similar to a cash grain. You would just need to add a definition for a processor. Bonding would relate to the amount being processed vs. the amount being stored. A warehouse license goes on capacity. An ethanol plant may hit the maximum. They would have the maximum warehouse bond.

Representative Satrom: Do we have potential exposure in the ethanol plants?

Stu Letcher: The maximum bond for any grain warehouse in the state is \$2 million. Most of the ethanol plants would probably reach that level anyway. There is risk in any part of the grain business.

Representative Satrom: We set the bond level? What should the maximum level be? Should the \$2 million be increased?

Stu Letcher: We don't see a problem with the maximum bond being increased. The minimum is \$50,000. Maybe that should be increased. That isn't much to get into business. The bond levels are set in administrative rules. The minimums are more than what is in the statute.

Representative Satrom: May be we should consider changing those bond levels.

Chairman Dennis Johnson: Increasing them drives inflation. We haven't had trouble with the larger warehouses.

Vice Chair Wayne Trottier: What percentage of the ethanol plants buy direct?

Stu Letcher: About 35-45% buy from other facilities. The rest buy from producers. It depends on the time of the year.

(11:48)

Brian Kroshus, Chairman of Public Service Commission: We have been dealing with a terrible insolvency. The individual was arrested yesterday for criminal activity.

We are dedicated to the program. We are one of four states that does it this way. Our reclamation program is world class. We have the lowest utility rates in the country. Our siting has never been appealed. We need more tools. The number of changes being proposed says the tool box has to be bigger.

Bonding will cost the grain operators and comes off the cash price they are willing to pay producers.

The indemnity fund can be opted out.

I would like to continue working with this program.

With the current situation, there are 12 producers with losses in the \$100,000 to \$200,000 range. There is one producer over \$200,000. Three-fourths of the 37 claimants on the producers' side are cash sale.

We should be able to dive into the financials and keep them confidential. If we treat everyone the same, it instills confidence in the producers. We have other successful inspection programs. We would like expanded parameters in the grain program.

Representative Dobervich: If there were new classes created, with the confidentiality and additional resources and it stayed with the PSC, what would the Public Service Commission do differently to avoid this situation?

Brian Kroshus: We would take a deeper dive into the books when an application comes in. It is ongoing to continually inspect. We can't rely on the bonds. The individual in the current insolvency had four bonds that were all A rated. That didn't happen here.

We have to communicate to the producer so they know what they are dealing with.

Representative Dobervich: Why do you believe the PSC is the best place?

Brian Kroshus: There are three of us which gives more perspective. There is continuity if one leaves. There will never be a question of a perceived conflict of interest.

Representative Tveit: Sometimes moving isn't the fix. Can you avoid a future situation?

Brian Kroshus: This would enhance the program. Even with this bill it would not have prevented the current situation; but it would have been caught sooner.

Representative Tveit: A number of producers got caught because they had a relationship with the broker.

Brian Kroshus: The broker had a license and is done and will lose his business. The buyer was using float between two banks and the broker didn't know it. The broker returned all of his fees to producers that did not get paid.

Representative Satrom: Are you comfortable with the bond levels?

Brian Kroshus: Agriculture has changed. A \$2 million bond will run \$15,000 to \$16,000.

\$2 million is not a lot when you look at the volume. Bonding is important. Producers have not paid into the indemnity fund since 2008. That will change after this situation.

This is a credit-sale situation. The bonding only goes so far. The dealers are not excited about raising the bond because it raises their cost.

Representative Tveit: Most of the insolvencies took place in the late 70s and early 80s. That affects other businesses in agriculture.

Brian Kroshus: Receiving 5.8 cents on a dollar is devastating. There are instances where the program worked.

Representative Schreiber-Beck: If I recognize there are problems, what is the process to alert the PSC?

Brian Kroshus: Yes, alert the PSC. After we had the first call, we moved quickly and had a cease and desist order issued within a few weeks. When the checks bounced, the phone rang. Seventeen elevators were caught up in his scam.

Representative Schreiber-Beck: A call is sufficient?

Brian Kroshus: We would ask for a written complaint.

Representative McWilliams: How long was this scheme going on before it was caught?

Brian Kroshus: That is still being investigated. Had we been able to look at his financials earlier, would have depended how he was playing one bank off of another. I think he had eight different businesses registered in North Dakota.

Representative McWilliams: Was it more than a year?

Brian Kroshus: I don't think it happened just this fall.

Representative Dobervich: Are the bonding levels comparable to surrounding states?

Brian Kroshus: It is different between the states.

Representative Skroch: Is there a possibility that losses will be recovered?

Brian Kroshus: They will be paid out from the trust fund. The credit-sale contracts will get 80 cents on a dollar which is capped up to \$280,000. The grain assets will be sold. We can't sell other assets. The cash sales won't get relief.

When producers take their grain to the elevator, they get a scale ticket. I think tightening that window of determining the type of sale would be beneficial. They wait to see if the price will improve. We are still sorting through the tickets.

Representative Kiefert: Was this a deliberate scheme?

Brian Kroshus: This wasn't bad marketing. The broker was reputable. The buyer did this intentionally. He knew what he was doing.

Vice Chair Wayne Trottier: The commission had been warned of this buyer?

Brian Kroshus: Not to my knowledge.

Chairman Dennis Johnson: I thank the PSC for what has been done in other areas. Agriculture is number one. I have seen what has happened in the Agriculture Department with the oversight of the livestock industry and it is quiet. Other states that have the Agriculture Commissioner don't have a conflict of interest. To have three people overseeing it is one thing. When you have people in a department to specifically hone in, it is better.

The current situation is what brought this to a head. The elevators called me. They called the PSC in March, 2017 when they heard a roving grain buyer was buying without a license. The PSCs answer was to help him get a license. The elevators told the PSC to not give a license based on past history. This is all documented. The PSC said it is just the competition calling. I feel the weakness of the oversight of the grain industry. That is why I feel so strongly about this. In May of 2017 he got his license. Within that time, people are out of over \$7 million. He has six new pickups and a car dealership. You know this is not right.

He's nineteen years old and has seven businesses registered with the Secretary of State. They are all inactive—just dreams. This needs to be in the Agriculture Department where we have some real dedicated concern about the farmers and grain industry in the state. The grain industry has suffered over this.

Brian Kroshus: The individual met the requirements in law to get the license. He obtained three high quality bonds. We can't discriminate based on age or gender.

Chairman Dennis Johnson: You talked about not being aware of any call with this individual. I have the documentation with the times you were called where he was issued a license. Is there something in the law that says a year and a half later you can't look at his books. There is no oversight that you are allowed to do.

Brian Kroshus: We are allowed to measure the bins and look at scale tickets. That is why we should be able to inspect financials to a greater degree.

A \$7.3 million insolvency claim was just filed in South Dakota on April 1. If you have a bad actor, there is no guarantee that the livestock program won't have an insolvency.

Representative McWilliams: Has anything like this happened before?

Brian Kroshus: Yes. The majority had a favorable outcome that didn't have a long-term impact. Before this it was Grand Forks and everyone was made whole.

Representative Fisher: Would you compare the difference between the grain and livestock industries?

Brian Kroshus: A commodity is a commodity. They are similar. Being able to look at the records will catch this sooner and serve as a deterrent. On the livestock side there is more flexibility to look at balance sheets than what we have.

Representative Tveit: What responsibility falls on the producer for taking advantage of something too good to be true?

Chairman Dennis Johnson: Why is there a guy in business making those offers?

Brian Kroshus: It is human nature. Our job is to protect producers and citizens. We have to learn from this.

Representative Dobervich: What would the Agriculture Department do differently?

Tom Bodine, Deputy Agriculture Commissioner: The Agriculture Department will be out in the businesses with the proper oversight with inspections at the facility. We have been in conversation with other states about how they are running their programs. We do a lot of regulatory inspections. There is a lot of agribusiness with the elevators. We already do fertilizer and pesticide auditing with the elevators.

Shaun Quissel, North Dakota Department of Agriculture: We want inspectors to look at Accounts Receivable and Accounts Payable. There are some financial reviews that can be done on site. With the change in the law, we could get a balance sheet and do a debt/asset ratio. We would look at their line of credit. We would also request a financial from their banking institution and any marketing organizations they are working with.

Representative Dobervich: How does that plan differ from an inspection that PSC would do?

Tom Bodine: This is where it has been lacking. This gets to the facility. We have to be there to hold people to the standards.

Representative Dobervich: Would the Agriculture Department be able to conduct inspections differently than Public Service without those resources?

Tom Bodine: Where ever the grain inspection program goes, there has always been the ability to review those records. The confidentiality was never an issue. The commissioner has expressed what he would like to see passed.

Representative Dobervich: So you get no new FTEs or additional financial resources. Does the department have the resources to conduct that level of investigation?

Tom Bodine: No, we would not be able to.

Chairman Dennis Johnson: This is my bill to give different eyes to a problem.

Tom Bodine: Departments need to work together in state government. There was a lot of discussion about grain inspection. Where it is located, it has to be properly resourced.

Representative Satrom: Who sets policy and who determines funding and staffing?

Tom Bodine: The authority would grant through you. Policy can be looked at within the rulemaking process. We never do any type of policy without involving those in the industry.

Representative Satrom: The process would be identical with either department?

Tom Bodine: Yes. We don't have our own attorney. We rely on the Attorney General to tell us where the boundaries are. We have to follow the law when we do inspections.

Representative Skroch: Do you have tools that the PSC does not have?

Tom Bodine: We do see the financial statements. We adjust bonds depending on the risk. We do have a staff person that goes to auction markets. When there is a delinquent payment, we are notified. So we can take action quicker on someone licensed.

Representative Skroch: So if we provide the same tools to the PSC, they would function similar to the livestock program?

Tom Bodine: If you have the resources and oversight, regulatory programs can function.

Representative Skroch: We denied more resources to the PSC.

Representative Dobervich: Would your department need an attorney?

Tom Bodine: We are comfortable with the Attorney General's office.

Representative Richter: Does this need to be in appropriations for FTEs designated for grain inspection?

Chairman Dennis Johnson: Appropriations is waiting for this bill to look at both budgets.

Tom Bodine: Where it is located is where the resources will be used.

Representative Headland: (asking Brian Kroshus) What are the duties and powers of the Public Service Commission? I am reading that it has the power to investigate all complaints of fraud and injustice. It seemed that there were complaints early in this process.

It also says the PSC has the duty to examine and inspect during ordinary business hours any licensed warehouse including all books, documents, and records. You have stated that there was an inability to look at the current insolvency's books. With all the responsibilities that the PSC has, is it possible that agriculture went to the bottom of priorities. The Agriculture Commissioner is focused on agriculture issues.

Brian Kroshus: No.

Representative Headland: At one time there were four inspectors?

Brian Kroshus: That is not true. We went back to 1980. We have been authorized two FTEs. There were concerns. But nothing fraudulent.

Representative Headland: Who does decide whether a complaint is fraudulent?

Brian Kroshus: When we received the call, we immediately consulted with our legal staff. We have two attorneys on staff. We are not put on a list. We moved on a cease and desist within a couple of weeks.

Chairman Dennis Johnson: The federal warehouse, with the first NSF check everything is frozen within 24 hours. Both receiving and sending. The PSC has to wait a couple of weeks?

Brian Kroshus: We had to call the bank. We had to verify that NSF check.

Chairman Dennis Johnson: The federal warehouse is 24 hours. We have to change that where ever it stays.

Representative McWilliams: If a producer wanted to check on a buyer, would the PSC be able to tell them if they have had calls?

Brian Kroshus: That would not be appropriate for us to indicate.

Tom Bodine: We are not on a list with the Attorney General's office. Legal Council is always available.

Chairman Dennis Johnson: Continue this afternoon.

2019 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Peace Garden Room, State Capitol

SB 2346—Committee Work
4/5/2019—p.m.
Job #34579

- Subcommittee
 Conference Committee

Committee Clerk: ReMae Kuehn

Explanation or reason for introduction of bill/resolution:

Relating to warehouse and grain buyer licensing, scale ticket conversions, claims distributions, assessments and refunds, subrogation, and unlicensed grain buyers; to provide a penalty; to provide a continuing appropriation; and to provide for reports.

Minutes:

Attachment #1

Chairman Dennis Johnson: Over the noon break I did research on the PSC budget from last session. They were not cut on grain inspection. They were cut in other areas. HB1126 from the 2017 session gives them their operation instructions. It says “The Commission may investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.”

No money was taken away from their grain budget.

Chairman Dennis Johnson: Proposed amendment (Attachment #1)
The amendment would add to Section 32. It is about the grain processor’s license. They could move out grain if they are in financial trouble. Once their inventory is processed, it is not part of a commodity that can be used for an insolvency to go back on to make claims whole.

Representative Schreiber-Beck: **Moved to adopt amendment #.02002.**

Representative McWilliams: Seconded the motion.

Representative Satrom: I can’t imagine the stress of having this happen in your backyard. I would like to see that we stay with the PSC for two years for grain inspection.

Representative Tveit: I agree. I don’t want to move it.

Representative Richter: Do we give the PSC a chance to operate with the new tools?

Representative Skroch: I am also undecided. I would give them two more years with the tools.

Representative Headland: What was the vote on HB1467 from this session? The reasons haven't changed since then.

Chairman Dennis Johnson: HB 1467 passed out of this committee with 12 yes--and 0 no-- and 2 absent. It passed on the House floor 85-8.

Representative McWilliams: This isn't a new conversation. What is the history of other incidences?

Chairman Dennis Johnson: Are we talking about Falkirk, Wimbledon, Northwood, Grand Forks? This is the last one.

Representative Schreiber-Beck: Having been in the aerial spraying business, I know the Agriculture Department comes around to check. They look at feed manufacturers—there are 69. There are nearly 100 feed retailers and about 450 fertilizer distributors that they visit. I don't think the PSC is the visible entity in the agriculture arena. The Agriculture Department is out there.

A Roll Call vote was taken: Yes 12, No 1, Absent 1.

The amendment is adopted.

Representative Dobervich: Moved to adopt proposed amendment to add the grain processor license and bond.

Vice Chair Wayne Trottier: Seconded the motion

A Roll Call vote was taken: Yes 13, No 0, Absent 1.

The amendment is adopted.

Representative McWilliams: Moved Do Pass as amended.

Vice Chair Wayne Trottier: Seconded the motion

A Roll Call vote was taken: Yes 9, No 4, Absent 1.

Do Pass as amended carries.

Representative Johnson will carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2346

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, a new section to chapter 60-02, and two new sections to chapter 60-02.1 of the North Dakota Century Code, relating to the definition of agriculture commissioner, licensing and bonding for cash grain brokers, and records confidentiality for warehousemen and grain buyers; and 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, sections 60-02.1-01, 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 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 enumerated under this chapter and the powers conferred herein devolve upon the commissioner.~~

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 commissioner 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 ~~eommission~~ 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 ~~eommission~~ 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 ~~eommission~~ 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 ~~eommission~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commissioner~~ commissioner, and authorized to do business within the state. The ~~commissioner~~ commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond ~~when~~ when, 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner. ~~When~~ When 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 ~~commissioner~~ 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 ~~shall~~ must 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 ~~commissioner~~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 ~~commissioner~~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 ~~commissioner~~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 ~~commissioner~~commissioner. The report must contain or be verified by a written declaration ~~that~~that the report is made under the penalties of perjury. The report may be called for more frequently if the ~~commissioner~~commissioner deems it necessary. Information pertaining

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

2. File the report with the ~~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 ~~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 ~~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 ~~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 ~~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 ~~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 ~~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 ~~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 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 all outstanding

receipts has been provided for, the ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner and all outstanding receipt holders 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 ~~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 23. A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

Release of records - Confidentiality.

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

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

SECTION 24. AMENDMENT. Section 60-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Cash grain broker" means a person who:
 - a. Is involved in the negotiation of cash grain transactions in the state;
 - b. Receives compensation from at least one party to the transaction; and
 - c. Does not take title to the grain and is not under any financial or contractual obligation related to the transaction.
2. "~~Commissioner~~Commissioner" means the public service commission agriculture commissioner.
- 2-3. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
- 3-4. "Facility" means a structure in which grain purchased by a grain buyer is received or held.
- 4-5. "Facility-based grain buyer" means a grain buyer who operates a facility licensed under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.
- 5-6. "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 grain or grass seed. "Grain" does not include grain or grass seeds owned by or in the possession of the grain buyer which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.

~~6-7.~~ "Grain buyer" means any person, other than a public warehouseman as defined in chapter 60-02, who purchases or otherwise merchandises grain for compensation. The term does not include:

- a. A producer of grain who purchases grain from other producers to complete a carload or truckload in which the greater portion of the load is grain grown by the producer or on-farm feedlot operations in which at least fifty percent of the livestock is owned by the owner of the farm.
- b. A person who is permitted to sell seed under chapter 4.1-53, if that person buys grain only for processing and subsequent resale as seed.
- c. A person who is an authorized dealer or agent of a seed company holding a permit in accordance with section 4.1-53-38.

~~7-8.~~ "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.

~~8-9.~~ "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract.

~~9-10.~~ "Roving grain buyer" means a grain buyer who does not operate a facility where grain is received.

SECTION 25. 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 26. 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 commissioncommissioner 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 27. 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 28. 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 29. 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 30. 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 31. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Cash grain broker license - Application - Bond - How obtained - Fee - Report - Disclosure.

1. Before conducting business in the state, a cash grain broker⁹ must submit an application to ~~and~~ obtain an annual license from the commissioner. To conduct business in the state, a cash grain broker must also register and be in good standing with the secretary of state. Except as provided in this section, each license expires on July thirty-first of each year. When 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 of a cash grain broker is two hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee. A license issued under this section is not transferable.
2. An application for licensure must include:
 - a. The name under which the applicant intends to conduct business in the state as a cash grain broker;
 - b. The name of each partner if the cash grain broker is in a partnership;
 - c. The name of each corporate officer and the state of incorporation if the cash grain broker is a corporation;
 - d. The name of each manager and the state of organization if the cash grain broker is a limited liability company;
 - e. The mailing address of the applicant; and
 - f. The location of the principal place of business of the applicant.
3. The commissioner may refuse to issue, renew, or may revoke a license if:
 - a. The licensee or applicant has been convicted of a criminal offense;
 - b. The licensee or applicant has failed to comply with the requirements of this section;
 - c. The commissioner has evidence the licensee negotiated in bad faith;
or
 - d. Any other reason determined by the commissioner.

4. A licensed cash grain broker must submit a monthly report to the commissioner by the tenth day of each month. The report must include:
 - a. The total volume of each commodity brokered in the preceding month; and
 - b. The name and contact information of any buyer who had more than two hundred and fifty thousand dollars in total purchases in transactions brokered by the cash grain broker during the preceding month.
5. A licensed cash grain broker must notify each potential commodity seller of the identity of the potential commodity buyer before the final confirmation of the transaction.
6. Before a license is effective for a cash grain broker under this section, the licensee or applicant must file a bond with the commissioner for ten thousand dollars.

SECTION 32. 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner may require an increase in the amount of any bond, from time to time, as ~~the commissioner~~ 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 ~~commissioner~~ commissioner, and authorized to do business within the state. The ~~commissioner~~ commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in ~~the commissioner's~~ 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 33. 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner.

SECTION 34. 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 ~~commissioner~~ 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 ~~commissioner'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 ~~commissioner~~ commissioner.

SECTION 35. 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 ~~commissioner~~ and shall make such reports of purchases of grain as may be required by the rules ~~made~~ adopted by the ~~commissioner~~. The ~~commissioner~~ at all times ~~shall~~ must have access to such accounts, records, and memoranda.

SECTION 36. 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 ~~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 ~~commissioner~~ deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The ~~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 ~~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 ~~commissioner~~ may refuse to renew a license to any grain buyer who fails to make a required report.

SECTION 37. 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 38. 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 39. 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 40. 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 ~~commissioner~~ and all receipt holders 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 41. AMENDMENT. Section 60-02.1-29 of the North Dakota Century Code is amended and reenacted as follows:

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

Upon the insolvency of any roving grain buyer, the ~~commissioner~~ 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 ~~commissioner~~ commissioner secure and execute the trust, the court shall issue an order granting the application, without bond, and 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 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 42. 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner is appointed trustee must be remitted to the ~~commissioner~~ 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 43. 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 ~~it~~the commissioner's appointment, the ~~com~~missioner may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the ~~com~~missioner shall publish a notice of ~~it~~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 ~~com~~missioner along with the receipts, contracts, or other evidence of the claims required by the ~~com~~missioner. 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 ~~com~~missioner, the ~~com~~missioner 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 44. 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 ~~com~~missioner fails or refuses to apply for ~~it~~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 45. AMENDMENT. Section 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-34. ~~Com~~missioner to marshal trust assets.

Upon ~~it~~the commissioner's appointment, the ~~com~~missioner shall marshal all of the trust fund assets. The ~~com~~missioner 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 46. 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 47. 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 48. 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 ~~commissioner~~ commissioner for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receiptholders, less expenses incurred by the ~~commissioner~~ 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 49. 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, its~~ commissioner, 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 50. 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 ~~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 51. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Release of records - Confidentiality.

1. As a condition of licensure under section 60-02.1-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
3. Any information obtained by the commissioner under this section is confidential and may be provided only:
 - a. To federal authorities in accordance with federal law;
 - b. To the attorney general, state agencies, and law enforcement agencies for use in the pursuit of official duties; and
 - c. As directed by an order of a court pursuant to a showing of good cause.

SECTION 52. AMENDMENT. Subsection 1 of section 60-04-01 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 53. AMENDMENT. Section 60-04-03 of the North Dakota Century Code is amended and reenacted as follows:

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

Upon the insolvency of any warehouseman, the ~~commission~~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~~ suchthe warehouseman is insolvent within the meaning of this chapter and ~~that~~ it would be for the best interests of the receiptholders that the ~~commission~~commissioner secure and execute such trust, the court shall issue an order granting the application, without bond, ~~whereupon~~ at which time 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 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 54. 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 ~~commission~~ 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 55. 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 56. 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 ~~commissioner~~ when commissioner if the ~~commissioner~~ 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 receiptholders, 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 57. 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 ~~commissioner~~ commissioner may take possession of relevant books and records of the warehouseman. The ~~commissioner~~ 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 ~~commissioner~~ commissioner along with the receipts, contracts, or any other evidence of the claims as 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 as prescribed by the ~~commissioner~~ commissioner, the ~~commissioner~~ 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 58. 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 ~~commissioner~~ 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 59. 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 shall deem~~commissioner deems it necessary to the redemption of the receipts that all the above remedies be pursued at the same time.

SECTION 60. 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 61. 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 62. 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 ~~it~~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 63. 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~~ 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 64. 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 65. 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 ~~whenever~~ 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~~ 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 66. 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 67. 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 68. 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~~ 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~~ stations are ten miles [16.09 kilometers] or more apart the railroad company, ~~whereif~~ required so to do by the ~~public service~~ ~~commissioner~~ commissioner, shall construct and maintain a sidetrack for the use of shippers between such stations.

SECTION 69. 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~~ commissioner to determine rights governed under this chapter. The ~~commissioner~~ 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 ~~commissioner~~ commissioner, directly to the entities owed. The ~~commissioner~~ commissioner may adopt rules to carry out this section.

SECTION 70. 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~~ commissioner no later than thirty days after each calendar quarter. The ~~commissioner~~ commissioner shall deposit the assessments received under this section in the credit-sale contract indemnity fund.

SECTION 71. 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 72. 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 73. 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 74. 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 75. 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 commission~~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 commission~~commissioner is appointed trustee under section 60-02.1-29 or 60-04-03.

SECTION 76. 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 commission~~commissioner in administrating the credit-sale contract indemnity must be reimbursed from the fund before any other claim for indemnity is paid.

SECTION 77. 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 commission~~commissioner for deposit in the credit-sale contract indemnity fund is guilty of a class A misdemeanor.

SECTION 78. AMENDMENT. Section 60-10-11 of the North Dakota Century Code is amended and reenacted as follows:

60-10-11. Revocation and suspension.

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

SECTION 79. 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 ~~commission~~commissioner, the ~~commission~~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 ~~commission~~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 80. 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 ~~commissioner~~ commissioner in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the fund.

SECTION 81. 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 ~~commissioner~~ 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

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2346

Page 13, after 7. Insert "Grain Processor" means an entity that purchases grain to process them into end products that are of a substantially different make up or nature than the original grain.

Page 16, after 6. insert:

"**SECTION 32.** A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Grain processor license – Application – Bond – How obtained – Fee- Report-Disclosure.

1. Before conducting business in the state, a cash grain processor must submit an application to obtain an annual license from the commissioner. To conduct business in the state, a grain processor must also register and be in good standing with the secretary of state. Except as provided in this section, each license expires on July thirty-first of each year. When 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 of a cash grain broker is two hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee. A license issued under this section is not transferable.
2. An application for licensure must include:
 - a. The name under which the applicant intends to conduct business in the state as a cash grain broker;
 - b. The name of each partner if the cash grain broker is in a partnership;
 - c. The name of each corporate officer and the state of incorporation if the cash grain broker is a corporation;
 - d. The name of each manager and the state of organization if the cash grain broker is a limited liability company;
 - e. The mailing address of the applicant; and
 - f. The location of the principal place of business of the applicant.
3. The commissioner may refuse to issue, renew, or may revoke a license if:
 - a. The license or applicant has been convicted of a criminal offense;
 - b. The licensee or applicant has failed to comply with the requirements of this section;
 - c. The commissioner has evidence the licensee negotiated in bad faith;
or
 - d. Any other reason determined by the commissioner.
4. A licensed grain processor must submit a monthly report to the commissioner by the tenth day of each month. The report must include:
 - a. The total volume of each commodity processed in the preceding month.
5. Before a license is effective for a grain processor under this section, the licensee or applicant must file a bond with the commissioner for ten thousand dollars.

Renumber Accordingly

April 5, 2019

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2346

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, a new section to chapter 60-02, and three new sections to chapter 60-02.1 of the North Dakota Century Code, relating to the definition of agriculture commissioner, licensing and bonding for cash grain brokers, and records confidentiality for warehousemen and grain buyers; and 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, 60-02-42, 60-02.1-01, 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.

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- 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 commissioner.~~
"Commissioner" means the 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 enumerated under this chapter and the powers conferred herein devolve upon the commissioner.~~

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 commissioner 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~~ ~~commissioner~~.

The ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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

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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.

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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.

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- b. Covering the costs incurred by the ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commissioner~~ commissioner, and authorized to do business within the state. The ~~commissioner~~ commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond ~~when~~ if, 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner. ~~When~~ 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 ~~commissioner~~ 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 ~~shall~~ must 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.

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- 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 commission~~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

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

2. File the report with the ~~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 ~~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 ~~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 ~~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 ~~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 ~~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 ~~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 ~~it~~ the grain will be priced and redeemed in cash in accordance with section 60-02-41.

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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~~ 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~~ all outstanding

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

Release of records - Confidentiality.

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

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

SECTION 24. AMENDMENT. Section 60-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Cash grain broker" means a person who:
 - a. Is involved in the negotiation of cash grain transactions in the state;
 - b. Receives compensation from at least one party to the transaction; and
 - c. Does not take title to the grain and is not under any financial or contractual obligation related to the transaction.
2. "~~Commission~~Commissioner" means the ~~public service~~ ~~commission~~ agriculture commissioner.
- 2-3. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
- 3-4. "Facility" means a structure in which grain purchased by a grain buyer is received or held.
- 4-5. "Facility-based grain buyer" means a grain buyer who operates a facility licensed under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.
- 5-6. "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 grain or grass seed. "Grain" does not include grain or grass seeds owned by or in the possession of the grain buyer which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.

- ~~6-7.~~ "Grain buyer" means any person, other than a public warehouseman as defined in chapter 60-02, who purchases or otherwise merchandises grain for compensation. The term does not include:
 - a. A producer of grain who purchases grain from other producers to complete a carload or truckload in which the greater portion of the load is grain grown by the producer or on-farm feedlot operations in which at least fifty percent of the livestock is owned by the owner of the farm.
 - b. A person who is permitted to sell seed under chapter 4.1-53, if that person buys grain only for processing and subsequent resale as seed.
 - c. A person who is an authorized dealer or agent of a seed company holding a permit in accordance with section 4.1-53-38.
- 8. "Grain processor" means an entity that purchases grain to process into end products that are of a substantially different makeup or nature than the original grain.
- ~~7-9.~~ "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
- ~~8-10.~~ "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract.
- ~~9-11.~~ "Roving grain buyer" means a grain buyer who does not operate a facility where grain is received.

SECTION 25. AMENDMENT. Section 60-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-02. ~~Commissioner~~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 26. 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 ~~commissioner~~commissioner.

The ~~commissioner~~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 27. 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 28. 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 29. 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.

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SECTION 30. 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 31. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Cash grain broker license - Application - Bond - How obtained - Fee - Report - Disclosure.

1. Before conducting business in the state, a cash grain broker must submit an application to obtain an annual license from the commissioner. To conduct business in the state, a cash grain broker must also register and be in good standing with the secretary of state. Except as provided in this section, each license expires on July thirty-first of each year. When 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 of a cash grain broker is two hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee. A license issued under this section is not transferable.
2. An application for licensure must include:
 - a. The name under which the applicant intends to conduct business in the state as a cash grain broker;
 - b. The name of each partner if the cash grain broker is in a partnership;
 - c. The name of each corporate officer and the state of incorporation if the cash grain broker is a corporation;
 - d. The name of each manager and the state of organization if the cash grain broker is a limited liability company;
 - e. The mailing address of the applicant; and
 - f. The location of the principal place of business of the applicant.
3. The commissioner may refuse to issue, renew, or may revoke a license if:
 - a. The licensee or applicant has been convicted of a criminal offense;
 - b. The licensee or applicant has failed to comply with the requirements of this section;
 - c. The commissioner has evidence the licensee negotiated in bad faith;
or

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- d. Any other reason determined by the commissioner.
- 4. A licensed cash grain broker must submit a monthly report to the commissioner by the tenth day of each month. The report must include:
 - a. The total volume of each commodity brokered in the preceding month; and
 - b. The name and contact information of any buyer who had more than two hundred fifty thousand dollars in total purchases in transactions brokered by the cash grain broker during the preceding month.
- 5. A licensed cash grain broker must notify each potential commodity seller of the identity of the potential commodity buyer before the final confirmation of the transaction.
- 6. Before a license is effective for a cash grain broker under this section, the licensee or applicant must file a bond with the commissioner for ten thousand dollars.

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

Grain processor license - Application - Bond - How obtained - Fee - Report - Disclosure.

- 1. Before conducting business in the state, a grain processor must submit an application to obtain an annual license from the commissioner. To conduct business in the state, a grain processor must also register and be in good standing with the secretary of state. Except as provided in this section, each license expires on July thirty-first of each year. When 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 of a grain processor is two hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee. A license issued under this section is not transferable.
- 2. An application for licensure must include:
 - a. The name under which the applicant intends to conduct business in the state as a grain processor;
 - b. The name of each partner if the grain processor is in a partnership;
 - c. The name of each corporate officer and the state of incorporation if the grain processor is a corporation;
 - d. The name of each manager and the state of organization if the grain processor is a limited liability company;
 - e. The mailing address of the applicant; and
 - f. The location of the principal place of business of the applicant.
- 3. The commissioner may refuse to issue, renew, or may revoke a license if:
 - a. The licensee or applicant has been convicted of a criminal offense;

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- b. The licensee or applicant has failed to comply with the requirements of this section;
 - c. The commissioner has evidence the licensee negotiated in bad faith;
or
 - d. Any other reason determined by the commissioner.
4. A licensed grain processor must submit a monthly report to the commissioner by the tenth day of each month. The report must include the total volume of each commodity processed in the preceding month.
 5. Before a license is effective for a grain processor under this section, the licensee or applicant must file a bond with the commissioner for ten thousand dollars.

SECTION 33. 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~~ 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 ~~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 ~~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 34. 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 35. 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 36. 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.

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The commissioner at all times ~~shall~~ must have access to such accounts, records, and memoranda.

SECTION 37. 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 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 commissioner deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The 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 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 commissioner may refuse to renew a license to any grain buyer who fails to make a required report.

SECTION 38. 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 39. 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~~ 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~~ 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~~ commissioner.

SECTION 40. 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~~ 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~~ commissioner.
3. Surrender to the ~~commissioner~~ 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~~ 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~~ 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~~ commissioner except when made in accordance with the provisions of this section.

SECTION 41. 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 ~~commissioner~~ commissioner and all receipt holders 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 42. AMENDMENT. Section 60-02.1-29 of the North Dakota Century Code is amended and reenacted as follows:

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

Upon the insolvency of any roving grain buyer, the ~~commissioner~~ 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 ~~commissioner~~ commissioner secure and execute the trust, the court shall issue an order granting the application, without bond, and the ~~commissioner~~ commissioner shall proceed to exercise ~~the commissioner's~~ authority without further direction from the court.

Upon the filing of the ~~commissioner'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 43. 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner is appointed trustee must be remitted to the ~~commissioner~~ 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.

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8. Unencumbered grain product assets.

SECTION 44. 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 45. 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 46. AMENDMENT. Section 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-34. CommissionerCommissioner to marshal trust assets.

Upon ~~its~~the 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.

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SECTION 47. 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~~ to prosecute or compromise claims.

The ~~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 receipt holders.
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 48. 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~~ as trustee must be deposited in the Bank of North Dakota.

SECTION 49. 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~~ 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 ~~commissioner~~ for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receipt holders, less expenses incurred by the ~~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 receipt holder 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~~ commissioner's trust.

SECTION 50. 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, its~~ commissioner, 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 51. 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 ~~commission~~ commissioner, upon ~~its~~ the ~~commissioner's~~ 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 52. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Release of records - Confidentiality.

1. As a condition of licensure under section 60-02.1-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
3. Any information obtained by the commissioner under this section is confidential and may be provided only:
 - a. To federal authorities in accordance with federal law;
 - b. To the attorney general, state agencies, and law enforcement agencies for use in the pursuit of official duties; and
 - c. As directed by an order of a court pursuant to a showing of good cause.

SECTION 53. AMENDMENT. Subsection 1 of section 60-04-01 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 54. AMENDMENT. Section 60-04-03 of the North Dakota Century Code is amended and reenacted as follows:

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

Upon the insolvency of any warehouseman, the ~~commission~~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 ~~commission~~commissioner secure and execute such trust, the court shall issue an order granting the application, without bond, ~~whereupon~~ at which time the ~~commission~~commissioner shall proceed to exercise ~~its~~ the commissioner's authority without further direction from the court.

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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 55. 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 ~~commission~~ 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 56. 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 57. 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 ~~commissioner~~ when commissioner if the ~~commissioner~~ 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 receiptholders, 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 58. 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 ~~commissioner~~ commissioner may take possession of relevant books and records of the warehouseman. The ~~commissioner~~ 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 ~~commissioner~~ commissioner along with the receipts, contracts, or any other evidence of the claims as 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 as prescribed by the ~~commissioner~~ commissioner, the ~~commissioner~~ 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 59. 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 ~~commissioner~~ 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 60. AMENDMENT. Section 60-04-06 of the North Dakota Century Code is amended and reenacted as follows:

60-04-06. 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 shall deem~~commissioner deems it necessary to the redemption of the receipts that all the above remedies be pursued at the same time.

SECTION 61. AMENDMENT. Section 60-04-07 of the North Dakota Century Code is amended and reenacted as follows:

60-04-07. Power of 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 62. 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 ~~commissioner~~ as trustee under this chapter, pending the marshalling of the fund, ~~shall~~ must be deposited in the Bank of North Dakota.

SECTION 63. 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 commissioner~~, the ~~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 ~~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 ~~commissioner~~ for the expenses of administering the insolvency, a proposed distribution of the trust fund assets, less expenses incurred by the ~~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 ~~commissioner~~ deems fair and equitable.

The court shall set a hearing and the appropriate notice for interested persons to show cause why the ~~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 ~~commissioner~~ by certified mail upon the warehouseman and the surety and by ordinary mail upon all persons having claims filed with the ~~commissioner~~.

Any aggrieved person having an objection to the ~~commissioner's~~ report shall file the objection with the court and serve copies on the ~~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 64. 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 65. 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 66. 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 ~~whenever~~ 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 67. 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, its~~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 68. 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 69. 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~~ 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~~ stations are ten miles [16.09 kilometers] or more apart the railroad company, ~~whereif~~ required so to do by the ~~public service commission~~ commissioner, shall construct and maintain a sidetrack for the use of shippers between such stations.

SECTION 70. 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 commission~~ 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 71. 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 commission~~ 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 72. 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 73. 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 74. 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 75. 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 76. 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 commission~~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 commission~~commissioner is appointed trustee under section 60-02.1-29 or 60-04-03.

SECTION 77. 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 commission~~commissioner in administrating the credit-sale contract indemnity must be reimbursed from the fund before any other claim for indemnity is paid.

SECTION 78. 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 commission~~commissioner for deposit in the credit-sale contract indemnity fund is guilty of a class A misdemeanor.

SECTION 79. AMENDMENT. Section 60-10-11 of the North Dakota Century Code is amended and reenacted as follows:

60-10-11. Revocation and suspension.

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

SECTION 80. 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 ~~commission~~commissioner, the ~~commission~~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 ~~commission~~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 81. 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 ~~commissien~~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 ~~commissien~~commissioner in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the fund.

SECTION 82. 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 ~~commissien~~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

Date: 4/5/2019

Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2346**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: 19.1148.02002

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Schreiber Beck Seconded By Rep. McWilliams

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Ruth Buffalo	X	
Vice Chairman Wayne Trottier	X		Rep. Gretchen Dobervich	X	
Rep. Jake Blum	AB				
Rep. Jay Fisher	X				
Rep. Craig Headland	X				
Rep. Dwight Kiefert	X				
Rep. Aaron McWilliams	X				
Rep. David Richter	X				
Rep. Bernie Satrom	X				
Rep. Cynthia Schreiber Beck	X				
Rep. Kathy Skroch	X				
Rep. Bill Tveit		X			

Total **Yes** 12 **No** 1

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 4/5/2019

Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2346**

House **Agriculture** Committee

Subcommittee

Amendment LC# or Description: Add grain processor license and bond

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Dobervich Seconded By Rep. Trottier

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Ruth Buffalo	X	
Vice Chairman Wayne Trottier	X		Rep. Gretchen Dobervich	X	
Rep. Jake Blum	AB				
Rep. Jay Fisher	X				
Rep. Craig Headland	X				
Rep. Dwight Kiefert	X				
Rep. Aaron McWilliams	X				
Rep. David Richter	X				
Rep. Bernie Satrom	X				
Rep. Cynthia Schreiber Beck	X				
Rep. Kathy Skroch	X				
Rep. Bill Tveit	X				

Total **Yes** 13 **No** 0

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2346**

House **Agriculture** Committee SubcommitteeAmendment LC# or Description: 19.1148.02003**Recommendation**

- Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____Motion Made By Rep. McWilliams Seconded By Rep. Trottier

Representatives	Yes	No	Representatives	Yes	No
Chairman Dennis Johnson	X		Rep. Ruth Buffalo	X	
Vice Chairman Wayne Trottier	X		Rep. Gretchen Dobervich	X	
Rep. Jake Blum	AB				
Rep. Jay Fisher		X			
Rep. Craig Headland	X				
Rep. Dwight Kiefert	X				
Rep. Aaron McWilliams	X				
Rep. David Richter	X				
Rep. Bernie Satrom		X			
Rep. Cynthia Schreiber Beck	X				
Rep. Kathy Skroch		X			
Rep. Bill Tveit		X			

Total **Yes** 9 **No** 4**Absent** 1Floor Assignment Representative Johnson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2346, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2346 was placed on the Sixth order on the calendar.

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, a new section to chapter 60-02, and three new sections to chapter 60-02.1 of the North Dakota Century Code, relating to the definition of agriculture commissioner, licensing and bonding for cash grain brokers, and records confidentiality for warehousemen and grain buyers; and 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, 60-02-42, 60-02.1-01, 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 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 enumerated under this chapter and the powers conferred herein devolve upon the commissioner.

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 commissioner 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 commissioner.

The 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 ~~when~~if, in ~~its~~the ~~commissioner's~~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. ~~When~~If a license is so suspended, the warehouseman shall give notice of such suspension to each receiptholder having grain stored in the warehouse. The warehouseman shall further notify each receiptholder having grain stored in the warehouse that the grain must be removed from the warehouse or ~~if~~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 ~~shall~~must 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~~ ~~commission~~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 licenses.
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 ~~the~~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 ~~the~~the policy of the warehousemen which must be filed with the ~~commission~~commissioner and posted in a conspicuous place in ~~the~~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 ~~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 ~~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 ~~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 ~~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 ~~commissioner~~.

~~When~~ If requested in writing, the ~~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 ~~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 ~~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 receipt holders.
3. Serve notice by registered or certified mail, at least thirty days before the transfer, upon all receipt holders 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 ~~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~~itscommissioner the warehouseman's license for cancellation ~~and at such, 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. A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

Release of records - Confidentiality.

1. As a condition of licensure under section 60-02-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a public warehouse license; or
 - b. An investigation after issuance or renewal of a public warehouse license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a public warehouse license; or
 - b. An investigation after issuance or renewal of a public warehouse license.
3. Any information obtained by the commissioner under this section is confidential and may be provided only:
 - a. To federal authorities in accordance with federal law;
 - b. To the attorney general, state agencies, and law enforcement agencies, for use in the pursuit of official duties; and
 - c. As directed by an order of a court pursuant to a showing of good cause.

SECTION 24. AMENDMENT. Section 60-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Cash grain broker" means a person who:
 - a. Is involved in the negotiation of cash grain transactions in the state;
 - b. Receives compensation from at least one party to the transaction; and
 - c. Does not take title to the grain and is not under any financial or contractual obligation related to the transaction.
2. "~~Commission~~Commissioner" means the public service commission agriculture commissioner.
- 2-3. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.

- ~~3-4.~~ "Facility" means a structure in which grain purchased by a grain buyer is received or held.
- ~~4-5.~~ "Facility-based grain buyer" means a grain buyer who operates a facility licensed under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.
- ~~5-6.~~ "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 grain or grass seed. "Grain" does not include grain or grass seeds owned by or in the possession of the grain buyer which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.
- ~~6-7.~~ "Grain buyer" means any person, other than a public warehouseman as defined in chapter 60-02, who purchases or otherwise merchandises grain for compensation. The term does not include:
- a. A producer of grain who purchases grain from other producers to complete a carload or truckload in which the greater portion of the load is grain grown by the producer or on-farm feedlot operations in which at least fifty percent of the livestock is owned by the owner of the farm.
 - b. A person who is permitted to sell seed under chapter 4.1-53, if that person buys grain only for processing and subsequent resale as seed.
 - c. A person who is an authorized dealer or agent of a seed company holding a permit in accordance with section 4.1-53-38.
- ~~8.~~ "Grain processor" means an entity that purchases grain to process into end products that are of a substantially different makeup or nature than the original grain.
- ~~7-9.~~ "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
- ~~8-10.~~ "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract.
- ~~9-11.~~ "Roving grain buyer" means a grain buyer who does not operate a facility where grain is received.

SECTION 25. AMENDMENT. Section 60-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-02. 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 26. 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 commissioner.

The ~~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 27. 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 28. 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 29. 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 30. 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 ~~commissioner~~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 31. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Cash grain broker license - Application - Bond - How obtained - Fee - Report - Disclosure.

1. Before conducting business in the state, a cash grain broker must submit an application to obtain an annual license from the commissioner. To conduct business in the state, a cash grain broker must also register and be in good standing with the secretary of state. Except as provided in this section, each license expires on July thirty-first of each year. When 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 of a cash grain broker is two hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee. A license issued under this section is not transferable.
2. An application for licensure must include:
 - a. The name under which the applicant intends to conduct business in the state as a cash grain broker;
 - b. The name of each partner if the cash grain broker is in a partnership;
 - c. The name of each corporate officer and the state of incorporation if the cash grain broker is a corporation;
 - d. The name of each manager and the state of organization if the cash grain broker is a limited liability company;
 - e. The mailing address of the applicant; and
 - f. The location of the principal place of business of the applicant.
3. The commissioner may refuse to issue, renew, or may revoke a license if:
 - a. The licensee or applicant has been convicted of a criminal offense;
 - b. The licensee or applicant has failed to comply with the requirements of this section;

- c. The commissioner has evidence the licensee negotiated in bad faith; or
- d. Any other reason determined by the commissioner.
- 4. A licensed cash grain broker must submit a monthly report to the commissioner by the tenth day of each month. The report must include:
 - a. The total volume of each commodity brokered in the preceding month; and
 - b. The name and contact information of any buyer who had more than two hundred fifty thousand dollars in total purchases in transactions brokered by the cash grain broker during the preceding month.
- 5. A licensed cash grain broker must notify each potential commodity seller of the identity of the potential commodity buyer before the final confirmation of the transaction.
- 6. Before a license is effective for a cash grain broker under this section, the licensee or applicant must file a bond with the commissioner for ten thousand dollars.

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

Grain processor license - Application - Bond - How obtained - Fee - Report - Disclosure.

- 1. Before conducting business in the state, a grain processor must submit an application to obtain an annual license from the commissioner. To conduct business in the state, a grain processor must also register and be in good standing with the secretary of state. Except as provided in this section, each license expires on July thirty-first of each year. When 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 of a grain processor is two hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee. A license issued under this section is not transferable.
- 2. An application for licensure must include:
 - a. The name under which the applicant intends to conduct business in the state as a grain processor;
 - b. The name of each partner if the grain processor is in a partnership;
 - c. The name of each corporate officer and the state of incorporation if the grain processor is a corporation;
 - d. The name of each manager and the state of organization if the grain processor is a limited liability company;
 - e. The mailing address of the applicant; and
 - f. The location of the principal place of business of the applicant.
- 3. The commissioner may refuse to issue, renew, or may revoke a license if:

- a. The licensee or applicant has been convicted of a criminal offense;
 - b. The licensee or applicant has failed to comply with the requirements of this section;
 - c. The commissioner has evidence the licensee negotiated in bad faith;
or
 - d. Any other reason determined by the commissioner.
4. A licensed grain processor must submit a monthly report to the commissioner by the tenth day of each month. The report must include the total volume of each commodity processed in the preceding month.
 5. Before a license is effective for a grain processor under this section, the licensee or applicant must file a bond with the commissioner for ten thousand dollars.

SECTION 33. 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~~thatcommissioner 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner, and authorized to do business within the state. The ~~commissioner~~ 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 34. 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner.

SECTION 35. 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 ~~commissioner~~ 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 ~~commissioner'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 ~~commissioner~~ commissioner.

SECTION 36. 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 ~~commissioner~~ commissioner and shall make such reports of purchases of grain as may be required by the rules ~~made~~ adopted by the ~~commissioner~~ commissioner. The ~~commissioner~~ commissioner at all times ~~shall~~ must have access to such accounts, records, and memoranda.

SECTION 37. 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 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 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 38. 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 ~~commission~~ 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 ~~commission~~ commissioner may prohibit the use of nonfederal grades.

SECTION 39. 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 ~~commission~~ 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 ~~commission~~ 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 40. 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 ~~commission~~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 ~~commission~~commissioner.
3. Surrender to the ~~commission~~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 ~~commission~~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 ~~commission~~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 ~~commission~~commissioner except when made in accordance with the provisions of this section.

SECTION 41. 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 42. 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 43. 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 receipt holders 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 44. AMENDMENT. Section 60-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

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

Upon ~~its~~ the commissioner's appointment, the ~~commission~~ commissioner may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the ~~commission~~ 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 receipt holders and credit-sale contract claimants to file their claims with the ~~commission~~ commissioner along with the receipts, contracts, or other evidence of the claims required by the ~~commission~~ commissioner. If an outstanding receipt holder 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 ~~commission~~ commissioner, the ~~commission~~ commissioner is relieved of further duty in the administration of the insolvency on behalf of the receipt holder or credit-sale contract claimant and the receipt holder 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 45. 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 ~~commission~~commissioner fails or refuses to apply for ~~it~~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 46. 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 ~~it~~the commissioner's appointment, the ~~commission~~commissioner shall marshal all of the trust fund assets. The ~~commission~~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 47. AMENDMENT. Section 60-02.1-35 of the North Dakota Century Code is amended and reenacted as follows:

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

The ~~commission~~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 48. 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 ~~commission~~commissioner as trustee must be deposited in the Bank of North Dakota.

SECTION 49. 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 ~~commissioner~~ commissioner for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receiptholders, less expenses incurred by the ~~commissioner~~ 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 ~~commissioner~~ commissioner by certified mail upon the licensee and the surety and by ordinary mail upon all persons having claims filed with the ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner from ~~its~~ the commissioner's trust.

SECTION 50. 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 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 51. 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 ~~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 52. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Release of records - Confidentiality.

1. As a condition of licensure under section 60-02.1-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
3. Any information obtained by the commissioner under this section is confidential and may be provided only:
 - a. To federal authorities in accordance with federal law;
 - b. To the attorney general, state agencies, and law enforcement agencies for use in the pursuit of official duties; and
 - c. As directed by an order of a court pursuant to a showing of good cause.

SECTION 53. AMENDMENT. Subsection 1 of section 60-04-01 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 54. AMENDMENT. Section 60-04-03 of the North Dakota Century Code is amended and reenacted as follows:

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

Upon the insolvency of any warehouseman, the ~~commission~~ 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~~ receiptholders that the ~~commission~~ commissioner secure and execute such trust, the court shall issue an order granting the application, without bond, ~~whereupon at which~~ time 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 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 55. 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 receiptholders 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 ~~commission~~ 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 56. 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 57. 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 receiptholders, 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 58. 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 59. 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 receipt holder, either individually or in conjunction with other receipt holders, 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 60. AMENDMENT. Section 60-04-06 of the North Dakota Century Code is amended and reenacted as follows:

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

Upon ~~its~~the commissioner's appointment by the district court, the ~~commissioner~~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 receipt holders against:

1. The insurers of grain;
2. The warehouseman's bond;
3. Any person who may have converted any grain; or
4. Any receipt holder who ~~shall have~~received more than ~~its~~the receipt holder'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 receipt holders. The ~~commissioner~~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 shall deem~~commissioner ~~deems~~ it necessary to the redemption of the receipts that all the above remedies be pursued at the same time.

SECTION 61. AMENDMENT. Section 60-04-07 of the North Dakota Century Code is amended and reenacted as follows:

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

The ~~commissioner~~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 receipt holders.
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 62. 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 63. 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 ~~it~~ 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 receipt holder 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 ~~commissioner~~ commissioner from ~~its~~ the commissioner's trust.

SECTION 64. 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 ~~commissioner~~ commissioner in the prosecution of such action as in the attorney general's judgment may be necessary and the ~~commissioner~~ 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 ~~commissioner~~ commissioner in carrying out the provisions of this chapter, including adequate insurance to protect the ~~commission,~~ commissioner, ~~its~~ commissioner's employees, and others engaged in carrying out the provisions of this chapter, must be reimbursed to the ~~commissioner~~ commissioner from the trust fund and credit-sale indemnity funds as appropriate.

SECTION 65. AMENDMENT. Section 60-05-01 of the North Dakota Century Code is amended and reenacted as follows:

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

The ~~public service commissioner~~ 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 66. 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 ~~commissioner~~ commissioner may install, and ~~whenever~~ 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 ~~commissioner~~ commissioner on ~~its~~ the commissioner's own motion may, or on request of the required percentage of partners, stockholders, or members, the ~~commissioner~~ 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 ~~commissioner~~ 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~~ 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 ~~commissioner.~~ commissioner.

SECTION 67. 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 68. 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 69. 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, ~~where~~ if 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. ~~Where~~ if stations are ten miles [16.09 kilometers] or more apart the railroad company, ~~when~~ if required so to do by the ~~public service commission~~ commissioner, shall construct and maintain a sidetrack for the use of shippers between such stations.

SECTION 70. 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 commission~~ 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 71. 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 commission~~ 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 72. 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 commission~~ 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 commission~~ commissioner on a continuing basis to be used exclusively to carry out the intent and purpose of this chapter.

SECTION 73. 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~~ 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~~ shall require collection of the assessment.

SECTION 74. 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~~ serve as the trustee, the ~~public service 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 75. 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~~ shall prorate the claims and pay the prorated amounts. As future assessments are collected, the ~~public service 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 76. 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~~ 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~~ is appointed trustee under section 60-02.1-29 or 60-04-03.

SECTION 77. 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~~ in administrating the credit-sale contract indemnity must be reimbursed from the fund before any other claim for indemnity is paid.

SECTION 78. 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 79. 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 80. 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 81. 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 ~~commissioner~~commissioner in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the fund.

SECTION 82. 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 ~~commissioner~~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

2019 CONFERENCE COMMITTEE

SB 2346

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2346
4/18/2019
JOB # 34830

- Subcommittee
 Conference Committee

Committee Clerk: Florence Mayer

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 60-02, a new section to chapter 60-02.1, and a new section to chapter 60-10 of the North Dakota Century Code, relating to records confidentiality for warehousemen and grain buyers and assessment refunds for grain producers; to amend and reenact subsection 5 of section 60-02-07 and sections 60-02-11, 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, 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 of the North Dakota Century Code, relating to warehouse and grain buyer licensing, scale ticket conversions, claims distributions, assessments and refunds, subrogation, and unlicensed grain buyers; to provide a penalty; to provide a continuing appropriation; and to provide for reports.

Minutes:

None.

Senator Klein: Opened the conference committee on SB 2346. Roll call was taken, all members were present. The conference committee consists of Senators Klein, Myrdal and Hogan; Representatives Johnson, Headland, and Satrom.

We have an hour scheduled for this morning. It is an important issue and we've had a lot of discussion on it with where this inspection should be. I think what the House sent us, we are moving it into the Agriculture commissioners preview. It seemed to be obvious that was the main thrust of it. The bill we sent included some financial disclosures, leaving it where it was and expanding the indemnity fund. Representative Johnson, are the Chairman for your side, if you would give us an update?

Representative Johnson: What we did to the Senate bill when it came over, we took the House version you turned in a study, put this back into the bill. It still makes the transfer from the PSC to the Agriculture department. We took the expansion of the indemnity fund, to leave it how it is currently. We included processors as far as being bonding and licensed in ND. It would be considered the same as a warehouse as far as insolvencies. Brokers, we wanted them covered as far as doing business in North Dakota. They are bonded and licensed we know who's doing business in ND and they have responsibility. We liked that the financials be put in statute. Whether this stays in the PSC or goes to the Agriculture department, we want those tools to be used by whoever has the oversight.

Senator Klein: That probably sums it up. I will sum up what the Senate came up with. We spent a little bit of time, we didn't want to kill your bill, but turn it into a study. There were so many questions related to brokers, roving grain buyers, 3rd part financial audits, whether an audit is just a snap shot in time and whether or not it has the capability of helping people. The concerns with how these guys are getting a bond with nothing in concerning. That is how we wound up with what we believe is a comprehensive study, which is still alive in the House. In the end, I believe the indemnity fund is still an important issue that the Senate would like to see expanded. The Wanzek proposal provided, I know there is a lot of angst that we are just creating a fall back for poor or shady people. Our discussion was that there isn't an insurance policy where after you pay up a certain amount that you aren't charged again until you have a claim. We really think the indemnity fund would create this back drop and we don't believe it would allow for people not to be careful. It is unfortunate that we had some folks make bad decisions and are really affected by that. I know you were the sponsor of your bill that came here. We know your position on this. There is a lot of emotion in this. I wasn't at all the meetings, but I sure heard about them. We need to settle that down and do what's best for our producers.

Representative Johnson: When I introduced this bill, I didn't realize, with all the meetings over the last 10-12 years, this isn't the first time this has come up about doing the transfer. I wasn't aware this had even been talked about before. You hear about these insolvencies, it's hard when it happens in your backyard. Every now and then, there is a hiccup. When I talked to people at home, they thought it was already done. They are so adamant that this happen because of their involvement. They thought they were given honest input and blew it off as competition. I looked into the 38 states that regulate the grain industry. Of those, 34 are in the Agriculture department. They have the boots on the ground that drive fertilizer, anhydrous chemicals, etc. They could certainly put this in their portfolio too. It isn't about personalities, I'm sure I will lose many friends with my stance on this. It isn't about personalities, it's about where I feel the operation ought to be conducted. No one asked me to introduce this bill, this is from my work at home. The Agriculture department is the ones getting the calls with what is going on. That is where I come from on this; it is unfortunate we have to read about ourselves in the papers and such. This is about the process of the agencies.

Representative Headland: Regarding the indemnity fund as a point of contention, I think a real issue the House had, was the combining the current practice and what has been specifically paid for; combining that with all grain type sales. I think if we could get over that issue, I would be willing to look at the expansion or creation of a new fund. I don't think it's fair to those of us, I am a farmer, we paid for coverage for a specific purpose. There was always some risk involved. If we pass the legislation the way the Senate did, if I choose not to participate in the future, I wouldn't have any coverage for the specific purpose I already paid for. That is a problem. The other issue I have with it, if I want to make the choice to not participate in a new fund, I don't think I should be the one responsible to do the leg work to recover or ask for my funds back. I should have the opportunity to opt in if I want to participate. Personally, those are 2 big issues I have with that. Beyond that, if we can overcome that area, I may be willing to support something in that area. I have no problem with those farmers who want to set up a fund to cover their decisions. If they want to pay for it it's fine. If I chose not to pay for it, I don't want to have to ask for my refund.

Senator Klein: I get that. When we established the credit sales indemnity fund, which was the whole concern. I don't know whether it should be in Agriculture or PSC. We could look at other states and which insolvencies are with which department. I am convinced the bad guys are out there. We've been here a while. Every 3-5 years we wind up trying to fix what we think is a broken part of the system. We put some stuff on it and try to glue it together; it seems to hold up a couple years. Then we have another guy that figures out how to beat the system, it upsets everyone. Look at the issues it has created. The emotional and physical issues among our producers.

Vice Chair Myrdal: I hear what Chairman Johnson is saying, it is a painful thing. I think the focus should be on how do we fix the process. Were there problems from parties from the bottom to the top? Absolutely. There is fault all the way to the bottom. If someone walks into my yard and offers me 50 cents more a bushel I wouldn't likely jump on that ship. There is a little buyer's remorse all the way down. That is the elephant in the room. For me, what is best starting today, to make it the best for the producers? I sit on the school board. People always fight for teachers. No, we do what's right for the kids, then the parents and teachers are happy. At the end of the day, where the regulatory authority ends up isn't a great concern to me as much as how do we make sure all the way from the broker to the bonding the process is as secure as we can make it even if someone will find a loophole. Whatever we can come up with to make it best for the producers, is where I'm at.

Senator Klein: The sponsor of the bill is the one I work through. He has spent a lot of time on this. The indemnity issue is something we feel strongly about. We have to figure out a way to adapt to what you're saying Representative Headland. To make sure that portion you participated in is help separately. We can provide some sort of fund for other folks. I don't think we are looking at covering pre-sales or pre-purchases. I think we are still just looking for the cash sale and make that work. If I'm hearing that right, we could have conversations again. We might have time this afternoon. Maybe in the meantime we could have some discussions.

Representative Satrom: I think we have a lot in common here. I appreciate Representative Headland's comments. I love the idea of having an additional indemnity fund. The only heartache I have is the having to opt in, rather than opt out. I think we will have problems with people saying; well I intended or thought I was in there. If you ask for the money back, you sign a disclosure saying you're not in there. People might assume they were covered.

Senator Klein: I don't quite get it all either. Whom does all this leg work for the fund?

Representative Johnson: I think whoever is doing business has got a lot tighter when you drop grain or sign the sheet of how you will market this grain. It think it would be just one more line on there if you want to participate or not participate.

Senator Klein: That is what we rely on to collect the funds and send them somewhere. Who holds the fund?

Representative Johnson: Whenever you market grain through the elevator, the bushels are counted and the discount is right on your check.

Senator Klein: What we are suggesting then is potentially looking at a second fund? It would be 2 pots?

Representative Headland: I think there has to be a separate pot.

Senator Klein: Then that pot would cover what we are going to decide? (Yes.) It is up for discussion. If there is information or someone in the crowd you would think is important; we are not opening the hearing, but if there is an answer for a question we have I will allow that.

Representative Satrom: I really like the idea of the separate fund. If it is a check box or whatever, I think there should be uniformity for each. Whether you are opting in or out, it should be the same kind of check box. Just to avoid confusion.

Representative Headland: We already have a process in place for the credit sale indemnity fund. Currently there are excess funds, so that assessment is not being made. I don't know how you change that particular fund into an opt in now, when it has already been paid for. I think we need to keep the 2 issues separate. We will have to have another mechanism for the new fund. I have to disagree with Representative Satrom that we could bring them together.

Representative Satrom: I am not about getting it together; I just hope in the process we don't create more confusion.

Representative Headland: Farmers are businessmen, they are smart people. There will not be any confusion. Do we have people who after the fact play dumb? Yes, that is nature. Anyone who signs off on not paying to the new fund will know darn well, what they signed.

Senator Klein: I think the word will get out very quickly on what we do or do not accomplish here. I have to lean with Representative Headland. The producers are in the know. The organizations are in the know as well.

Senator Hogan: In the House, did you consider amending this bill to add a separate section and did you do any legislative work on how that might be done?

Representative Johnson: Indemnity fund, we have talked about it, but we have never been able to increase or expand.

Senator Hogan: To set up a separate fund, a new one. So you haven't look at the language?

Representative Johnson: That language comes from the Senate. I don't believe we would be able to pass another indemnity fund in the House at this time.

Representative Headland: I don't think many of us on the House side believe the indemnity fund, creating a new one, or expand the old one solves any problems. If it had been in place prior to this incidence, I guess those who participated would be able to recover some of what their losses were. That is all find. If we had it so there is an opt in or out either way. A lot of farmers know where they do business and they will opt out. I don't think a fund is the answer

that solves the problem. I think tightening it up, wherever you put it, those are things that will fix the problems.

Senator Klein: I can't help it, but I am going to have the other half of Team 29 come to the podium. I want him to express his opinion for the benefit of the entire room.

Senator Terry Wanzek, District 29: I came here to listen and I don't have much time. I understand the road you're going down. I'm trying to think of how you keep that simple. I don't think you need 2 different funds, but we could somehow identify the current fund is used until it is exhausted in paying for the credit sale contracts. They might be exhausted before the biennium is even over. Somehow, if we could identify that they are used solely for that. Eventually it would be nice to keep it as simple as possible. Maybe you need to sign a public document that you want to opt out. Instead of having a file every year for a return, if you sign and opt out, maybe that could be filed, whether it is PSC or Agriculture. When there is an insolvency, that is when even those who don't like the indemnity fund will want to get in line for it. They are losing money. My way of thinking, it is always about taking care of the innocent. They aren't totally innocent and won't be totally made whole. It bothers me that the young farmers will lose entirely what they sold. That will effect whether their farm survives or not. I want to give them a shot of hanging in there. I understand where you're going, I understand Representative Headland's concern. If he decided to opt out, how is the money he's paid into the fund dealt with. Unfortunately, the current insolvency will solve that problem. There might not be any money left, we won't know until the whole case is litigated.

Senator Klein: I see it as, someone somewhere will be are you in or out. What if you have 500 customer, I know technology helps us along. The guy buying your grain, where is that file so they know who's in or out?

Senator Wanzek: With sales tax, aren't there certain vendors exempt? How does the sales tax department handle that? Is there some way to sign a document or acknowledge they don't want the insurance. Then he could present an indemnity exemption card with a number to his elevator. I think you almost have to have everyone in and then opt out. That would provide an option to opt out without having to do the file to get the refund.

Senator Klein: Thank you. There is a lot of stuff here guys. This will be a little more involved to get to the end. We will adjourn for now.

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2346
4/23/2019
JOB # 34927

- Subcommittee
 Conference Committee

Committee Clerk: Florence Mayer

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 60-02, a new section to chapter 60-02.1, and a new section to chapter 60-10 of the North Dakota Century Code, relating to records confidentiality for warehousemen and grain buyers and assessment refunds for grain producers; to amend and reenact subsection 5 of section 60-02-07 and sections 60-02-11, 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, 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 of the North Dakota Century Code, relating to warehouse and grain buyer licensing, scale ticket conversions, claims distributions, assessments and refunds, subrogation, and unlicensed grain buyers; to provide a penalty; to provide a continuing appropriation; and to provide for reports.

Minutes:

None.

Senator Klein: Opened the conference committee on SB 2346. Roll call was taken, all members were present. The conference committee consists of Senators Klein, Myrdal and Hogan; Representatives Johnson, Headland, Satrom.

There has been some effort to move this product along so we can provide a sort of solid ground. There are 2 budgets on hold because of this. There have been a lot of discussions. We have settled on, and the sponsor has settled on, is accepting the house version of SB 2346. There are some issues we have changed. We were hoping the amendments would be here at 10am so the committee could look at them, then we would send you on to have further review. We are being asked to see if we can't move things along because there are 2 budgets that are being help up due to this bill. Representative Johnson will walk us through the changes to the House version of SB 2346.

Representative Johnson: The amendments we worked on in this bill, we were able to work with prime sponsor, Senator Wanzek. This was his bill, it came to the House, and we amended on the bill we had to transfer this from the PSC to the Agriculture department. That is still here. Some of the things we amended in the House was to include the grain brokers as far as bonding and licensing; we want to take that out for now. The things we are taking out in the bill are the things we want to have in the study. When we have our study in the interim, we can fully study the different aspects. Then next session we can decide what we

want to put into the more permanent bill. The bill we have now, we want to take the brokers, processors out. We wanted to have some ability to recapture on the insolvencies, both the raw material and finished material. We will take that back out to study it. The financials would be kept confidential like we have with the livestock and federal warehouses; we want to take that out for the time being.

Senator Klein: As you page through you will see most of the sections are fully underlined, section 23, 31, 32, etc. You will see section 52. The other issue was, whether or not the roving grain buyers were collecting the indemnity assessment.

Representative Johnson: They are supposed to be collecting the assessment when the indemnity fund is being collected. Right now, it kicks in at \$3 million and kicks out at \$6 million. It stays in that range, but it is somewhere in between there right now. If that were to kick in again, the roving grain buyers are supposed to be collecting that and the check offs for the different commodities they haul. That is in statute, but we want to make sure it is in this bill.

Vice Chair Myrdal: Could you go back to the confidentiality issue and why are we removing that?

Representative Johnson: That is something we talked about with Senator Wanzek. I have no problem leaving it in there. This is a work in progress. Do we want to leave it in this bill or do we want to leave that with the study? If the committee wants to leave it in, I am fine with it. Right now, I believe the writers of the code are taking it out.

Senator Klein: As the inspectors are looking at the warehouse at the location, they are confidential. It's when the inspector takes the copy and leaves the facility, that is when the confidentiality issue creates a problem.

Senator Hogan: I understand we are just getting the amendments; will we be able to look at the Christmas tree version so we can see it as a whole? It is so much easier to read that way.

Representative Johnson: We are hoping to get both.

Senator Hogan: That would be easier to read, because it sounds like a substantial change.

Representative Johnson: I'm in no hurry to act on this bill. It is a lot easier for all of us to see the Christmas tree version.

Senator Klein: If it doesn't come down that way, we will have one this afternoon.

Representative Headland: Regarding the collection of the indemnity fund on roving grain buyers, if that is current law; could we find out and make sure processors would also be included in collecting? I think the intent of the legislature when we created the indemnity fund, if the fund was in a range where it was collecting, that the first point of sale would be considered in paying towards it. That way everyone would be participating, no matter where you sold it. I think that is important. If the statute doesn't currently state it's collected by processors, I think we need to make sure they are included in any new language.

Senator Klein: What council suggested was everyone is supposed to be collecting it. They were questioning why we were signaling out and adding a paragraph for roving grain buyers. Senator Wanzek said it's like thanking people for helping you and you miss somebody. Where do we draw that line? Under the current law, everyone is supposed to be. Council was questioning why we were even adding that. Everyone on that point of sale is supposed to be doing it. I know there was feeling among some that it was one area that wasn't being collected on. It is certainly a discussion to be had. Whether or not we are in a position to do that right now, we don't know. We will talk about the indemnity fund in a minute. All the discussions have been, this hasn't been an easy decision. We've been working back and forth. I thought we had resolution, and then over the weekend it changed on the sponsor and I. We are still trying to absorb all of this. We haven't talked about the indemnity fund at all.

Representative Headland: When we talk about that, I would like to have clarification if there is a situation where the fee is not collected at the time of sale, those who are responsible to collect will have to pay it themselves. I don't know if that is clarification we need for the roving grain buying industry. I think we need to make sure this is tight when we leave here.

Senator Klein: We are going back to the study, which is why we are not addressing the indemnity fund to the degree we had intended. There are so many outliers and suggestions. We only have 8 more days and we have to be done here. I understand what you're suggesting. I believe Representative Johnson's idea is looking at the indemnity fund in the study, how we cover it, are those guys included, what should be a penalty if they don't. There might be grain warehouses not paying their fee, I don't know that. Because of the liquidity of roving grain buyers, they may not be doing their job.

Representative Headland: I think it is possible the current indemnity fund would be in an area where they will start assessing the fee. If we wait and address it in the study, I think we are missing an opportunity that at the point of the first sale everyone pays. I agree with the study of the fund itself and the direction. We need to make sure everyone is fairly assessed. That means every bushel sold through a credit sale would pay. I don't know how roving grain buying sales work, if they are as a credit sale possibility. I believe for the processors there is that ability.

Senator Klein: I would suggest that Representative Johnson and you check that out. If it is under current law, we may not have to move that forward. Since we will not be acting on this this morning, check it out. Council implied that this is a requirement and in the law. If it is a credit sale, it needs to be addressed.

Senator Hogan: I know we are focused on the indemnity fund, but at some point I would like to walk through what the transition process would be if we moved the inspection from the PSC to the Agriculture Commissioner.

Senator Klein: I don't have a clue who we would ask.

Representative Johnson: As far as how the move will take place, with the legislation we make that possibility happen. It would be the department that would need to envision how

they will take on this project. I wouldn't want to put word in their mouth on how they will do it. As far as on the record, I would feel more comfortable if they shared that with you.

Senator Hogan: We would transfer the existing inspectors to the Agriculture Commissioner and then add the additional ones requested?

Representative Johnson: I would envision the job descriptions are already there, anyone who wants to apply for that position would have the opportunity to do that. I don't know if people are getting transferred. I wouldn't want to go there without asking.

Senator Klein: Similar to how we moved the boiler inspection from the insurance department and transitioning into the department of environmental quality. There are a variety of things we've done, I don't know how this process will go.

Senator Hogan: That has varied. We have done a couple of those over time and each has been a little different.

Representative Johnson: I think we've just moved the pot from commerce to the Agriculture department and employees too. I would feel more comfortable with those folks explaining how the process works.

Senator Hogan: And the timelines. My concern is that the inspectors' are pretty involved in the current issues. They have a lot of technical and detail knowledge on those issues. I want to make sure we are maintaining some continuity.

Senator Klein: A discussion we've had is the concern that we are moving this during a time where there are issues happening, the timing is poor. I don't know what that answer it. I am still not totally comfortable yet. We are working on that. We had the discussion yesterday to calm those concerns. We know this will take some years to transition and work through the current insolvency. That will be major to me. I think the sponsor is good with the direction we are going. We had a lot of discussion on the indemnity fund and how to shore that up. Senator Wanzek's original bill was to provide the indemnity coverage lowering the percentage to quite a small one but using all sales. That would not be including supplies. We kept running into a snag one way or another. That is when we talked about the Senate version of the House bill, where we provided a comprehensive study. That is where that was left. Then as we were throwing things around yesterday afternoon trying to develop the comprehensive idea, I don't think we were getting very far.

Representative Johnson: I think it emphasizes the need for a study. If we are going to start broadening this indemnity fund, if we will start covering cash or credit or prepaids or all of it on the table. Just to sort through it and see what direction we want to go.

Senator Klein: Senator Luick has done a lot of work on looking at other states and how they expanded the indemnity fund. Some don't cover cash or credit and why they would do that. As the committee members from the Agriculture interim committee travel around the country next summer looking into that.

Vice Chair Myrdal: In our regular committee work, we did a lot of study into that. It is a little frustrating to me, now we are going to hang out there for another 2-years for the producers to not have that assurance and option. With the change of venue for the oversight, I think there will be a downstream effect on the producers. The indemnity fund was important to me, but we are at the place we have to get something going here. But I hope that we can do something serious about that next session.

Senator Klein: Just to remind the newer committee members, the efforts that were made in 2003 when we established the indemnity fund. It wasn't an easy task. It seems to have provided what we were looking for. We wouldn't be talking about this if we didn't have an issue. We have an indemnity fund, we just don't have a fund that goes as far as some wish it would. That is where our concerns are.

Representative Johnson: It think this emphasizes the importance of who we do business with as producers. You consider that when you're thinking you're getting an extra \$0.20 or you are happy with what you're getting.

Representative Headland: Certainly, what has happened in the past will generate many farmers paying special attention to who they're doing business with because of the current insolvency. I think, regarding the indemnity fund, there are big questions that need to be answered. Is it appropriate to move dollars that have already been assessed and payed for, for a specific purpose, into a broader area now? The way the legislation came out of the Senate was the new assessment would be optional. If you chose not to pay that assessment, and you'd already payed for coverage on a credit sale; is it fair that you would no longer have that coverage when you've already payed for it? That is a big question and it's just an example of why we need to take a look at that before we move forward with an expanded fund.

Senator Klein: I know some people have to go. If the amendments get to someone, we will deliver it to your desk. I will reschedule, it is critical to move those other budgets forward. We are adjourned.

2019 SENATE STANDING COMMITTEE MINUTES

Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2346
4/23/2019
JOB # 34946

- Subcommittee
 Conference Committee

Committee Clerk: Florence Mayer

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 60-02, a new section to chapter 60-02.1, and a new section to chapter 60-10 of the North Dakota Century Code, relating to records confidentiality for warehousemen and grain buyers and assessment refunds for grain producers; to amend and reenact subsection 5 of section 60-02-07 and sections 60-02-11, 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, 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 of the North Dakota Century Code, relating to warehouse and grain buyer licensing, scale ticket conversions, claims distributions, assessments and refunds, subrogation, and unlicensed grain buyers; to provide a penalty; to provide a continuing appropriation; and to provide for reports.

Minutes:

Attachments # 1 - 2

Senator Klein: Called the conference committee on SB 2346 back to order. Handed out **Attachment #1**, proposed amendment “.02004” and **Attachment #2** a copy of HB 1467. I handed out HB 1467, which is passed the House, so everyone can see the questions we had as far as what the study covered. It covered everything from bonding to grain buyers, brokers, handling facilities, financials, etc. We have the amendments. There is not a markup version because we are moving sections.

Representative Johnson: It is a thick bill. When you read through it, we overstruck “commission” and put the word “commissioner” in, thus allowing for the transfer. The fees were raised in all facilities, raised \$100 for small or large grain buyers. On page 13, line 1, it talks about the bond from 5-10 and the agency can go 10 times that. Instead of a \$5,000 bond, now it can be \$50,000. We took it from a \$10,000 bond to \$100,000 if they so choose to go up to 10 times the bond. We talked about the roving grain buyers and the assessments. That is in statute. We talked about duplicating the language; it keeps it a lot cleaner I believe. They do take the assessment as far as the indemnity fund when it is working. They are all required to take that assessment when they load from a first time purchase. There is no assessment at a warehouse or cleaning facility because it’s been taken the first time. We talked about putting that amendment back in, but we decided to leave it alone because it

creates a conflict in another section. When you look through the bill, unless there is something that grabs you, it is pretty much just the couple of words we talked about.

Senator Hogan: I went through and looked at the things that were totally removed. The first is the release of records and confidentiality. Can you walk through why you did that?

Representative Johnson: We've been told they can be made public if they are looked at. Our understanding was you could look at them on the premise. They are made public when you remove the documents from the premise back to the office or something. If you look at them on the premise, they are confidential.

Senator Hogan: It think we were trying to assure that if they needed to take something away, they would maintain the confidential status. That is what this section was trying to do. I wanted to see if you thought about why you took it out. In the original draft, it is section 23 if you want to look .

Representative Johnson: I can appreciate that comment; that is in on the study too. If we can keep it simple and move forward on what we have here, then have this encompassing study in the interim, along with the other parts of the study.

Senator Hogan: Right now, if an inspector went out, they can't bring information back? That is what we were trying to get to originally.

Representative Johnson: If it is the financials that would be the case.

Senator Hogan: We are just maintaining current practice and not addressing those issues we identified?

Representative Johnson: I think we are thinking the same.

Senator Klein: Let's keep it separate, but keep thinking.

Representative Satrom: They wouldn't be able to take back the information that you have such and such money in such and such funds. Perhaps maybe a debt-to-asset ratio or something else like that. They are at a de-risk right now. I have some real concerns about the roving grain buyers. We are raising it from 5 to 10, supposedly they can have that factored by up to 10 if they want to, so that is \$100,000. Is that a common practice?

Senator Klein: Currently they are going 10 times on the \$5,000, which is the minimum, so they can get it up to \$50,000.

Representative Satrom: Just seems like that is not very much grain. With a regular elevator, at least you potentially have assets and inventory to levy against. Of all the people we are dealing with, those should be the people we should be compensating for because they have the most risk. I don't mean to be unfair to free-market capitalism and all that. They are the highest risk and we aren't having them reach a very high bar.

Senator Klein: There is a reason for that, Representative Johnson will tell you.

Representative Johnson: In committee when we had testimony, we had 2 different roving grain buyers address us. One was bonded at \$1 million, the other at \$2 million. Certainly, this number can be changed. We are doubling what it was and I think that is part of the study too.

Senator Klein: This is based on the volume of grain they are entrusted with or bonding for “x” amount of bushels? Help me out here? I wasn’t aware of that.

Representative Satrom: If that is what you say, I’m fine with it, thank you.

Senator Klein: Discussion on the Johnson amendments?

Senator Hogan: The other section you took out was section 31 on the cash grain broker licenses application and bonding section. Tell me what you’re thinking?

Representative Johnson: That was something new we added. If we do it and get the study passed, I would like to see that in a study too so we know what level we want to deal with that issue. As much as I feel the processors should be involved too, rather than do something now I want to make sure we are doing the right thing in the interim.

Senator Hogan: The last one was the confidentiality records issue on section 52. So you said just do the study and come back to those 2 issues?

Representative Johnson: If we have the study, all of that can go in there, so we get this right.

Senator Hogan: Okay, I can live with that.

Senator Klein: Section 31 and 32 those dealt with the brokers and processors. Both were relatively new discussions and concerns.

Senator Hogan: One of the things I talked with Senator Klein about, if we are transferring the positions to the Department of Agriculture, we should ask for legislative management reports or quarterly reports. We don’t want to reopen that at this point. We could either have Legislative Management do it or put a study issue in the OMB budget. I think we need to have regular reports on the status of this transfer.

Senator Klein: That can be done.

Senator Hogan: It doesn’t necessarily need to be in this bill. I thought it would be good to share with this committee, it’s a big deal.

Representative Johnson: Do you want a motion or to talk about it?

Senator Klein: If we have a motion, we can have discussion and a vote.

Representative Johnson: Moved to adopt the amendments .02004.
Representative Satrom: Seconded.

Representative Satrom: I am assuming that everyone has a comfort level and we have enough of a Band-Aid level to get this through to the study and the next session? That may be an unfair way to ask that.

Senator Klein: The insolvency has raised a level of folks keeping an eye on what they're doing. We are caught up in trying to create legislation in a short period of time that has hidden risks and undo circumstances. It is incumbent upon us to move slower. We can argue we are putting the cash sale folks at risk; they've been at risk forever and now another 2 years. I understand that. When we were trying to craft something we could live with, it will be a major lift for the committee to come up with something that will be agreeable to the producers. You could say a Band-Aid or we are kicking the can; there are a couple slangs we could use. There are things that need to be done. The Senate spent a lot of time crafting this. We may not of gotten it entirely right on the study, but at that point we were still going to study it where it was currently located. Some of us felt there was already enough black and blue and we have to do this for the right reasons, the producers.

Vice Chair Myrdal: It think this study is extremely comprehensive and needs to be taken extremely seriously. It is a heavy-duty study that needs to be worked on diligently in the interim. Farmers are smart business people. I've said this on record in many committees, buyers be aware, literally. It is a horrible situation for those who were caught in this. The media, coverage of it, and what we are doing here will certainly be a buyers aware thing. I wish we could of done a few more things then what this bill is doing, I think the process, sadly, became a little convoluted and hurtful for a lot of people. It is too bad. The producers are my number one concern. If the kids are happy, then the teachers are happy, then the parents are happy. I know that sounds light, but it isn't. It is really, you have to go to the bottom of this and see what we can do for the producers to have this work better for the future. I think this is a good product to come out of this committee. Too bad it became a World War III in this building.

Senator Klein: Last week at this time, I would have never even thought to be supporting what we are doing here today. After a lot of discussions, it has turned into an opportunity to move it ahead and maybe do the right thing. I am hoping we are doing the right thing. I am 51% convinced we are doing the right thing, which is riding the fence. It is where we are at. We have the amendment before us and I think we have wrestled with this. We have spent a bit of time trying to figure this out and do what we can. The indemnity issue was a big issue and we tried to continue to see what we could do there. It will continue to be a big issue.

Representative Johnson: This certainly hasn't been easy for me. Obviously, I brought this on. I've been on the elevator board for 15 years. The board I was on are the ones who made the call. I talked to several bankers, producers; I got to the point where something needs to be done. Agriculture is our #1 industry. You talk about kicking the can down the road. 2003 is when we came up with the indemnity fund to fix insolvencies for cash sales. This many years later one of the fixed is to expand the indemnity fund so everyone is made whole. I personally have a hard problem in creating an insurance policy with our own money with our

own product, even as little as it is. We could get a refund maybe, but it is the principle of it. The oversight should be here so something like this isn't allowed to happen. That is the way I feel about it, thus I came with the bill. I have confidence this will get fixed. Of the 38 states, 34 of them the grain is overseen by the Agriculture Department. The Agriculture Department is getting the calls on the last situation we had. That is why I want to go to the Agriculture department. They oversee dry fertilizer, anhydrous, chemicals; they have the boots on the ground, they can check the warehouses. I feel strongly about this. Commodity prices are low enough; we don't need another hiccup down the road.

**A Roll Call Vote Was Taken: 5 yea, 1 nay, 0 absent.
Motion Carried.**

Representative Johnson: I move the House recede from the House amendments and further amend as discussed.

Representative Satrom: Seconded.

A Roll Call Vote Was Taken: 5 yea, 1 nay, 0 absent.

Motion Carried.

Senator Klein will carry in the Senate.

Representative Johnson will carry in the House.

Senator Klein: Anything else? We are adjourned.

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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"~~ Commissioner means the ~~public service commissioner~~ 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 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 ~~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 ~~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 ~~commissioner~~ deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commissioner~~, and authorized to do business within the state. The ~~commissioner~~ may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond ~~when~~ if, 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 ~~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 ~~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 ~~commissioner~~. ~~When~~ 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 ~~the~~ 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 ~~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 ~~shall~~ must 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.

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- 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 ~~it~~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 ~~commissioner~~ commissioner.

~~When~~ If requested in writing, the ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 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 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 receipt holders 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~~ 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 ~~commission~~ 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~~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 ~~commissioner~~ 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 ~~commissioner~~ commissioner may require an increase in the amount of any bond, from time to time, as ~~the commissioner~~ 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 ~~commissioner~~ commissioner, and authorized to do business within the state. The ~~commissioner~~ commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in ~~the commissioner's~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner'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~~ 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 ~~commission~~ commissioner may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the ~~commission~~ 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 ~~commission~~ commissioner along with the receipts, contracts, or other evidence of the claims 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 set by the ~~commission~~ commissioner, the ~~commission~~ 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 ~~commission~~ 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 appointment, the ~~commission~~commissioner shall marshal all of the trust fund assets. The ~~commission~~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 ~~commission~~commissioner to prosecute or compromise claims.

The ~~commission~~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 ~~commission~~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 ~~commission~~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.

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- 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 ~~commissioner~~ commissioner for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receipt holders, less expenses incurred by the ~~commissioner~~ 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 receipt holder 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 ~~commissioner~~ commissioner by certified mail upon the licensee and the surety and by ordinary mail upon all persons having claims filed with the ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner from ~~its~~ the ~~commissioner's~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner in carrying out the provisions of this chapter, including adequate insurance to protect the ~~commission, its~~ commissioner, the ~~commissioner's~~ 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 ~~commissioner~~ 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 ~~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 49. AMENDMENT. Subsection 1 of section 60-04-01 of the North Dakota Century Code is amended and reenacted as follows:

- 1. "~~Commission~~ 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 commission commissioner.

Upon the insolvency of any warehouseman, the ~~commission~~ 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 ~~commission~~ commissioner secure and execute such trust, the court shall issue an order granting the application, without bond, ~~whereupon~~ ~~at which time~~ 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 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 ~~commission~~ 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~~ commissioner ~~when~~ 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 receiptholders, 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 ~~commissioner~~commissioner may take possession of relevant books and records of the warehouseman. The ~~commissioner~~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 ~~commissioner~~commissioner along with the receipts, contracts, or any other evidence of the claims as 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 as prescribed by the ~~commissioner~~commissioner, the ~~commissioner~~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 ~~commissioner~~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 ~~commissioner~~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 receipt holders. 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 shall deem~~ 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 receipt holders.
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~~ the claims.
2. Assignments ~~thereof~~ 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 ~~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 ~~commissioner~~ for the expenses of administering the insolvency, a proposed distribution of the trust fund assets, less expenses incurred by the ~~commissioner~~ in the administration of this chapter, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants as ~~the~~ their 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 ~~commissioner~~ deems fair and equitable.

The court shall set a hearing and the appropriate notice for interested persons to show cause why the ~~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 ~~commissioner~~ by certified mail upon the warehouseman and the surety and by ordinary mail upon all persons having claims filed with the ~~commissioner~~.

Any aggrieved person having an objection to the ~~commissioner's~~ report shall file the objection with the court and serve copies on the ~~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 ~~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 ~~commissioner~~ shall ~~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 ~~commissioner~~ in the prosecution of such action as in the attorney general's judgment may be necessary and the ~~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~~ ~~commission~~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 ~~whenever~~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 ~~commissioner~~ after its examination of accounts.

If the ~~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 ~~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 ~~commissioner, 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 ~~commissioner~~ shall mail a copy of ~~said~~the statement or certificate to each of such shareholders or stockholders as may have requested the ~~commissioner~~ to make such examination. The ~~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 ~~commissioner~~. In case any such association, copartnership, corporation, or limited liability company shall wrongfully refuse or neglect to pay such fees, then the ~~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:

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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 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~~ 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~~ stations are ten miles [16.09 kilometers] or more apart the railroad company, ~~whenif~~ required so to do by the ~~public service commissioner~~ 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~~ commissioner to determine rights governed under this chapter. The ~~commissioner~~ 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 ~~commissioner~~ commissioner, directly to the entities owed. The ~~commissioner~~ 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~~ commissioner no later than thirty days after each calendar quarter. The ~~commissioner~~ 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~~ that the 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 commission~~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 commission~~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 commission~~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 ~~commission~~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 ~~commission~~commissioner, the ~~commission~~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 ~~commission~~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 ~~commission~~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

Date: 4/18/2019

**2019 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES**

SENATE BILL # 2346 as engrossed

Senate Agriculture Committee

Senators		4/18	4/22	4/23	Yes	No	Representatives		4/18	4/22	4/23	Yes	No
Klein, chair		✓	✓	✓			D. Johnson	✓	✓	✓			
Myrdal		✓	✓	✓			Headland	✓	✓	✓			
Hign		✓	✓	✓			Satrom	✓	✓	✓			
Total Senate Vote							Total Rep. Vote						

**2019 SENATE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 2346 as engrossed

Senate Agriculture Committee

- Action Taken
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

adopt amendments .02004

Motion Made by: Johnson Seconded by: Satrom

Senators				Yes	No	Representatives				Yes	No
Klein				✓		Johnson				✓	
Murdal				✓		Headland				✓	
Hogan					✓	Satrom				✓	
Total Senate Vote				2	1	Total Rep. Vote				3	1

Vote Count Yes: 5 No: 1 Absent: 0

Senate Carrier _____ House Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Insert LC: 19.1148.02004
Senate Carrier: Klein
House Carrier: D. Johnson

REPORT OF CONFERENCE COMMITTEE

SB 2346, as engrossed: Your conference committee (Sens. Klein, Myrdal, Hogan and Reps. D. Johnson, Satrom, Headland) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1594-1624, adopt amendments as follows, and place SB 2346 on the Seventh order:

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.~~

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- 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 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 enumerated under this chapter and the powers conferred herein devolve upon the commissioner.

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 commissioner shall have the duty and power to
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 commissioner.

The 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.

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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:

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- (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.

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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 ~~commissioner~~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 ~~commissioner~~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 ~~commissioner~~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 ~~commissioner~~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.

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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 ~~when~~if, 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. ~~When~~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 ~~if~~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

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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 ~~shall~~must 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~~

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~~commission~~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 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.

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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 ~~commissioner~~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 ~~commissioner~~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 ~~commissioner~~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 ~~commissioner~~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 ~~commissioner~~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 ~~it~~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 ~~commissioner~~commissioner.

~~When~~If requested in writing, the ~~commissioner~~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 ~~commissioner~~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:

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1. Notify the ~~commission~~commissioner first of ~~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 ~~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~~itscommissioner the warehouseman's license for cancellation and at such, 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, itcommissioner, 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 ~~commission~~ 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.

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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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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:

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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~~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 ~~it~~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~~ 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 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 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.

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2. File the report with the ~~commissioner~~ 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 ~~commissioner~~ 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~~ 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~~ 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~~ 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~~ 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~~ 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~~ 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~~ commissioner.

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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 ~~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 ~~commissioner~~.

Upon the insolvency of any roving grain buyer, the ~~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 ~~commissioner~~ secure and execute the trust, the court shall issue an order granting the application, without bond, and the ~~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:

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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 ~~commissioner~~ 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 ~~commissioner~~ commissioner is appointed trustee must be remitted to the ~~commissioner~~ 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:

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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 ~~commission~~commissioner fails or refuses to apply for ~~it~~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. CommissionCommissioner to marshal trust assets.

Upon ~~it~~the commissioner's appointment, the ~~commission~~commissioner shall marshal all of the trust fund assets. The ~~commission~~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 commissioncommissioner to prosecute or compromise claims.

The ~~commission~~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 ~~commission~~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~~ 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 ~~commissioner~~ for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receiptholders, less expenses incurred by the ~~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 ~~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 ~~commissioner~~ by certified mail upon the licensee and the surety and by ordinary mail upon all persons having claims filed with the ~~commissioner~~.
4. Any aggrieved person having an objection to the ~~commissioner's~~ report shall file the objection with the court and serve copies on the ~~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 ~~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 ~~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 ~~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 ~~commissioner~~ in carrying out the provisions of this chapter, including adequate insurance to protect the ~~commission, its~~ commissioner,

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~~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 ~~commissioner~~ 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. "~~Commission~~ 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.

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

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- beneficiaries of the trust fund in accordance with section 60-02-11;
and
- b. To pay the costs incurred by the ~~commission~~ 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 ~~commissioner~~commissioner may take possession of relevant books and records of the warehouseman. The ~~commissioner~~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 ~~commissioner~~commissioner along with the receipts, contracts, or any other evidence of the claims as 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 as prescribed by the ~~commissioner~~commissioner, the ~~commissioner~~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 ~~commissioner~~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. CommissionerCommissioner to marshal trust assets.

Upon ~~its~~the commissioner's appointment by the district court, the ~~commissioner~~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 ~~commissioner~~commissioner shall seek possession of

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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 shall deem~~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 receipt holders.
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 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.

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5. In the case of scale tickets or warehouse receipts, the amount thereof based upon the market price prevailing on the date the ~~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 ~~commissioner~~ for the expenses of administering the insolvency, a proposed distribution of the trust fund assets, less expenses incurred by the ~~commissioner~~ in the administration of this chapter, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants as ~~the~~ interests of the claimants are determined. If the trust fund is insufficient to redeem all receipt holder claims in full, the fund must be shown prorated in the report in the manner the ~~commissioner~~ deems fair and equitable.

The court shall set a hearing and the appropriate notice for interested persons to show cause why the ~~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 ~~commissioner~~ by certified mail upon the warehouseman and the surety and by ordinary mail upon all persons having claims filed with the ~~commissioner~~.

Any aggrieved person having an objection to the ~~commissioner's~~ report shall file the objection with the court and serve copies on the ~~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 ~~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 ~~commissioner 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 ~~commissioner~~ in the prosecution of such action as in the attorney general's judgment may be necessary and the ~~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 ~~commissioner~~ in carrying out the provisions of this chapter, including adequate insurance to protect the ~~commissioner~~, ~~its~~ commissioner, the commissioner's employees, and others engaged in carrying out the provisions of this chapter, must be reimbursed to the ~~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 commission~~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 ~~whenever~~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 ~~become~~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,

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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 ~~commissioner~~ commissioner shall mail a copy of ~~said~~ the statement or certificate to each of such shareholders or stockholders as may have requested the ~~commissioner~~ commissioner to make such examination. The ~~commissioner~~ 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 ~~commissioner~~ commissioner. In case any such association, copartnership, corporation, or limited liability company shall wrongfully refuse or neglect to pay such fees, then the ~~commissioner~~ 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~~ 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~~ commissioner to determine rights governed under this chapter. The ~~commissioner~~ 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

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parties to such a proceeding shall pay the expenses of the proceeding, as determined by the ~~commissioner~~ commissioner, directly to the entities owed. The ~~commissioner~~ 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~~ commissioner no later than thirty days after each calendar quarter. The ~~commissioner~~ 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~~ shall prorate the claims and pay the prorated amounts. As future assessments are collected, the ~~public service 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~~ 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~~ 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~~ in administering 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~~ 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~~ 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:

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Senate Carrier: Klein
House Carrier: D. Johnson

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~~, the ~~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~~. 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~~ 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 ~~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 ~~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

Engrossed SB 2346 was placed on the Seventh order of business on the calendar.

2019 TESTIMONY

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Testimony on SB 2346
Senate Agriculture Committee
Senator Terry Wanzek

Good morning Chairman Luick and members of the Senate Agriculture committee. I am here today to introduce SB 2346. This bill is addressing warehouse and grain buyer licensing, scale ticket conversions, claims distributions in an insolvency, and the assessments and refunds of an indemnity fund that is already established in our state law.

The issue is complex and difficult to know where to begin. We are trying to accomplish 2 things with this bill. First we are providing more oversight authority to the PSC on the front end of the licensing process to hopefully develop a stronger program to better prevent warehouse and grain buyer insolvencies or to be able to recognize an potential insolvency sooner to mitigate financial damage. And secondly this bill attempts to provide broader financial protection to producer claimants who are harmed by a grain buyer's or warehouse's insolvency.

This bill expands the authority of the PSC to request any financial information the commission deems relevant to issue a license or conduct an investigation after issuance of a license. This gives the commission access to more financial information from the applicant to make a better decision on licensure and more teeth in their authority to request information on the front end of licensing a grain buyers and public warehouses. Hopefully this will help prevent future problems rather than having to deal with them later. All this new authority information obtained by the commission is confidential and not open to public record. This new language is nearly identical to language regulating livestock auction barns and individual livestock buyers in ND century code.

When a person delivers grain to a warehouse or a grain buyer, they fall into one of 4 position categories. Why is this important? Under current law your position with the elevator, in an insolvency case, can determine whether you receive any indemnity or not. There is cash, non credit sales contracts, credit sale contracts and warehouse storage receipts.

Cash, non credit sales contracts, and warehouse storage claimants fall under the trust fund in an insolvency but do not get covered by the indemnity fund. Credit sale contract claimants are not covered by trust fund assets but by the credit sale indemnity fund. Depending on the insolvency case, a producer might be better off being on one side or the other. Your not sure until the Commission has taken receivership of the insolvent entity and the financials are revealed. Many resolutions, of an insolvency case, take a long time because claimants jockey to get on which ever side appears to be more financially advantageous to the claimant. More direction and clarity is needed in law. This bill changes the 45 day requirement to 30 days, to convert scale tickets to cash or non credit sale contracts or credit sale contracts or warehouse storage receipts. It also clarifies that claimants who failed to convert their scale tickets within 30 days will by default be considered a credit sale contract, in the case of an insolvency.

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This bill also tweaks the credit sale contract indemnity fund in current law. It is our intent to not grow the indemnity fund. It will remain at the same level of funding as in current law. However, It is our intent to expand the benefit coverage of the indemnity fund to cover all claimant positions, whether that is cash sales position or a non credit sale or credit sale contracts position or warehouse storage receipts claimant position. Payouts of indemnity benefits to claimants in an insolvency remains the same, 80% of a claim with a limit of \$280,000 paid. When an assessment is triggered, the bill reduces the assessment fee from 2/10ths of 1% or .002 of the total value of a grain sale to 1/20th of 1% or .0005 of the total value of a grain sale transaction. Current law applies the assessment fee on only credit sale contract settlements whereby this bill changes it to be assessed against all final grain sale transaction settlements. Thus the name change from The Credit Sale Contract Indemnity funds to Grain Indemnity fund. Using latest USDA information on ND's grains, oilseed, dry beans and peas and lentils crop receipts this will raise about \$3 million per year in indemnity funds. Assessment fees will cease when fund is \$6 million plus and trigger again when fund is \$3 million minus. Same as current law. We are not expanding the size of the credit sale indemnity fund. The current fund balance of the Credit Sale Contract Indemnity fund will transfer into the Grain Indemnity fund. Also anyone who does not want to be a part of the grain indemnity fund can seek a refund of the assessment fee from the PSC. Insurance companies have a guaranty association which operates similar to an indemnity fund. It is required by our state's insurance commission.

In conclusion, we are trying to provide a better system that allows for better risk protection for our producers when they sell their commodities. I am sure this bill will not eliminate all insolvencies or problems, but hopefully it will do a better job of addressing the concerns of the grain producers and the grain merchandising industry. I hear from farmers, 'we need more protection". This is meant to provide financial protection and more certainty for innocent players in the grain marketing process. Many times it is not just the producer who ends up hurting, it reverberates throughout the local community when they can't pay their bills.

Given the highly publicized insolvencies in the news we want to be careful to not overreact. Now is not the time to point fingers. We have producers whom are going to be seriously negatively impacted. Providing protection is not about bailing out the bad actor, it's about helping innocent folks who are being hurt by an insolvency. We need to have this discussion! Where can we improve our bonding and licensing program. This bill may not be perfect or the final answer but it is a start. Hopefully it gets the discussion going. I want to assure the committee that I will be willing to work with you on addressing concerns and or making changes or amending. I believe this will be a work in progress to improve on our system and provide better protection for the producers of our state.

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Title.

Prepared by the Legislative Council staff for
Senator Wanzek

January 29, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2346

Page 1, line 1, after "60-02" insert ", a new section to chapter 60-02.1,"

Page 1, line 14, remove the overstrike over "~~may~~"

Page 1, line 14, remove "shall"

Page 2, line 16, replace "producer" with "claimant"

Page 2, line 17, replace "producer's" with "claimant's"

Page 2, line 26, replace "sections" with "section"

Page 2, line 26, remove "or 60-02.1-07"

Page 2, line 29, after "issuance" insert "or renewal"

Page 2, line 29, remove "or grain buyer"

Page 2, line 30, after "issuance" insert "or renewal"

Page 2, line 30, remove "or grain buyer"

Page 3, line 4, after "issuance" insert "or renewal"

Page 3, line 4, remove "or grain buyer"

Page 3, line 5, after "issuance" insert "or renewal"

Page 3, line 5, remove "or grain buyer"

Page 3, line 27, remove the overstrike over "~~may~~"

Page 3, line 27, remove "shall"

Page 4, line 15, remove "producers"

Page 4, line 30, remove "producers"

Page 5, line 2, remove "producers"

Page 5, line 10, remove "producers"

Page 5, line 15, remove "producers"

Page 5, after line 15, insert:

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

Release of records - Confidentiality.

1. As a condition of licensure under section 60-02.1-07, an applicant must agree to provide to the commission, upon request, any financial record the commission deems relevant for purposes related to:

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

Page 6, line 4, remove "producers"

Page 6, line 7, remove "If the trust fund is insufficient to redeem all receiptholder claims in full,"

Page 6, remove lines 8 and 9

Page 6, line 12, remove "producers"

Page 6, line 22, remove "producers"

Page 7, line 1, remove "producers"

Page 7, line 5, remove "producers"

Page 7, line 8, overstrike "**Credit-sale contracts - "**

Page 7, line 9, replace "one-tenth" with "one-twentieth"

Page 7, line 16, remove "producers"

Page 7, line 19, remove "**producers**"

Page 7, line 21, overstrike "There is created" and insert immediately thereafter "The grain indemnity fund is a special fund"

Page 7, line 21, overstrike the second "the"

Page 7, line 21, remove "grain producers"

Page 7, line 21, overstrike "indemnity"

Page 7, line 22, overstrike the first "fund"

Page 8, line 1, remove "**producers**"

Page 8, line 4, remove "producers"

Page 8, line 4, remove the overstrike over "six"

Page 8, line 4, remove "ten"

Page 8, line 6, remove ", if there is no large claim anticipated against the fund, as determined by"

Page 8, line 7, remove "the public service commission"

Page 8, line 8, remove the overstrike over "~~three~~"

Page 8, line 8, remove "six"

Page 8, line 12, remove "**producers**"

Page 8, line 15, remove "producers"

Page 8, line 18, after the period insert: "After August 1, 2019, the person delivered or sold grain to a licensed warehouse or a grain buyer in the state;

3."

Page 8, line 20, overstrike "3." and insert immediately thereafter "4."

Page 8, line 21, after "contract" insert ", noncredit-sale contract, sale, or storage contract"

Page 8, line 24, remove "**producers**"

Page 8, line 27, remove "producers"

Page 8, line 28, after "who" insert "delivered or"

Page 8, line 29, overstrike "under a credit-sale contract"

Page 8, line 30, after "contract" insert ", sale, or storage contract"

Page 9, line 3, remove "**producers**"

Page 9, line 4, remove "producers"

Page 9, line 7, after "contracts" insert ", storage contracts, noncredit-sale contracts, or sales"

Page 9, line 10, remove "**producers**"

Page 9, line 11, remove "producers"

Page 9, line 18, remove "**producers**"

Page 9, line 21, remove "producers"

Page 9, line 25, remove "**producers**"

Page 9, line 30, remove "producers"

Page 10, line 7, remove "producers"

Page 10, line 13, remove "producers"

Page 10, line 18, remove "producers"

Page 10, line 28, remove "producers"

Page 11, line 14, remove "producers"

Page 11, line 22, remove "producers"

Renumber accordingly

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#2 RJ

Senate Bill 2346

Presented by: Randy Christmann, Commissioner
Public Service Commission

Before: Senate Agriculture Committee
The Honorable Larry Luick, Chairman

Date: January 31, 2019

TESTIMONY

Mr. Chairman and committee members, I am Randy Christmann, Commissioner with the Public Service Commission.

SB 2346 recognizes that there needs to be changes in the grain licensing program, and the Commission appreciates that acknowledgement and agrees. Improving the situation must involve a two-prong approach including a more thorough review of licensees to prevent insolvencies (or at least catch them earlier) and more help for grain sellers who are victimized.

With the language in this bill and the proposed amendments, we believe we can implement just such an approach. It allows us to collect enough financial information to do a more thorough review of licensees, while assuring that we can keep their financial information confidential unless mandated by law enforcement or the courts.

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Just as important as that is making sure there is help available for sellers who suffer a loss due to an insolvency. Please see Attachment 1 which I prepared to help me clarify.

You will see that when an insolvency occurs and the Commission is appointed by the Court as trustee, we have two funds that we use to help claimants. The column on the left applies to the indemnity fund which exists because of a 2/10 of 1% assessment on credit-sale contract sales. The law suspends assessments for that fund when it hits \$6 million, and starts assessments again when it falls below \$3 million. The balance is currently over \$4 million and assessments have not been collected for a decade. The column on the right is the trust fund which consists of any grain assets that are captured, the bond, certain accounts receivable, etc. Bonds have never been at a level equal to the value of grain traded, even though ND's bond requirements are higher than most of our neighbors. Grain assets, which are the main source of money for this trust fund, are becoming harder to capture because of the efficiency of our modern transportation system.

Working down the page to the second row of boxes in each column you see who is protected by each of these funds. Holders of valid credit-sale contracts are protected by the indemnity fund. All other claimants are protected by the trust fund.

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The third row of boxes show the level of protection for each. Claimants with valid credit-sale contracts can be reimbursed 80% of their losses, up to \$280,000. They are limited to 80% because they chose to take the additional risk of entering into these longer term contracts. However, they are assured of a fairly good settlement (80%) because they pay assessments to build the fund. Other claimants who did not sign credit sale contracts could get 100% of their losses reimbursed if the trust fund has enough money to do that. However, with the difficulty we see in capturing significant grain assets we have also had cases where claimants receive less than 10%. This can be devastating to claimants, potentially terminal for some operations, and can have a similarly devastating trickle-down effect in their communities.

The fourth row covers both columns, and really captures the heart of this bill. SB 2346 decreases that 2/10 of 1% assessment to 1/20 of 1%. For perspective, under a credit-sale contract, a 1000 bushel semi of grain that is worth \$5/bushel is currently subject to a \$10 assessment. With this bill that sale would be assessed just \$2.50. However, it applies the assessment to all sales, not just credit-sale contracts. Most importantly, it allows the seller to have their assessments refunded.

The bottom set of boxes show the resulting change. People with credit-sale contracts would see very little difference. Other claimants would continue to

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qualify for 100% coverage from the trust fund, but if the trust fund falls short, 80% of the remainder that they did not receive could be reimbursed, up to \$280,000. With this bill all producers will have the opportunity to assure themselves better reimbursement if their buyer becomes insolvent, and they will have the opportunity to opt out of that protection and have their assessments reimbursed if they choose to take that risk.

Mr. Chairman, this concludes my testimony. Thank you for the opportunity to present this information. I will be happy to answer any questions.

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Indemnity fund from 2/10 of 1%
assessment on credit-sale contracts

Trust fund from captured grain, bond
and certain accounts receivable, etc.

Holders of credit-sale contracts

All others

80% of losses up to \$280,000
(subject to assessment) (more risk)

Up to 100% of losses with no limit
(recovery has been as little as 6%)

SB 2346 lowers the 2/10 of 1% assessment to 1/20 of 1%. It applies the assessment to all sales, not just credit-sale contracts. It makes the assessments voluntary. (all sales will have assessment withheld, but seller can apply for refund.)

No change regarding recovery

80% of amount not recovered from
trust fund would be paid out of the
indemnity fund, up to an additional
\$280,000



**Testimony of Doug Goehring, Agriculture Commissioner
North Dakota Department of Agriculture
Senate Bill 2346
Senate Agriculture Committee
Roosevelt Park Room
January 31, 2019**

Chairman Luick and members of the Senate Agriculture Committee, I am Agriculture Commissioner Doug Goehring. Thank you for the opportunity to appear before the committee. I am here today to provide neutral testimony on Senate Bill 2346.

Unfortunately, this is a reoccurring conversation that we seem to be having every few years that has yet to be resolved. Insolvencies, fraud and grain marketing issues that have happened over the past year are serious. We need to strongly consider how the grain inspection program is structured and operates, and this is the time to have the conversation and find a solution. I have received numerous calls from hurt and frustrated farmers regarding grain they've sold to a grain buyer and why he wasn't stopped earlier.

The Ag Department currently has a livestock licensing program where we license livestock dealers and auction markets, and I would propose several adjustments to this bill for your consideration based off the structure of this program.

The first would be requiring applicants to submit annual financial statements for review prior to a license being issued, and that they file a release authorizing the regulator access to financial records of the applicant held by financial institutions, accountants or other sources. Both grain elevators and roving grain buyers would need to submit a financial balance sheet that would be used to determine their current debt to asset ratio, and one's ability to cover current liabilities including purchases. Plus, any business with annual purchases over \$5,000,000 needs to submit quarterly financial reports. Maintaining confidentiality of these documents could easily be

accomplished by adding confidentiality language similar to that in the Department's livestock dealers licensing law (4.1-83-09).

Another suggestion would be to adopt a portion of South Dakota's grain inspection program. Grain inspectors should look at accounts payable, accounts receivable and a daily position report. All cash sales are settled within 10 days, and all deferred, delayed and hedge to arrive contracts are to be settled 30 days after the final delivery has been made. This minimizes risk and large exposures for both the purchaser and the seller. Reconciling inventory is also vitally important. I believe South Dakota's approach may be an option to consider. They use a third-party contractor and CCC to audit inventory and check warehouse receipts.

Now, to address the real elephant in the room, roving grain buyers. Roving grain buyers generally lack brick and mortar facilities to store, condition or move commodities. Because of this, we should consider limiting a roving grain buyer's annual purchases. They need to provide adequate bonding, a verified line of credit from a financial institution, and adequate assets. The statute could also limit how much exposure the state would allow a grain buyer. Additionally, roving grain buyers should submit documentation on an agreement with receiving facilities to avoid taking possession of a commodity that cannot be conditioned, processed or marketed. A final consideration would be to not allow a roving grain buyer to do business in North Dakota at all.

If the state is going to continue to allow roving grain buyers the ability to do business in North Dakota, they need to be heavily scrutinized and treated differently than grain elevators. Regulatory oversight should not be burdensome but clearly assist the industry in understanding the rules, regulations and expectations. As regulators I believe our role is to protect the consumer, seller, purchaser, wholesaler and retailer. Essentially, monitoring the entire value chain.

As you can tell, the real issue at hand is prevention and proper oversight. I also believe it would be beneficial to meet with grain merchandisers, managers, boards and owners of elevators to

understand their policies on contracting, hedging and accounts payable to evaluate future adjustments to policy and regulations that reflect the present business environment.

I am apprehensive to support increasing the indemnity fund without addressing some concerns. Expanding the indemnity fund could potentially incentivize riskier behavior by both the seller and the purchaser by providing a false sense of security. This is an assessment that the producer pays and is sometimes treated as the answer to the problem. I am not opposed to self-insured programs, but it must have certain elements included before it may widely supported.

A suggestion would be that it is refundable. The assessment would be low enough that a producer would hardly recognize anything came out of his grain sales at the end of the year. The assessment could be one tenth of one hundredth percent ($0.0001\% = \$600-800,000$ annually). A minor assessment would build the fund slowly. The fund would be capped at \$6 million, and farmers could collect on 80 percent, up to \$400,000 of sales. I'd suggest language that prohibits individuals who received a refund from being eligible to receive an indemnity payment the following year.

Chairman Luick and committee members, I thank you for your consideration and would be happy to take any questions.

**Testimony of Rick Clayburgh
North Dakota Bankers Association
SB 2346
January 31, 2019**

Chairman Luick and members of the Senate Agriculture Committee, my name is Rick Clayburgh, President and CEO of the North Dakota Bankers Association (NDBA). I am here today on behalf of NDBA to discuss SB 2346. NDBA is in Support of the Bill as it seeks to Amend several sections of the North Dakota Century Code dealing with Grain Buyers, Grain Dealers, Warehouses, Insolvencies and the Credit-Sale Indemnity Fund; however, NDBA wishes to propose Amendments to the Bill that would bring more protections to our State's Farm Producers and more stability to our State's Ag Economy.

In light of our State's downturn in the Ag Sector, there is no better time to address these issues and to help our Farm Producers. Therefore, NDBA is asking this committee to re-examine the protections of the North Dakota Credit-Sale Indemnity Fund as well as update and clarify the statutory defined terms of a "receipt", and eliminate unnecessary and confusing terms like "non-credit sale".

These changes will strengthen protection to farmers under an improved Credit-Sale Indemnity Fund and well as ensure that a grain buyer and a grain warehouse can obtain the operating credit it needs from North Dakota Banks and to assure those creditors as to what they can rely on for collateral, namely all grain purchased and not held for storage.

The Credit-Sale Contract Indemnity Fund was enacted as a measure to protect grain producers that sold their grain via credit-sale contract to a grain warehouse. The fund ensures producers would be able to recover on the contract if the warehouse became insolvent; producers could recover 80% of their claim, or \$280,000. This amount was established in 2003 and needs to be increased.

Due to a gap in the law, and after numerous insolvencies, further clarification of a credit-sale contract and receipt holder is needed. NDBA is asking this committee to broaden the definition and scope of a credit-sale contract, and narrow the definition of a receipt to include only those farmers who store grain and pay rent for that storage.

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The definition of “receipt” should be limited to warehouse receipts and unconverted scale tickets that do not exceed 45 days. Limiting the definition of “receipt” will clarify and limit the amount of “receipt holders” who shall maintain a priority lien on the grain in a warehouse. It will also ensure that a warehouse can either generate operating revenue from the rent paid by farmers who store their grain or from an ag lender by pledging a lien on the grain not held for storage to obtain needed operating credit.

NDBA’s requests are being proposed because as farming operations grow and become more complex, so will insolvencies. The more complex insolvencies become, the less secure producers, creditors, and warehouses are. The intent of these changes is to provide more comprehensive coverage for each party involved in marketing and selling grain as well as for the buyers of that grain.

We have the statutory framework to provide true economic stability to our State’s grain farmers and to those who do business storing and purchasing that grain but that framework needs to be updated. There is no time like the present to make those changes.

Attached to this written testimony is a comprehensive explanation of what NDBA would like to see for an amendment to SB 2346, along with detailed research in support of the requested changes.

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HISTORY OF THE CREDIT SALE INDEMNITY FUND

In 2003, the North Dakota State Legislature created a credit-sale contract indemnity fund to pay grain farmers for credit-sale losses that may be incurred if the grain warehouse became insolvent. An individual recovering may be eligible to receive 80% of the amount owed, but not to exceed \$280,000.¹ In order to raise money for the fund, farmers were charged two-tenths of one percent on all credit-sale contract grain sold in North Dakota.² Collection will continue until the fund reaches \$6 million, and will start again when the funds dip to \$3 million.³

Role of the Public Service Commission

North Dakota law mandates that grain elevators and buyers be licensed and bonded. The job of licensing and bonding grain elevators is under the purview of the Public Service Commission (PSC).⁴ The Public Service Commission has a Licensing Division that is responsible for licensing and bonding of all grain elevators, facility-based grain buyers, and roving grain buyers.⁵ The intention behind the regulation of these facilities is to protect farmers from or during insolvency, and minimize negative economic impacts on individuals, industries, and entities.

The Public Service Commission is responsible for general supervision of grain warehouses, which includes the handling, weighing, storing of grain, and management of public warehouses. The PSC also investigates complaints of fraud and injustice, unfair practices, and unfair discrimination. The legislature has given the PSC the power to examine and inspect, during ordinary business hours, any licensed warehouse, which includes all books, documents and records.⁶ The PSC can require warehouses to file reports regarding the operation of the warehouse, and the PSC can make all proper rules for carrying out and enforcing laws regarding public warehouses in North Dakota.⁷

Additionally, in the case of insolvency, the PSC must ask the district court to step in and take all "action necessary and appropriate to secure and act as trustee of trust fund" found at § 60-04-03.1.⁸ If the district court in the county where the warehouse in question is deemed to be insolvent and it would be in the best interest of receipt-holders, the court will grant the PSC's application for authority, and the PSC will then have the

¹ <https://ageconsearch.umn.edu/bitstream/189418/2/AAE732.pdf>

² *Id.*

³ *Id.*

⁴ See, N.D.C.C. § 60-02-03.

⁵ <https://www.psc.nd.gov/jurisdiction/grain/index.php>

⁶ See, N.D.C.C. § 60-02-03.

⁷ *Id.*

⁸ See, N.D.C.C. § 60-04-03.

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authority to secure and execute the trust fund without any further direction from the court.⁹ Essentially, the PSC's authority is triggered when a grain buyer becomes insolvent. A grain buyer is insolvent when "the licensee refuses, neglects, or is unable upon proper written demand, including electronic communication, to make payment for grain purchased or marketed."¹⁰ Under N.D.C.C. § 60-04-03.1, when a warehouseman becomes insolvent, a trust fund is established for **noncredit-sale receipt holders** of the warehouseman, and other than those who have waived their rights according to section 6-02-11, and to pay the costs of PSC in carrying out this statute.¹¹ The trust fund will contain: the grain from the insolvent warehouse; the proceeds including the accounts receivable from the sale of seized grain; the proceeds of insurance policies upon grain destroyed in the elevator; the claims for relief, and proceeds therefrom, for damages upon any bond given by the warehouseman to ensure faithful performance; the claims for relief, and proceeds therefrom, for the conversion of any grain stored in the warehouse; unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency; unencumbered equity in grain hedging accounts; and unencumbered grain product assets.¹² Essentially, the PSC will act in a similar manner as a bankruptcy trustee.

While cash sales are not the subject of these materials, it is important to make a distinction between what kind of recovery is available to farmers who sell their grain through cash sales versus farmers who sell their grain via credit-sale contract. When a grain buyer purchases grain through a cash sale, the buyer is required to file a bond with the PSC to protect the farmer in case the buyer becomes insolvent. Typically, however, the bonds buyers file with the PSC are unable to cover the totality of claims in an insolvency proceeding. Farmers who sell their grain via credit-sale contract would not be entitled to any proceeds from the bond, but would be entitled to recover from the indemnity fund. Additionally, when a grain buyer files for bankruptcy, farmers may not be able to retrieve their grain. If the buyer has grain as "inventory", which includes grain sold directly to the elevator, farmers will not be able to retrieve the grain becomes it will become an asset of the bankruptcy estate. However, if the grain is simply being stored with the grain buyer, the farmer will more than likely be able to recover the asset.

⁹If it is deemed to be in the best interest of the receipt holders that the PSC take control, the district court in the county where the insolvent warehouse is, will grant authority without bond. N.D.C.C. § 60-04-03.

¹⁰ N.D.C.C. § 60-02.1-28.

¹¹ N.D.C.C. § 60-04-3.1.

¹² *Id.*

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HOW THE INDEMNITY FUND WORKS

What is a Credit-Sale Contract?

North Dakota State law defines credit-sale contract as “a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale.”¹³ If part of the sale price in a contract for the sale grain will or may be paid more than thirty days after delivery/release, only such part of the contract is a credit-sale contract.¹⁴ Currently, in order to be valid and enforceable, a credit-sale contract must be signed.¹⁵

Credit-sale contracts can take different forms. Different types of credit-sale contracts include: deferred payment, delayed pricing, no price established, installment sales, or any variations of these that might have a different name. While these types of contracts are not always *credit-sale contracts*, the key is the payment occurs more than thirty days after release. Participation in the credit-sale indemnity fund is mandatory; both licensees and producers must participate, and opting out is not an option. If the indemnity fund cannot cover the loss, the proceeds would be prorated among the farmers.¹⁶

What is a Noncredit-Sale Contract?

The North Dakota Century Code defines Noncredit-Sale Contract as “a contract for the sale of grain other than a credit-sale contract.”¹⁷ N.D.C.C. § 60-02-01. If title to grain has been transferred and payment for the grain will be made within 30 days of transfer, then a noncredit-sale contract is established.¹⁸ If a noncredit-sale contract is made through a company sale, a sales agreement normally covers the payment.¹⁹ However, if a noncredit-sale contract exists, and the warehouse files for bankruptcy, then the seller is considered an unsecured creditor, but it is possible a grain dealers bond may cover a portion of the unpaid contract.²⁰

The grain dealers bond is an added protection for farmers, but the bond may not be large enough to cover all claims, nor will it guarantee the farmer will be paid in full in case of insolvency.²¹ In the case of insolvency where the grain in inventory and the bond are not enough to cover claims, proceeds will be distributed on a prorated basis.²²

¹³ N.D.C.C. § 60-02-01.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See, Frayne Olson Presentation.

¹⁷ N.D.C.C. § 60-02-01.

¹⁸ See, Frayne Olson Presentation.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

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How does a Credit-Sale Contract Work?

A credit-sale contract allows for payment of grain more than thirty days after the delivery of the grain. In order for a credit-sale contract to be legal, the requirements of the contract include: the contract must be in writing, the price per unit, date payment is to be made, and a clear and prominent notice that the sale is not protected by the grain buyer's bond coverage must be included in the contract (the grain buyers bond is meant to protect farmers who are making cash sales). The buyer and the farmer would then establish how the farmer would like to sell his grain, and if the farmer chooses a credit-sale contract, the above requirements would have to be met.

Typically, a producer will opt to use a credit-sale contract to market their grain in order to delay receipt of their grain into a later tax period, receive a higher price for their grain when commodity prices are better, and when there excess storage capacity, elevators/buyers will use credit-sale contracts to possess grain early in the season and take advantage of merchandising opportunities. This allows the buyer to sell the grain early and continue the flow of commerce and grain, and allows the farmer the ability to potentially get a better price for his crop, or delay payment into a subsequent tax year. Credit-sale contracts have seen some success in the specialty grain market. Credit-sale contracts "promote the orderly flow of limited volume special characteristic grains."²³

Other Definitions²⁴

Grain Warehousemen

Traditional local facilities by the North Dakota Public Service Commission.

Grain Buyers

Roving buyers with no facilities or with facilities licensed by the USDA.

Storage

Producer maintains ownership of grain and pays warehouse to store it.

²³ See, Iowa State Extension handout. Specialty grain credit-sale contracts come with their own challenges, such as farmers are paid a fixed premium above commodity price, and the use of a "buyers call" provision, which means at the time a buyer "calls" the grain to come in, the producer might not want to sell the grain at the time "it is called". *Id.*

²⁴ See, Randy Christmann testimony, HB 1126

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RELEVANT STATUTORY AUTHORITY AND CASE LAW

Case Law

Public Service Commission v. Wimbledon Grain Co.

Wimbledon Grain was a grain elevator operating in Leal and Wimbledon, and in January 2002, Wimbledon Grain notified the North Dakota Public Service Commission (PSC) that it was unable to redeem receipts and scale tickets from farmers who had sold it grain. The PSC became the trustee of the trust fund established under N.D.C.C. § 60-02.1-30 for claimants in grain insolvencies. Multiple parties intervened, including "WGFG" which was made up of farmers who had entered into credit-sale contracts with Wimbledon grain. Farmers filed claims with the PSC totaling over \$ 4 million. Due to the amount of claimants, the PSC divided individuals into categories. Individuals who had credit-sale contracts payable beyond 30 days were not recognized by the PSC, and thus not paid. The PSC stated these claimants had unsecured claims because credit-sale contracts payable beyond 30 days do not fall under the definition of receipt in the North Dakota Century Code, and would not have valid claims; the trial court agreed. However, the North Dakota Supreme Court disagreed.

Claimants must file with receipts or other evidence of claims with the PSC, and valid claims can only go through the trustee, which is the PSC. The PSC argued claimants who hold credit-sale contracts are precluded from participating in the trust fund. Defendants argued it was made for claimants and not receipt holders – not limited by definition of receipt; and include definition of credit sale contract. This law was for the benefit of claimants and must be construed with sufficient liberality to effectuate its purpose of settling legit demands of owners of grain delivered to an insolvent elevator without doing injury to those who are liable. The PSC also argued the claims were invalid. The PSC wanted the definition of claimant to mean receipt holder and exempt credit sale contract under the statute. The court disagreed. The statute said "other evidence of claims," which was persuasive to the court. The court stated the commission's argument would make the statute meaningless and the statutory language encompasses other language to include more than just receipts. The definition of receipt comports with notion that persons entering into credit sale contract are entitled to participate in assets of the trust fund other than the bond. Although credit-sale contracts are not within the definition of a receipt, when the statute is taken as a whole, the legislature did not mean to limit claims to only those supported by "receipts."

Public Service Com'n v. Wimbledon Grain Co., 2003 ND 104, 663 N.W.2d 186.

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PHI Financial Services, Inc. v. Johnston Law Office, P.C.; AKA "Grabanski"

Choice made a series of loans totaling \$6.75 million to Thomas and Mari Grabanski and John and Dawn Keeley, who had formed G&K Farms. Choice entered into security agreements and took and took an interest in government and insurance payments, all now and hereafter acquired collateral. Filed UCC statements in TX because that is where G&K were growing crops. Choice filed financing statements with the North Dakota Secretary of State in December 2008 and January 2009. PHI loaned \$6.6 million and took a security interest in G&K's general intangibles, state and federal payments, and filed financing statements in North Dakota. PHI received \$7.5 million in a judgment against the Grabanskis and G&K in 2011 in US District Court. In October 2011 G&K got a subsidy payment and did not deposit the money with Choice because it would have offset a portion of their debt to Choice. PHI sued to recover \$170,000 back due to fraudulent transfer and conversion, and later added Choice as a defendant. The district court said PHI had priority over choice and gave them a judgment of \$167,203.24.

Questions of actual or constructive fraudulent transfers are questions of fact and subject to clearly erroneous review. A party that receives transfer directly from the debtor will not be considered the initial transferee unless that party gains actual dominion and control over the funds. For perfection of farm products, perfection is governed by where the crops are located. The Texas Supreme Court says payment in kind contracts are "proceeds" of crops for the purpose of filing financial statements under the federal diversion program. The 8th Circuit held federal diversion and deficiency payments are not crop proceeds, but are contract rights, accounts, or general intangibles. Choice argued that the district court erred in ruling PHI's security interest had priority. Choice also contends it has first priority because PHI did not file a financing statement with the Texas Secretary of State, but the court did not agree because the crops or their proceeds are not the collateral that was at issue. The North Dakota Supreme Court ruled in favor of PHI and against Choice.

PHI Financial Services, Inc. v. Johnston Law Office, P.C., 2016 ND 2, 874 N.W.2d 910.

Public Service Commission v. Grand Forks Bean Company, Inc.

Grand Forks Bean was a public grain warehouse licensed by the North Dakota Public Service Commission. Nine bean growers had submitted complaints to the PSC regarding difficulties in obtaining payments or marketing services for beans delivered to Grand Forks Bean. The PSC ordered a cease and desist against Grand Forks Bean, the beans in the warehouse were sold, and the proceeds were deposited into a trust account, and as of Feb. 29, 2016 the balance was \$768,053.24. Grand Forks Bean was deemed insolvent, and the PSC became trustee of the trust fund. Bremer alleged it was a secured creditor of Grand Forks Bean and was entitled to proceeds from the bean sale. In the

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alternative, Bremer argued it was entitled to trust fund assets after distribution to noncredit-sale receipt holders. The nine growers amended their claims stating they were noncredit-sale receipt holders. Bremer asserted its perfected security interest in Grand Forks Bean's beans had priority over other interests in the beans. The district court denied Bremer's motion to intervene, but allowed them to participate in the insolvency proceeding.

The PSC issued a trustee report which stated all nine growers were noncredit-sale receipt holders; the district court then reviewed the report and changed it so only eight of the growers were noncredit-sale receipt holders, and one was a credit-sale contract holder. The issues raised on appeal involve questions of statutory interpretation and application. The North Dakota Supreme Court allowed Bremer to intervene, which the district court initially denied. Bremer also argued the district court erred in ruling that a credit-sale contract requires a signature, and it was wrongly decided the eight growers who were deemed noncredit-sale contract holders was wrong, and the growers were not entitled to trust fund proceeds. The court examined the statutory construct of North Dakota Century Code Section 60-04-01(2) and Section 60-02-19.1. The court stated that "the law relating to grain insolvencies was intended for the benefit of claimants, and must be construed with sufficient liberality to effectuate its purpose of settling the legitimate demands of owners of grain delivered to an insolvent elevator without doing injury to those who are liable." The court examined the plain language of the statute and definition of credit-sale contract, and determined the statute shows the intent to include only that definition for purposes of priority in insolvency. The North Dakota Supreme Court concluded the district court was correct in interpreting the relevant statutes, and in their interpretation of a credit-sale contract for purposes of insolvency. Additionally, the court determined the district court correctly construed the credit-sale contract requirements for growers and applied the interpretation correctly to the Grand Forks Bean and nine growers relationship.

Issues related to Grand Forks Bean's date of insolvency also arose, which would establish the price per hundredweight available to noncredit-sale receipt holders. The court ultimately agreed with the district court regarding the day of insolvency. The court also affirmed the district court's judgment and did not allow recovery of fees for Bremer.

Public Service Commission v. Grand Forks Bean Company, Inc., 2017 ND 201, 900 N.W.2d.

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Public Service Commission v. Hunter Hansen, d/b/a NoDak Grain, et al, filed November 27, 2018.

This is the most recent grain insolvency currently pending with losses to our State's Ag Producers of more than Six Million Dollars, illustrating the dire need to amend our current laws to provide better products to our grain farmers.

Statutory Authority

Relevant Statutory Authority Includes:

1. North Dakota Century Code Chapter 60-02-01(2), (4), (7), & 60-02-19.1
 - a. 60-02-01(2): Credit-sale Contract
 - i. "Means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02-19.1. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
 - b. 60-02-01(4): Noncredit-sale Contract
 - i. Means a contract for the sale of grain other than a credit-sale contract.
 - c. 60-02-01(7): Receipts
 - i. Means grain warehouse receipts, scale tickets, checks or other memoranda given by a public warehouseman 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.
 - d. 60-02-19.1: Credit-sale Contracts
 - i. A warehouseman shall not purchase grain by a credit-sale contract except as provided in this section. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing the contract. The warehouseman shall maintain an accurate record of all credit-sale contract numbers, including the disposition of each numbered form, whether by execution, destruction, or otherwise. Each credit-sale contract must contain or provide for all of the following:
 1. The seller's name and address
 2. The conditions of delivery

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3. The amount and kind of grain delivered
 4. The price per unit or basis of value
 5. The date the payment is to be made
 6. The duration of the credit-sale contract
 7. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02-09. However, if the warehouseman has obtained bond coverage in addition to that required by Section 60-02-09 and such coverage extends to the benefit of credit-sale contracts, the warehouseman may state the same in the credit-sale contract along with the extent of such coverage.
- ii. The contract must be signed by both parties and executed in duplicate. One copy shall be retained by the warehouseman and one copy shall be delivered to the seller. Upon revocation, termination, or cancellation of a warehouseman's license, the payment date for all credit-sale contracts shall, at the seller's option be advanced to a date not later than thirty days after the effective date of revocation, termination, or cancellation, and the purchase price for all unpriced grain shall be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. When a public warehouse is transferred under this chapter, credit-sale contracts may be assigned to another licensed public warehouseman or facility-based grain buyer."
2. North Dakota Century Code Chapter 60-04
 - a. 60-04-01(2) *See credit-sale contract definition above*
 - b. 60-04-016) *See receipt definition above*
 3. North Dakota Century Code Chapter 60-10
 - a. 60-10-06: Credit-sale contract indemnity fund – Reimbursement Limit
 - i. The amount payable to any eligible person from the credit-sale contract indemnity fund for each insolvency 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.

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LEGISLATIVE HISTORY AND BILLS

Senate Bill 2291, 64th Legislative Session

This bill proposed to establish an option where a farmer can keep scale tickets without converting them, but the farmer would have to sign off stating that he understands he is at risk by keeping the scale ticket because the farmer would not be covered under the warehouse bond or the indemnity fund. Essentially, this bill would seek to protect the grain holder by filling a gap in the protection measures.

Senate Bill 2301, 64th Legislative Session

This bill amendment would change the warehouse licensing period from a one-year licensing period to a two-year licensing period, but would allow the Commission to issue a small amount of one-year licenses in order to stagger licensing cycles. The annual license cost will not change. The purpose of the bill is to make the licensing process more efficient, which would allow the PSC to focus on vulnerable warehouses that are apt to insolvency. The Emergency Clause in the proposed bill would give the PSC time to process applicants with the proper attention, and without the clause, the law would not be in effect and would not allow the PSC to implement the change for 2015's license renewals. The proposed bill included state warehouses. The PSC wanted a streamlined licensing procedure in order to allow PSC inspectors to pinpoint vulnerable elevators before they became insolvent.

House Bill 1126, 65th Legislative Session

This proposed legislation would impact 52 sections of the law, and repeal 7 sections. Much of what was proposed impacted Grain Warehousemen and Grain Buyers. The insolvency changes were in reference to Grain Warehousemen in Chapters 60-02 and 60-04. Changes for Grain Buyers were in 60-02.1, and the indemnity fund which affects both Grain Buyers and Grain Warehouses. There was language proposed that would eliminate the producer's first priority lien on grain at an insolvent warehouse. This was the foundation for the indemnity fund and was used to reimburse noncredit-sale producers during insolvency. This was proposed because grain rarely stays at an elevator for very long anymore and if grain is out of the PSC's jurisdiction, it elongates the legal battles, and prevents the producers from being timely paid; it is not currently in the Grain Buyer statute.

The PSC wanted to process insolvency cases administratively, rather than through the courts. Additionally, there was a major proposal in how to refund noncredit-sale claimants; they were (and presently) still are being paid out of the trust fund, which contains money recovered by selling grain on hand and through the licensee's bond. Additionally, the proposed rule, the PSC would have no longer captured the grain, so the

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fund would be renamed the "grain indemnity fund" which would be funded through assessments on grain sales. The new fund would refund valid claims at 80%, whether or not it was a credit-sale contract. If the fund were to run out, the producers would be paid when funds become available. If it happened that a producer had both a credit-sale contract and noncredit sale contract claim, the producer would be eligible for reimbursement to the cap level for each type of claim. The PSC expects expenses related to insolvencies to be reduced

The biggest change for producers would be whether they are dealing with a grain warehouseman or grain buyer. The assessment on every grain transaction would be used to build the grain indemnity fund. If an insolvency regarding grain storage were to occur, the loss would be covered just like all other claims, except the assessment would be offset from any payment due the claimant. The assessment would be 2/100 of %1; essentially \$1 for every \$5,000. The change to fund is to protect both credit-sale and noncredit-sale claimants. Most noncredit-sale claimants have recovered less than 10%, and the new fund would be able to insure valid claimants at least 80% recovery.

The bill would also raise the \$280,000 limit to \$400,000; licensees seemed to be in agreement that \$280,000 was too low of a limit and unrealistic. The PSC would also use bond proceeds to make up the difference between 80% recovery and 100% recovery for noncredit-sale claimants ONLY, which is what the current law is. The idea behind this is that credit-sale contract claimants are consciously choosing to delay payments, and are assuming a greater risk.

Changes the regulatory scheme for grain warehouses and grain buyers, allowing efficiencies in the licensing, inspection, and insolvency processes. The bill changes how some claims are handled in the event of insolvency. Rather than paying cash and noncredit sale claims from a trust fund (made up of grain assets and a bond), these will now be partially paid from an indemnity fund as credit sale claims are now paid. The assessment will be reinstated for credit sale contract sales, at a lower rate, and initiated for all other sales, at the same lower rate. The credit sale contract indemnity fund will be renamed the grain indemnity fund, and all assessments will be deposited into this special fund. This will result in revenue to the fund. The proposed assessment is 2/100ths of 1% of the value of all grain sold via noncredit sale contract, credit sale contract, or for cash.

In the last 12 years, there have been 11 insolvencies; it is about one every 1-1.5 years. In 2017, there was an insolvency still open, which began in 2014. A credit sale claimant would still be limited up to 80% of a claim or \$280,000, whichever is less. The PSC's inventory measurements are not accurate for long because grain can be loaded out fairly quickly. The cap is still at \$6 million and once the fund dips below \$3 million collections will start again; there have been no collections since 2008. The fund should be bigger than \$6 million because of the big licensees in the state and should be

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monitored by the legislature, rather than mandating it into law. The fund grows quickly with two tenths. The North Dakota Grain Dealers Association was consulted on this issue. The state is not in the business of bonding the grain warehouses; the state just requires them all to have bonds. The proposed legislation would release the PSC from their obligation in marshaling the grain part of the trust fund

This bill it would have relieved the PSC of its duties as a trustee – which is one of the core regulatory responsibilities of the PSC. This would have “take away a moral compass” for elevators

This bill would have also removed the receipt holder’s lien from the statute. The receipt holder’s lien is the key part of the current law that allows the PSC to capture the grain assets of a warehouse to pay claimants in the event of insolvency. Removing this would mean the elevator creditors will have access to those assets and those assets could be gone before producers are able to place a claim against them.

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2019 Proposed Changes to the Statutory Makeup

What Changes Should Be Made to the Credit-Sale Contract Indemnity Fund

The definition of credit-sale contract should be rewritten to broaden its scope. The definition of receipt should be rewritten to be more specific, along with the timeframe in which a producer has a noncredit-sale contract and is a receipt holder. Additionally, the indemnity fund cap and floor should be raised.

The credit-sale contract definition should be changed because it does not reflect agricultural realities. Grain farmers are rarely the ones delivering grain to the elevator/warehouses; they have employees who will deliver grain, sign for the scale ticket, and any other paperwork when the grain is delivered. Trying to get the producer come in and sign a credit-sale contract after delivery grain is unrealistic and nearly impossible. If a producer has stated his intentions to use a credit-sale contract or worked out a deal with the elevator, the contract should not be invalid because it is not signed, and should not change the nature of the transaction. The following North Dakota Century Code chapters are the subject of the proposed changes.

The definition of a credit-sale contract is:

“[A] written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02-19.1. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.”

N.D.C.C. § 60-02-01(2).

The definition of a receipt is:

“[G]rain warehouse receipts, scale tickets, checks, or other memoranda given by a public warehouseman 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.”

N.D.C.C. § 60-02-01(7).

The definition of a noncredit-sale contract is:

“[A] contract for the sale of grain other than a credit-sale contract.”

N.D.C.C. § 60-02-01(4).

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By broadening the scope of a credit-sale contract and making it the default under the law, would make it easier for producers and elevators to make a contract. Currently, if credit sale contracts are not being signed, they are not being executed properly, and this is something auditors do not catch. Farmers are rarely bringing in their grain and signing the contract themselves; producers usually have employees sign the document, which has allowed producers to later disclaim the contracts and claim they have a receipt if they come under question during insolvency. Improperly executed instruments create risk and so long as the elevator is solvent, it's not a problem. Under the law, the credit-sale contract needs to be signed and a receipt does not; a receipt does not require a writing or signature in any way. The law should reflect that even if a credit-sale contract is not signed, it should not change the nature of the transaction. Additionally, if the credit-sale contract statute was changed to the default method of grain sales, this would protect farmers if they did not get a signature on the contract, or have not sold their grain, etc.

The receipt definition should be narrowed by putting a 45 day cap on a receipt holder, and after 45 days, their receipt turns into a credit-sale contract if they have not been paid for their grain.

If the indemnity fund amount is raised, it will further protect banks who finance producers and elevators. Thus, if banks are further protected, commerce can flow more freely. Additionally, the indemnity fund amounts are not reflective of current income statistics and amounts. The amount has not been raised since 2003, and in 15 years, inflation has fluctuated. Realistically, \$280,000 would not cover 80% of a farmers claim anymore. The proposed change would be to raise the recovery amount up to \$500,000.

Income and Wealth Statistics

North Dakota's top five cash receipt crops are: soybeans; wheat; corn; cattle; and canola.²⁵ In 2017, the average cost of production in North Dakota was \$8,968,936,000. ²⁶ North Dakota is currently ranked 33rd in the nation for net farm income. ²⁷ The agricultural economy does not have a positive outlook for 2018 because of tariffs and trade, which has the potential to result in more insolvency for North Dakota warehouses.

\$280,000 is not reflective of income and wealth in 2018. North Dakota grain producers can recover up to 80% of their claim, or up to \$280,000, whichever is less, in the case of an elevator/warehouse insolvency. In today's agricultural and economic world, to think \$280,000 would adequately compensate a producer is unrealistic. What \$280,000 was worth in April 2003 (when the indemnity fund was created), is now worth \$373,000

²⁵ <https://www.ers.usda.gov/data-products/farm-income-and-wealth-statistics/charts-and-maps-about-your-state/>

²⁶ *Id.*

²⁷ *Id.*

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(as a real price) and \$405,000 (as real value in consumption).²⁸ Additionally, production expenses have increased approximately \$3 billion over the last 8 years.

The indemnity fund should continue to grow in order to reflect the changes in inflation, income, and wealth that has occurred over the past 15 years.

N.D.C.C. § 60-10-06: Credit-sale contract indemnity fund – reimbursement limit:

“The amount payable to any eligible person from the credit-sale contract indemnity fund for each insolvency 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.”

Proposed Statutory Changes.

Chapter 60-02 – Grain and Seed Warehouses

A BILL for an Act to amend and reenact subsection 2 of section 60-02-01, deletion of subsection 4 of section 60-02-01, amend and reenact subsection 7 of section 60-02-01 and create and enact subsection 9 of section 60-02-01, amend and reenact subdivision b of subsection 1 and deletion of subdivision c and subdivision d of subsection 1 and subsection 2 of section 60-02-11, amend and reenact section 60-02-19.1, amend and reenact section 60-02-25, amend and reenact section 60-02-35, amend and reenact section 60-02-36 and amend and reenact section 60-02-41 of the North Dakota Century Code, relating to grain and seed warehouses.

Chapter 60-02.1 – Grain Buyer.

A BILL for an Act to amend and reenact subsection 2 of section 60-02.1-01, deletion of subsection 7 of section 60-02.1-01, amend and reenact subsection 8 of section 60-02.1-01, create and enact subsection 10 of section 60-02.1-01, and amend and reenact section 60-02.1-14, section 60-02.1-21, section 60-02.1-23 and section 60-02.1-27 of the North Dakota Century Code, relating to grain buyers.

Chapter 60-04 – Insolvent Grain Warehousemen.

A BILL for an Act to amend and reenact subsection 2 of section 60-04-01, amend and reenact subsection 6 of section 60-04-01, and create and enact subsection 7 of section 60-04-01, amend and reenact subdivision a of subsection 1 of Section 60-04-03.1, and amend and reenact subsection 6 of section 60-04-09 of the North Dakota Century Code, relating to insolvent grain warehousemen.

²⁸ <https://www.measuringworth.com/calculators/uscompare/relativevalue.php>

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Chapter 60-10 – Credit-Sale Contract Indemnity.

A BILL for an Act to amend and reenact section 60-10-01, section 60-10-03, section 60-10-05, section 60-10-06, section 60-10-08, section 60-10-09, section 60-10-11, section 60-10-12 and section 60-10-14 of the North Dakota Century Code, relating to credit-sale contract indemnity.

Attached are the changes to Chapters 60-02, 60-02.1 and 60-10 to the North Dakota Century Code that NDBA would propose.

CHAPTER 60-02 – GRAIN AND SEED WAREHOUSES

SECTION 1. AMENDMENT. Subsection 2 and subsection 7 are amended and reenacted, subsection 4 is deleted, and subsection 9 is created and enacted of section 60-02-01 of the North Dakota Century Code as follows:

§60-02-01. Definitions

2. “Credit-sale ~~contract~~” means a ~~written contract for the~~ sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale. ~~and which contains the notice provided in subsection 7 of section 60-02-19.1.~~ If a part of the sale price of a ~~contract~~ for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the ~~contract~~ sale is a credit-sale ~~contract~~.
4. ~~“Noncredit sale contract” means a contract for the sale of grain other than a credit sale contract.~~
7. “Receipts” means a grain warehouse receipts, a scale tickets that remain unconverted within forty-five days of deliver of the grain to the warehouse, a checks, or other memoranda given by a public warehouseman 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~~.
9. “Receiptholder” means a person in rightful possession of a receipt as described in subsection 7 above.

SECTION 2. AMENDMENT. Subdivision b of subsection 1 is amended and reenacted, subdivision c and subdivision d of subsection 1 are deleted and subsection 2 is amended and reenacted of Section 60-02-11 of the North Dakota Century Code is amended and reenacted as follows:

§60-02-11. Sale ticket - Contents - Conversion.

1.
 - b. ~~All~~ Each 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 shall prepare the waiver form required by subdivision b and make the form available to each warehouse.

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- 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.
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 3. AMENDMENT. Section 60-02-19.1 of the North Dakota Century Code is amended and reenacted as follows:

§60-02-19.1. Credit-sale contracts.

A warehouseman shall not purchase grain by a credit-sale ~~contract~~ except as provided in this section. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing the contract. The warehouseman shall maintain an accurate record of all credit-sale contract numbers, including the disposition of each numbered form, whether by execution, destruction, or otherwise. Each credit-sale contract must contain or provide for all of the following:

1. The seller's name and address.
2. The conditions of delivery.
3. The amount and kind of grain delivered.
4. The price per unit or basis of value.
5. The date payment is to be made.
6. The duration of the credit-sale contract.
7. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02-09. However, if the warehouseman has obtained bond coverage in addition to that required by section 60-02-09 and such coverage extends to the benefit of credit-sale contracts, the warehouseman may state the same in the credit-sale contract along with the extent of such coverage.

The contract must be signed by both parties and executed in duplicate. One copy ~~shall~~ must be retained by the warehouseman and one copy ~~shall~~ must be delivered to the seller. Upon revocation, termination, or cancellation of a warehouseman's license, the payment date for all credit-sale contracts ~~shall~~, at the seller's option, must be advanced to a date not later than thirty days after the effective date of revocation, termination or cancellation, and the purchase price for all unpriced grain ~~shall~~ must be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. When a public warehouse is transferred under this chapter, credit-sale contracts may be assigned to another licensed public warehouseman or facility-based grain buyer.

SECTION 4. AMENDMENT. Section 60-02-25 of the North Dakota Century Code is amended and reenacted as follows:

§60-02-25. Bailment not a sale.

Whenever any grain shall be delivered to any public warehouse and an unconverted scale ticket no less than forty-five days old from the date of delivery, or a warehouse receipt is issued therefor, such delivery shall be a bailment and not a sale of the grain so delivered. In no case shall the grain so delivered be liable to seizure upon process of any court in any action against such bailee, except in an action by an owner of such unconverted scale ticket no less than forty-five days old from the date of delivery, or warehouse receipt to enforce the terms thereof or obtain redelivery of such delivered grain. In the event of the failure or insolvency of the warehouseman, all the grain in the warehouse, whether the same is stored or not, first shall be applied at all times to the satisfaction of receipts issued by the warehouseman.

SECTION 5. AMENDMENT. Section 60-02-35 of the North Dakota Century Code is amended and reenacted as follows:

§60-02-35. Grain to be kept insured for benefit of owner receiptholder and unpaid credit-sale contract by warehouseman.

A public warehouseman license is not effective unless all grain in storage or on deposit in the warehouse is kept fully insured at the expense of the warehouseman for the benefit of the ~~owner~~ receiptholder and unpaid credit-sale contract at the current market value of the grain against loss by fire, lightning, internal explosion, windstorm, cyclone, tornado, and such other risks of direct physical loss as provided by the insurer in a policy approved by the insurance commissioner. An insurance policy covering grain in a public warehouse may not be transferred or assigned to any person for any purpose, except for grain that is not on warehouse receipt or deposit. The insurance policy must be continuous and may only be canceled in accordance with section 60-02-35.1.

SECTION 6. AMENDMENT. Section 60-02-36 of the North Dakota Century Code is amended and reenacted as follows:

§60-02-36. Destruction of grain in public warehouse - First lien by holder of outstanding receipt.

The holder of an ~~unconverted scale ticket or warehouse~~ a receipt issued by any public warehouseman shall have a first lien, to the extent of the value of the grain at the time of loss at the place where held, on all insurance of the warehouse for any loss sustained by the receiptholder, on account of the loss of such grain by fire, tornado, or any other cause covered by such insurance policy.

SECTION 7. 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 and credit-sale contracts.

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When a public warehouseman ceases business through the destruction of a warehouse by fire or other cause, or through insolvency, such warehouseman shall redeem all outstanding unconverted scale tickets, or warehouse receipts, or credit-sale contracts at the price prevailing on the date the warehouse was destroyed or closed because of insolvency. The holder of such receipts, or credit-sale contracts, upon due notice, must accept this price and surrender the receipts or credit-sale contracts. 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 and all outstanding receiptholders of such closing and redeem all outstanding unconverted scale tickets or warehouse receipts, or credit-sale contracts at the price prevailing on the date the warehouse closed or at the option of the ~~owner~~ receiptholder of the receipt or holder of a credit-sale contract redeliver the kind, grade, and quantity of grain called for by the unconverted scale ticket or warehouse receipt, or credit-sale contract. On commingled grain the value of over and under deliveries in quantity, grade, and protein shall be settled in cash and priced on the market on the day of closing.

CHAPTER 60-02.1 – GRAIN BUYERS

SECTION 1. AMENDMENT. Subsection 2 and subsection 8 are amended and reenacted, subsection 7 is deleted, and subsection 10 is created and enacted of section 60-02.1-01 of the North Dakota Century Code as follows:

§60-02.1-01. Definitions

3. "Credit-sale ~~contract~~" means a ~~written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale. and which contains the notice provided in subsection 7 of section 60-02-19.1.~~ If a part of the sale price of a ~~contract~~ for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the ~~contract sale~~ is a credit-sale ~~contract~~.
8. ~~"Noncredit sale contract" means a contract for the sale of grain other than a credit-sale contract.~~
8. "Receipts" means a scale tickets that remain unconverted within forty-five days after the grain is delivered to a grain buyer, a checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale ~~contract~~.
10. "Receiptholder" means a person entitled to hold a receipt as described in subsection 8 above.

SECTION 2. AMENDMENT. Section 60-02.1-14 of the North Dakota Century Code is amended and reenacted as follows:

§60-02.-14. Credit-sale contracts.

A grain buyer may not purchase grain by a credit-sale ~~contract~~ except as provided in this section. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing the contract. The grain buyer shall maintain an accurate record of all credit-sale contract numbers, including the disposition of each numbered form, whether by execution, destruction, or otherwise. Each credit-sale contract must contain or provide for all of the following:

1. The seller's name and address.
2. The conditions of delivery.
3. The amount and kind of grain delivered.
4. The price per unit or basis of value.
5. The date payment is to be made.
6. The duration of the credit-sale contract.

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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 60-02.1-08 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

The contract must be signed by both parties and executed in duplicate. One copy must be retained by the grain buyer and one copy must be delivered to the seller. Upon revocation, termination, or cancellation of a grain buyer's license, the payment date for all credit-sale contracts, at the seller's option, must be advanced to a date not later than thirty days after the effective date of revocation, termination or cancellation, and the purchase price for all unpriced grain must be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. When a facility is transferred under this chapter, credit-sale contracts may be assigned to another licensed facility based grain buyer or public warehouseman.

SECTION 3. AMENDMENT. Section 60-02.1-21 of the North Dakota Century Code is amended and reenacted as follows:

§60-02.1-21. Grain to be kept insured for benefit of ~~owner~~ receiptholders and unpaid credit-sale contracts by warehouseman.

A license may not be issued to a facility-based grain buyer unless all ~~company owned and unconverted scale ticket~~ grain in storage or on deposit in the facility is kept fully insured at the expense of the grain buyer for the benefit of the ~~owner~~ receiptholder and the unpaid credit-sale contracts at the current market value of the grain against loss by fire, lightening, internal explosion, windstorm, cyclone, tornado, and such other risks of direct physical loss as provided by the insurer in a policy approved by the insurance commissioner. An insurance policy may not be transferred or assigned to any person for any purpose.

SECTION 4. AMENDMENT. Section 60-02.1-23 of the North Dakota Century Code is amended and reenacted as follows:

§60-02.1-23. Destruction of grain - First lien by holder of outstanding receipt.

The holder of a ~~an unconverted scale ticket or warehouse~~ receipt issued by any public facility-based grain buyer shall have a first lien, to the extent of the value of the grain at the time of loss at the place where held, on all insurance of the warehouse for any loss sustained by the receiptholder, on account of the loss of such grain by fire, tornado, or any other cause covered by such insurance policy.

SECTION 5. 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 and credit-sale contracts.

When a facility-based grain buyer ceases business through closure, the destruction of a facility by fire or other cause, or through insolvency, such grain buyer shall redeem all outstanding receipts or credit-sale contracts as the price prevailing on the date the facility was closed, destroyed, or became insolvent. The holder of such receipts or credit-sale contracts, upon due notice, must 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 and all receiptholders of such closing and redeem all such receipts or credit-sale contracts 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 or credit-sale contracts. On commingled grain the value of over and under deliveries in quantity, grade, and protein shall be settled in cash and priced on the market on the day of closing.

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CHAPTER 60-04 – AG PRODUCE WAREHOUSING AND CREDIT SALE CONTRACTS

SECTION 1. AMENDMENT. Subsection 2 and subsection 6 are amended and reenacted and subsection 7 is created and enacted of section 60-04-01 of the North Dakota Century Code as follows:

§60-04-01. Definitions.

4. "Credit-sale ~~contract~~" means a ~~written contract for the~~ sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale. ~~and which contains the notice provided in subsection 7 of section 60-02-19.1. When~~ If a part of the sale price of a ~~contract~~ sale for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the ~~contract~~ sale is a credit-sale ~~contract~~.
6. "Receipts" means a grain warehouse receipts, a scale tickets that remain unconverted within forty-five days of deliver of the grain to the warehouse, a checks, or other memoranda given by a public warehouseman 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~~.
7. "Receiptholder" means a person in rightful possession of a receipt as described in subsection 6 above.

SECTION 2. AMENDMENT. Subdivision a of subsection 1 of section 60-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

§60-04-03.1. Trust fund established.

- a. For the benefit of ~~noncredit-sale~~ receiptholders 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

SECTION 3. AMENDMENT. Subsection 6 of section 60-04-09 of the North Dakota Century Code is amended and reenacted as follows:

6. In the case of a credit-sale contract or ~~noncredit~~ sale contract, the amount remaining to be paid based on the terms of the contract.

60-10 – CREDIT-SALE CONTRACT INDEMNITY

SECTION 1. 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 credit-sale 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 public service commission shall deposit the assessments received under this section in the credit-sale contract indemnity fund.

SECTION 2. 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~~ eight 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 ~~three~~ four million dollars, the public service commission shall require collection of the assessment.

SECTION 3. 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 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 credit-sale contract.

SECTION 4. AMENDMENT. Section 60-10-06 of the North Dakota Century Code is amended and reenacted as follows:

§60-10-06. Credit-sale contract indemnity fund – Reimbursement limit.

The amount payable to any eligible person from the credit-sale contract indemnity fund for each insolvency 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~~ five hundred thousand dollars.

SECTION 5. 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 commission shall ensure that all persons eligible for payment from the credit-sale contract indemnity fund as a result of an insolvency are fully compensated to the extent permitted by this chapter before any payments from the credit-sale contract indemnity fund are initiated as a result of a later insolvency. The chronological order of insolvencies is determined by the date the public service commission is appointed trustee under section 60-02.1-29 or 60-04-03.

SECTION 6. 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 commission in administering the credit-sale contract indemnity fund must be reimbursed from the credit-sale contract indemnity fund before any other claim for indemnity is paid.

SECTION 7. AMENDMENT. Section 60-10-11 of the North Dakota Century Code is amended and reenacted as follows:

§60-10-11. Revocation and suspension.

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

SECTION 8. 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 public service commission, the public service 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 public service 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.

SECTION 9. 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 public service commission may take an action on behalf of the credit-sale contract indemnity fund against a person to recover the amount of payment made, plus costs and attorney's fees. Any recovery for reimbursement to the credit-sale contract indemnity 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 public service commission in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the credit-sale contract indemnity fund.

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Title.

Prepared by the Legislative Council staff for
Senator Wanzek

February 6, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2346

Page 1, line 1, after "60-02" insert ", a new section to chapter 60-02.1,"

Page 1, line 14, remove the overstrike over "~~may~~"

Page 1, line 14, remove "shall"

Page 2, line 16, replace "producer" with "claimant"

Page 2, line 17, replace "producer's" with "claimant's"

Page 2, line 17, after "grain" insert "or sign a waiver"

Page 2, line 17, after "subdivision b" insert an underscored comma

Page 2, line 26, replace "sections" with "section"

Page 2, line 26, remove "or 60-02.1-07"

Page 2, line 26, replace "must" with "shall"

Page 2, line 29, after "issuance" insert "or renewal"

Page 2, line 29, remove "or grain buyer"

Page 2, line 30, after "issuance" insert "or renewal"

Page 2, line 30, remove "or grain buyer"

Page 3, line 4, after "issuance" insert "or renewal"

Page 3, line 4, remove "or grain buyer"

Page 3, line 5, after "issuance" insert "or renewal"

Page 3, line 5, remove "or grain buyer"

Page 3, line 27, remove the overstrike over "~~may~~"

Page 3, line 27, remove "shall"

Page 4, line 15, remove "producers"

Page 4, line 30, remove "producers"

Page 5, line 2, remove "producers"

Page 5, line 10, remove "producers"

Page 5, line 15, remove "producers"

Page 5, after line 15, insert:

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

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Release of records - Confidentiality.

1. As a condition of licensure under section 60-02.1-07, an applicant shall agree to provide to the commission, upon request, any financial record the commission deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
2. As a condition of licensure, an applicant shall file a records release with the commission, authorizing the commission to obtain from any source any financial record the commission deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
3. Any information obtained by the commission under this section is confidential and may be provided only:
 - a. To federal authorities in accordance with federal law;
 - b. To the attorney general, state agencies, and law enforcement agencies for use in the pursuit of official duties; and
 - c. As directed by an order of a court pursuant to a showing of good cause."

Page 6, line 4, remove "producers"

Page 6, line 12, remove "producers"

Page 6, line 22, remove "producers"

Page 7, line 1, remove "producers"

Page 7, line 5, remove "producers"

Page 7, line 8, overstrike "**Credit-sale contracts -**"

Page 7, line 9, replace "one-tenth" with "one-twentieth"

Page 7, line 16, remove "producers"

Page 7, line 19, remove "**producers**"

Page 7, line 21, overstrike "There is created" and insert immediately thereafter "The grain indemnity fund is a special fund"

Page 7, line 21, overstrike the second "the"

Page 7, line 21, remove "grain producers"

Page 7, line 21, overstrike "indemnity"

Page 7, line 22, overstrike the first "fund"

Page 8, line 1, remove "**producers**"

Page 8, line 4, remove "producers"

Page 8, line 4, remove the overstrike over "six"

Page 8, line 4, remove "ten"

Page 8, line 6, remove ", if there is no large claim anticipated against the fund, as determined by"

Page 8, line 7, remove "the public service commission"

Page 8, line 8, remove the overstrike over "~~three~~"

Page 8, line 8, remove "six"

Page 8, line 12, remove "**producers**"

Page 8, line 15, remove "producers"

Page 8, line 18, after the period insert: "After August 1, 2019, the person delivered or sold grain to a licensed warehouse or a grain buyer in the state:

3."

Page 8, line 20, overstrike "3." and insert immediately thereafter "4."

Page 8, line 21, after "contract" insert ", noncredit-sale contract, sale, or storage contract"

Page 8, line 24, remove "**producers**"

Page 8, line 27, remove "producers"

Page 8, line 28, after "who" insert "delivered or"

Page 8, line 29, overstrike "under a credit-sale contract"

Page 8, line 30, after "contract" insert ", sale, or storage contract"

Page 9, line 3, remove "**producers**"

Page 9, line 4, remove "producers"

Page 9, line 7, after "contracts" insert ", storage contracts, noncredit-sale contracts, or sales"

Page 9, line 10, remove "**producers**"

Page 9, line 11, remove "producers"

Page 9, line 18, remove "**producers**"

Page 9, line 21, remove "producers"

Page 9, line 25, remove "**producers**"

Page 9, line 30, remove "producers"

Page 10, line 7, remove "producers"

Page 10, line 13, remove "producers"

Page 10, line 18, remove "producers"

Page 10, line 28, remove "producers"

Page 11, line 14, remove "producers"

Page 11, line 22, remove "producers"

Renumber accordingly

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Senate Bill 2346

Presented by: Randy Christmann, Commissioner
Public Service Commission

Before: Senate Appropriations Committee
The Honorable Ray Holmberg, Chairman

Date: February 14, 2019

TESTIMONY

Mr. Chairman and committee members, I am Randy Christmann, Commissioner with the Public Service Commission.

SB 2346 recognizes that there needs to be changes in the grain licensing program, and the Commission appreciates that acknowledgement and agrees. Improving the situation must involve a two-prong approach including a more thorough review of licensees to prevent insolvencies (or at least catch them earlier) and more help for grain sellers who are victimized.

With the language in this bill, we believe we can implement just such an approach. It allows us to collect enough financial information to do a more thorough review of licensees, while assuring that we can keep their financial information confidential unless mandated by law enforcement or the courts.

Just as important as that is making sure there is help available for sellers who suffer a loss due to an insolvency. Please see Attachment 1 which I prepared to help me clarify.

You will see that when an insolvency occurs and the Commission is appointed by the Court as trustee, we have two funds that we use to help claimants. The column on the left applies to the indemnity fund which exists because of a 2/10 of 1% assessment on credit-sale contract sales. The law suspends assessments for that fund when it hits \$6 million, and starts assessments again when it falls below \$3 million. The balance is currently over \$4 million and assessments have not been collected for a decade. The column on the right is the trust fund which consists of any grain assets that are captured, the bond, certain accounts receivable, etc. Bonds have never been at a level equal to the value of grain traded, even though ND's bond requirements are higher than most of our neighbors. Grain assets, which are the main source of money for this trust fund, are becoming harder to capture because of the efficiency of our modern transportation system.

Working down the page to the second row of boxes in each column you see who is protected by each of these funds. Holders of valid credit-sale contracts are protected by the indemnity fund. All other claimants are protected by the trust fund.

The third row of boxes show the level of protection for each. Claimants with valid credit-sale contracts can be reimbursed 80% of their losses, up to \$280,000. They are limited to 80% because they chose to take the additional

risk of entering into these longer term contracts. However, they are assured of a fairly good settlement (80%) because they pay assessments to build the fund. Other claimants who did not sign credit sale contracts could get 100% of their losses reimbursed if the trust fund has enough money to do that. However, with the difficulty we see in capturing significant grain assets we have also had cases where claimants receive less than 10%. This can be devastating to claimants, potentially terminal for some operations, and can have a similarly devastating trickle-down effect in their communities.

The fourth row covers both columns, and really captures the heart of this bill. SB 2346 decreases that 2/10 of 1% assessment to 1/20 of 1%. For perspective, under a credit-sale contract, a 1000 bushel semi of grain that is worth \$5/bushel is currently subject to a \$10 assessment. With this bill that sale would be assessed just \$2.50. However, it applies the assessment to all sales, not just credit-sale contracts. Most importantly, it allows the seller to have their assessments refunded.

The bottom set of boxes show the resulting change. People with credit-sale contracts would see very little difference. Other claimants would continue to qualify for 100% coverage from the trust fund, but if the trust fund falls short, 80% of the remainder that they did not receive could be reimbursed, up to \$280,000. With this bill all producers will have the opportunity to assure themselves better reimbursement if their buyer becomes insolvent, and they will have the

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opportunity to opt out of that protection and have their assessments reimbursed if they choose to take that risk.

Working with the subcommittee on our budget bill, the resources necessary to carry out the requirements of SB 2346 have been provided. We greatly appreciate the help in addressing this very critical need.

Mr. Chairman, this concludes my testimony. Thank you for the opportunity to present this information. I will be happy to answer any questions.

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Indemnity fund from 2/10 of 1% assessment on credit-sale contracts

Trust fund from captured grain, bond and certain accounts receivable

Holders of credit-sale contracts

All others

80% of losses up to \$280,000 (subject to assessment) (more risk)

Up to 100% of losses with no limit (recovery has been as little as 6%)

SB 2346 lowers the 2/10 of 1% assessment to 1/20 of 1%. It applies the assessment to all sales, not just credit-sale contracts. It makes the assessments voluntary. (all sales will have assessment withheld, but seller can apply for refund.)

No change regarding recovery

80% of amount not recovered from trust fund would be paid out of the indemnity fund, up to an additional \$280,000

#1
SB2346
3/15/19

Testimony on SB 2346
House Agriculture Committee
Senator Terry Wanzek

Good morning Chairman Johnson and members of the House Agriculture committee. I am here today to introduce SB 2346. This bill is addressing warehouse and grain buyer licensing, scale ticket conversions, claims distributions in an insolvency, and the assessments and refunds of an indemnity fund that is already established in our state law.

We are trying to accomplish 2 things with this bill. First we are providing more oversight authority to the PSC on the front end of the licensing process to hopefully develop a stronger program to better prevent warehouse and grain buyer insolvencies and to be able to recognize a potential insolvency sooner to mitigate financial damage. And secondly this bill attempts to provide broader financial protection to producer claimants who are harmed by a grain buyer's or public warehouse insolvency.

This bill expands the authority of the PSC to request any financial information the commission deems relevant to issue a license or conduct an investigation after issuance of a license. This gives the commission access to more financial information from the applicant to hopefully make a more informed decision on extending licensure and places more teeth in their authority to request information on the front end of licensing a grain buyers and public warehouses. The emphasis is trying to prevent future insolvency problems rather than having to deal with them later. This new information obtained by the commission is confidential as a trade secret and not open to public record. This new language is identical to language regulating livestock auction barns and individual livestock buyers in ND century code with similar authority to Department of Agriculture to ask for financial information.

When a person delivers grain to a warehouse or a grain buyer, they fall into one of 4 position categories. There is cash, non credit sales contracts, credit sale contracts and warehouse storage receipts. This matters because it can determine how you are treated in an insolvency case and whether you receive relief or not.

Cash, non credit sales contracts, and warehouse storage claimants fall under the trust fund in an insolvency but are not covered by the indemnity fund. Credit sale contract claimants are not covered by trust fund assets but by the credit sale indemnity fund. Depending on the insolvency case, a producer might be better off being on one side or the other. Your not sure until the Commission has taken receivership of the insolvent entity and the financials are revealed. Many resolutions, of an insolvency case, take a long time because claimants jockey to get on which ever side appears to be more financially advantageous to the claimant. More direction and clarity is needed in law. This bill changes the 45 day requirement to 30 days, to convert scale tickets to cash or non credit sale contracts or credit sale contracts or warehouse storage receipts. It also clarifies that claimants who failed to convert their scale tickets within 30 days will by default be considered a credit sale contract, in the case of an insolvency.

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The bill also tweaks the credit sale contract indemnity fund in current law. It is not our intent to grow the indemnity fund. It will remain at the same level of funding as in current law. However, it is our intent to expand the benefit coverage of the indemnity fund to cover all claimant positions, whether that is cash sales position or a non credit sale or credit sale contracts position or warehouse storage receipts claimant position. Payouts of indemnity benefits to claimants in an insolvency remains the same, 80% of a claim with a limit of \$280,000 paid.

When an assessment to fund the indemnity fund is triggered, the bill reduces the assessment fee from 2/10ths of 1% or .002 of the total value of a grain sale to 1/20th of 1% or .0005 of the total value of a grain sale transaction. Current law applies the assessment fee on only credit sale contract settlements whereby this bill changes it to be assessed against all grain sale transaction settlements. Thus the name change from The Credit Sale Contract Indemnity funds to Grain Indemnity fund. Using latest USDA information on ND's grains, oilseed, dry beans and peas and lentils crop receipts this will raise about \$3 million per year in indemnity funds. Assessment fees will cease when fund is \$6 million plus and trigger again when fund is \$3 million minus. Same as current law. We are not expanding the size of the credit sale indemnity fund. The current fund balance of the Credit Sale Contract Indemnity fund will transfer into the Grain Indemnity fund.

Also anyone who does not want to be a part of the grain indemnity fund can seek a refund of the assessment fee from the PSC. Insurance companies have a guaranty association which operates similar to an indemnity fund. It is required by our state's insurance commission.

In conclusion, we are trying to provide a better system that allows for better risk protection for our producers when they sell their commodities. I am sure this bill will not eliminate all insolvencies or problems, but hopefully it will do a better job of addressing the concerns of the grain producers and the grain merchandising industry. I hear from farmers, 'we need more protection". This is meant to provide financial protection and more certainty for innocent players in the grain marketing process. Many times it is not just the producer who ends up hurting, it reverberates throughout the local community when they can't pay their bills.

Given the highly publicized insolvencies in the news we want to be careful to not overreact. Now is not the time to point fingers. We have producers whom are going to be seriously and negatively impacted. Providing protection is not about bailing out the bad actor, it's about helping innocent folks who are being hurt by an insolvency. We need to have this discussion! Where can we improve our bonding and licensing program. This bill may not be perfect or the final answer but it is a start. Hopefully it gets the discussion going. I want to assure the committee that I will be willing to work with you on addressing concerns and or making changes or amending. I believe this will be a work in progress to improve on our system and provide better protection for the producers of our state.

#2
3/15/19

Senate Bill 2346

Presented by: Randy Christmann, Commissioner
Public Service Commission

Before: House Agriculture Committee
The Honorable Dennis Johnson, Chairman

Date: March 15, 2019

TESTIMONY

Mr. Chairman and committee members, I am Randy Christmann, Commissioner with the Public Service Commission.

SB 2346 recognizes that there needs to be changes in the grain licensing program, and the Commission appreciates that acknowledgement and agrees. The thoughtful approach used in this bill involves a two-prong proposal including a more thorough review of licensees to help prevent insolvencies (or at least catch them earlier to limit losses) and more help for grain sellers who are victimized. With the language in this bill we believe we can implement just such an approach.

Before anything else let me clarify some confusing terms used in the Century Code for grain licensing. Section 60-02 deals with Grain Warehouses. These are what many of you will think of when you think of traditional grain elevators. Even though buying grain is an important part of their business, for legal purposes they are not Grain Buyers. Section 60-02.1 deals with Grain Buyers. These fall into two categories. Roving Grain Buyers have no facility in ND and buy grain to be shipped to a destination of their choosing. Facility-Based

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Grain Buyers have facilities in ND which are operating under a federal license and since their facility is licensed by the federal government, ND law only requires them to have a Grain Buyers license.

I also want to clarify a comment that you heard earlier this year on a different bill that left me very surprised. You were told there was a federal inspector that said years back there were ten state inspectors that he conferred with. Then there were five inspectors. Today he's been told there are 1.50 to 1.75 positions. Well I don't know how long this person has been an inspector, but our surprised staff was able to research back as far as 1958. Throughout most of those years there was one inspector. In the late 1990's a second inspector was added thanks to encouragement from the ND Grain Dealers Association and an increase in licensing fees. In 2017 our funding was reduced, bringing us down to 1.75.

Getting back to 2346, most importantly it allows us to collect enough financial information to do a more thorough review of licensees, while assuring that we can keep their financial information confidential unless mandated by law enforcement or the courts.

Also important is making sure there is help available for sellers who suffer a loss due to an insolvency. Please see Attachment 1 which I prepared to help clarify.

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You will see that when an insolvency occurs and the Commission is appointed by the Court as trustee, we have two funds that we use to help claimants. The column on the left applies to the indemnity fund which exists because of a 2/10 of 1% assessment on credit-sale contract sales. This is a mandatory assessment on producers who use credit-sale contracts, regardless of what type of crop they produce, except the law suspends assessments for that fund when it hits \$6 million, and starts assessments again when it falls below \$3 million. The balance is currently over \$4 million and assessments have not been collected for a decade.

The column on the right is the trust fund which consists of any grain assets that are captured, the bond, certain accounts receivable, etc. Bonds have never been at a level equal to the value of grain traded, that would put most marketing operations out of business. I hasten to say though that ND's bond requirements are higher than most of our neighbors, and in 2015 the Commission did raise bond requirements even more on certain classes of licensees that had a record of showing the highest risk. Grain assets, which are the main source of money for this trust fund, are becoming harder to capture because of the efficiency of our modern transportation system.

Working down the page to the second row of boxes in each column you see who is protected by each of these funds. Holders of valid credit-sale

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contracts are protected by the indemnity fund. All other grain sale claimants are protected by the trust fund.

The third row of boxes show the level of protection for each. Claimants with valid credit-sale contracts can be reimbursed 80% of their losses, up to \$280,000. They are limited to 80% because they chose to take the additional risk of entering into these longer term contracts. These limits exist so the presence of the fund does not encourage reckless marketing decisions. However, claimants are assured of a fairly good settlement (80%) because they pay assessments to build the fund.

Other claimants who did not sign credit sale contracts could get 100% of their losses reimbursed if the trust fund has enough money to do that. However, with the difficulty we see in capturing significant grain assets we have also had cases where claimants receive less than 10%. This can be devastating to claimants, potentially terminal for some agricultural operations, and can have a similarly devastating trickle-down effect in their communities.

The disparity in these protection levels can encourage legal challenges between the claimant classes which could lengthen the time before final court approval of a settlement.

To this point the Attachment is only clarifying existing law.

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The fourth row covers both columns, and really captures an important part of this bill. SB 2346 decreases that 2/10 of 1% assessment to 1/20 of 1%. For perspective, under a credit-sale contract, a 1000 bushel semi of grain that is worth \$5/bushel is currently subject to a \$10 assessment. With this bill that sale would be assessed just \$2.50. However, it applies the assessment to all sales, not just credit-sale contracts. Most importantly, it allows the seller to have their assessments refunded.

The bottom set of boxes show the resulting change. People with credit-sale contracts would see very little difference. Other claimants would continue to qualify for 100% coverage from the trust fund, but if the trust fund falls short, 80% of the remainder that they did not receive could be reimbursed, up to \$280,000. (If there is concern that the ability to recover 80% up to \$280,000 will encourage risky behavior, the solution could be a lower percentage.)

With this bill all producers will have the opportunity to assure themselves better reimbursement if their buyer becomes insolvent, and they will have the opportunity to opt out of that protection and have their assessments reimbursed if they choose not to participate.

To me though, the most important part of the bill is allowing us to review financial information while keeping proprietary information protected. I believe that this should be the most important part of the licensing program, it is modeled

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after what livestock buyers are subjected to, it is what the PSC has been asking for since the 2015 session and it is what I think producers expect when they do business with someone who is licensed by the State of North Dakota.

In the past we have heard three different reasons for denying us the ability to do these essential reviews in a way that allows us to provide assurance of confidentiality.

1. It has been stated that the authority already exists in law, but the first part of that paragraph/section in the Century Code puts in a qualifier which make it unworkable. (see Attachment 2) If you believe that we can already do this, it should not hurt to clarify the language and this bill uses language almost exactly like the Agriculture Commissioner uses for livestock buyers.
2. Some grain dealers do not want us looking at their financials and emphasize that their bonding company is doing that. Based on the insolvencies we have seen that has clearly not been an effective strategy. It has also been asserted that perhaps some licensees are getting bonding from "fly-by-night" sources. All of our licensees have bonding from companies carrying an AM Best rating of A- or higher on a scale from A+ to D. That includes the bonds issued to the most recent insolvent licensee.

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3. We have also been told that customer confidence will be shaken if customers hear the PSC is checking financials. Rest assured, that will not be the case when these reviews become part of the licensing process. If it were a problem, it would be showing up in the livestock buyer licensing program where these thorough financial reviews already take place.

This legislation combines two completely separate strategies and allows us to bring grain licensing into the modern era. These are not changes the agency can implement without code changes. We need your help and cooperation to do this.

Mr. Chairman, this concludes my testimony. Thank you for the opportunity to present this information. I will be happy to answer any questions.

60-02-06. Printing and publishing rules.

Repealed by S.L. 1983, ch. 672, § 25.

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

A license must be obtained from the commission 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 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 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 hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
 - (2) Four 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 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 hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
 - (2) Nine hundred 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 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 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 subsection is a confidential trade secret and is not a public record.

60-02-07.1. Warehouseman to operate warehouse owned by another.

A warehouseman may operate under its warehouse license a warehouse owned by another person. Storage performed for such person in the entire licensed warehouse is excepted from the storage rate and discrimination provisions contained in sections 60-02-17 and 60-02-20 to the extent of the person's owned capacity in the warehouse.

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

Grain buyers must obtain an annual license from the commission. Except as provided in this section, each license expires on July thirty-first of each year. When 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 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.

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.

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 obtain an annual license from the commission. Except as provided in this section, each license expires on July thirty-first of each year. When 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 hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee.

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

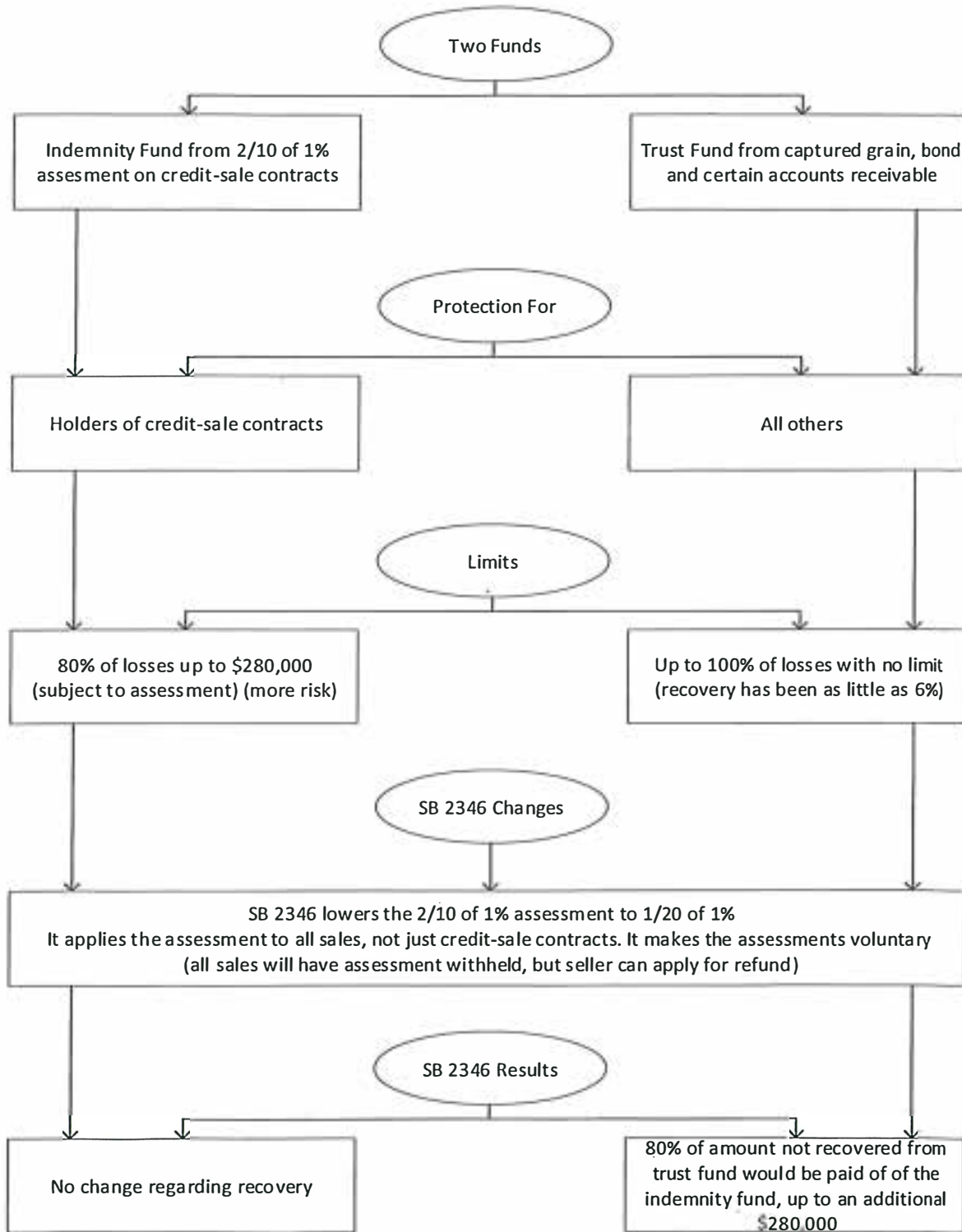
Before any license is effective for any grain buyer under this chapter, the applicant for the license shall file a bond with the commission which must:

1. Be in a sum not less than five thousand dollars.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commission that 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 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 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 may require an increase in the amount of any bond, from time to time, as it deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the commission, and authorized to do business within the state. The commission may accept cash, a negotiable instrument, or a bond executed by

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Grain Seller Safety Net: Insolvency



#1
SB 2346
3/21/19

TESTIMONY OF TRACY KENNEDY
ON BEHALF OF NORTH DAKOTA BANKERS ASSOCIATION
IN SUPPORT OF SB 2346

Chairman Johnson and Committee Members, my name is Tracy Kennedy, and I am counsel for the North Dakota Bankers Association. As an attorney for Zimney Foster Law Firm, I have 20 years of experience in Ag financing and credit enforcement, and served as Adjunct Faculty to the UND School of Law for 13 years teaching courses on secured transactions, sales, and other commercial law. I have represented and advised banks in three grain insolvency proceedings, and argued before the North Dakota Supreme Court in the Grand Forks Bean case. For these reasons, I've become quite knowledgeable about the laws you are considering to enact and amend in SB 2346.

The North Dakota Bankers Association is in support of SB 2346 but request several additions and amendments.

First, is to amend Section 60-02-25.1 "Receipholder's Lien". There is actually no definition of a receipholder. Title 60 to the North Dakota Century Code does define receipt, but it is too broad and should also be amended and restricted. We suggest that only growers who hold actual warehouse receipts should hold a super priority lien as under Section 60-02-25.1. Growers who hold a warehouse receipt are the only people who actually retain their ownership interest in the grain and pay the elevator for its storage. On the other hand, Growers who sell grain or sell grain on credit have ability to obtain liens under Article 9 Secured Transactions and Article 2 Sales of the Uniform Commercial Code, as adopted in North Dakota in Title 41 of the North Dakota Century Code. This amendment would ensure that the grain sold to an elevator by credit-sale or otherwise should clearly be the

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“inventory” and the primary source of collateral for that elevator to obtain financing for their operating needs.

NDBA is also asking this committee to broaden the definition and scope of a credit-sale contract, and narrow the definition of a receipt to include only those farmers who store grain and pay rent for that storage.

The definition of “Credit-Sale Contract” should be amended to strike the word “written” before contract as well as the striking of additional formalities of a Credit-Sale Contract required in Section 60-02-19.1. The Statute of Frauds shall determine what contracts must be in writing and Section 60-02-19.1 clearly states what must be in a Credit-Sale Contract form, much like Section 60-02-16 describes the contracts required in warehouse receipt.

The definition of “receipt” should be limited to warehouse receipts and unconverted scale tickets that do not exceed 30 days. Limiting the definition of “receipt” will clarify and limit the amount of “receipt holders” or “warehouse receipt holder” as proposed, of whom shall maintain a priority lien on the grain in a warehouse but it will also insure that a warehouse can either generate operating revenue from the rent paid by farmers who store their grain, or from an Ag lender by pledging a lien on the grain not held for storage to obtain needed operating credit.

NDBA asserts that expanding the protections of the Credit Sale Indemnity Fund to all grain sales will require extensive review, amendments and additions to all of the warehouse statutes in Title 60 of the North Dakota Century Code. Failure to address these required changes in Title 60 will create more confusion and difficulty for growers to access the Indemnity Fund. We believe that during the review you will find that over the years our State has addressed these issue in patchwork fashion which has led to ineffective remedies. For example: Additions that were made in 2017 in Section 60-02-11 are useless as a fix in the fact that they require a signed waiver of the trust fund as a remedy for failure to convert scale

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tickets to signed contracts. Requiring a signature is not only impractical it is contradictory to the rules of sales found again in Article 2 Sales in the Uniform Commercial Code found in Title 41 of the North Dakota Century Code.

NDBA also requests an increase in the amount of the Indemnity Fund and the maximum amount a claimant can receive from the Fund. The Credit Sale Indemnity Fund was created in 2003 and the amounts required by the fund of \$6,000,000 and the maximum amount growers can claim under the fund \$280,000 are inadequate to provide meaningful protections to our growers. After 16 years the amount should be increased to keep up with inflation. We suggest \$400,000 for claims.

Lastly this Committee may also want to look at adding an additional layer of protection by requiring bonding requirements to cover expense and deposit with protections to be provided by a Grain Indemnity Fund, much like is required in other sections of the warehouse statutes.

In conclusion, NDBA is strongly in favor of a clear, fair, adequate and accessible Grain Indemnity Fund and advocates for laws that will allow our bank members to better provide operating financing to both the growers and elevators. We have the statutory framework to provide true economic stability to our State's grain farmers and to those who do business storing and purchasing that grain but that framework needs to be updated. There is no time like the present to make those changes.



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Testimony of Paul Thomas

North Dakota Corn Growers Association

In Support of SB 2346

March 21, 2019

Chairman Johnson and members of the Committee,

My name is Paul Thomas, I am a farmer from Velva, North Dakota and vice-president of the North Dakota Corn Growers Association. I appreciate the opportunity to appear before you today to voice the support of Corn Growers for the passage of Senate Bill 2346.

The North Dakota Corn Growers Association was organized in 1987 to represent corn farmers and industry stakeholders from across the state.

The NDCGA is the farmer led, membership organization focusing on policy that impacts North Dakota corn producers. The NDCGA has identified six priorities and developed Action Teams to work on these priorities including: Livestock, Grower Services, Production/Stewardship, Corn Research, Ethanol, and Public Policy.

Our Association's Mission is: "Growing a healthy, profitable business climate for northern corn."

The Corn Growers support the focus of this bill to provide additional oversight tools for the Public Service Commission in the licensing of grain buyers and to expand a loss coverage pool for farmers impacted by a grain buyer or grain warehouse insolvency.

Agriculture producers deal with risks every day. Many of these risks can be partially insured against. Farmers carry crop insurance to cover potential losses from acts of mother nature beyond our control. We buy insurance to cover the risk of loss from hail. Health insurance to cover illness. Life insurance to aid in paying for the loans we may leave our loved ones. Expanding the farmer-funded indemnity fund to insure against the risk of a grain buyer going insolvent and without resources to make payment for grain they have purchased is another insurance product needed to help producers manage the risks we face.

The proposed grain indemnity fund is funded by ag producers paying a very small sum of each grain sale into the fund. A farm selling \$1,000,000 worth of grain would pay \$500 into the indemnity fund. Once the fund reaches \$6 million dollars, the collection is halted until the fund is used and falls below \$3 million. This proposed funding mechanism puts the insurance cost onto the potential benefactors. Even administrative costs born by the PSC are paid out of the farmers' payments into this fund.

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This proposed bill would also allow a producer to refund their payment, if they choose, in exchange for opting out of coverage from the fund. However, in conversations with our members, no one has indicated any interest in the refund provision.

Senate Bill 2346's suggested language to limit payout to any one producer to 80 percent of the amount owed to that person, up to \$280,000, falls in line with many of the other insurances producers carry. We believe this provision alleviates concerns that a producer does not need to do due diligence regarding who they are doing business with. Being assured of 80 percent of your sales, up to \$280,000, is comforting— but in no way would make me more comfortable doing business with a company I felt was questionable in making a payment.

On behalf of the North Dakota Corn Growers Association, I urge your support for SB 2346. I will be happy to answer any questions.



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North Dakota Soybean Growers Association
4852 Rocking Horse Circle South, Fargo, ND 58104
(701) 566-9300 | www.ndsoygrowers.com

SB 2346 Testimony

Good Morning - Chairman Johnson and House Agricultural Committee members.

My name is Scott Rising and I'm representing the ND Soybean Growers Association.

The North Dakota Soybean Growers Association is urging you to give SB2346 a DO PASS recommendation.

Mr. Chairman, the Soybean Growers like the bill's requirement to provide requested financial information in the licensure and licensing renewal process for warehousemen and grain buyers. We trust the confidentiality of that information will quell concerns by the industry because we see the information **critical to insolvency prevention** opportunities.

Our Board understands and supports Section two's scale ticket conversion requirement.

They are solid supporters of an Indemnity Fund concept. Providing a pathway for Sale, Storage, Non-Credit Contracts, and Credit Sale Contracts to fully participate in the same Grain Indemnity Fund is appealing as well.

We also believe the Opt-Out refund option in SB2346 is valid and supportable.

We also believe the current bonding requirements need to be strengthened. An obvious choice would be to increase the dollar amount. Another suggested option is to require bonds from companies with higher bond ratings. We perceive there needs to be higher bonding levels for roving grain buyers, beyond that we will trust your judgement.

We also would also ask you to look at the role and responsibility of grain brokers in this entire process.

Please give SB2346 a DO PASS recommendation.

Scott Rising,
NDSGA Legislative Director
C 710.527.1073
scott.rising@ndsga.com

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Cash Sale

- \$\$ Paid
- Title Transferred

Storage

- Pay Storage
- Retain Title w/Warehouse Receipt

Non-Credit Sale Contract

- Sale Agreement
- Paid within 30 Days
- Agreement Determines Title

Credit-Sale Contract

- Sale Agreement
- Payment Delayed
- Title Moves

Insolvency Resolved By :

- Trust of Assets Established by Court
- Court Assigns Trustee – GUN, in ND PSC

Insolvency Resolved By :

- Credit-Sale Contract Indemnity Fund
- Pays 80% of \$350,000 = Max of \$280,000
- **Assessment 2/10^{ths}** of 1%
- Max Fund \$6 Mil
- Min Fund \$3 mil

Insolvency Resolved By :

- Trust of Assets Established by Court
- Court Assigns Trustee – GUN, in ND PSC

Plus

With OPT-OUT Option

- Out till next “trigger” at \$3 mil
- Petition PSC for Reinstatement

Insolvency Resolved By :

- **Grain Indemnity Fund**
- Pays 80% of \$350,000 = Max of \$280,000
- **Assessment 1/20^{ths}** of 1%
- Max Fund \$6 Mil
- Min Fund \$3 mil



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Chairman Johnson and Committee,

My name is David Spickler and I would like to offer the following testimony on behalf of Lighthouse Commodities regarding Senate Bill 2346. Lighthouse Commodities is headquartered in Bismarck, was founded in 2015 and has been licensed as a roving grain buyer since inception. I've spent my entire career as a commodity trader in North Dakota, executing over \$2.5 billion worth of commodity trades, licensing multiple entities and transacting with counterparties of every nature along the way. From this experience, I'd like to contribute the following information and exhibit to further illustrate key aspects and differences of Roving Grain Buyers, a license class and cash grain brokers, functioning as unregulated third parties:

- Lighthouse Commodities, a Roving Grain Buyer, has a \$2 million bond in North Dakota; higher than the aggregate bond coverage amount required for all other states we are licensed in combined. In addition to this bond and the rigorous financial and professional scrutiny that was required to obtain it, Lighthouse has an annual financial audit prepared by a highly respected public accounting firm, a comprehensive internal risk management policy, rigid and clearly defined internal controls/separation of duties and nearly two hundred written procedures informing virtually every task the company undertakes. Lighthouse has a ten-day conversion policy and typically issues payment by electronic funds transfer. And far from operating with no compliance scrutiny, our business activities are governed in one capacity or another by agencies and authorities in addition to the North Dakota Public Service commission which include similar regulators in other states, the Commodity Futures Trading Corporation, National Futures Association, Independent Security Dealers Association, Canadian Border Service Agency, Canadian Feed Inspection Agency and other such governing bodies. Along with this oversight, we regularly submit financial statements and compliance reports to these agencies while participating in on-sight audits numerous times each year. I offer this to better characterize that, along with most of our colleagues, established Roving Grain Buyers in general operate professional, well-run businesses and provide vital market access to farmers. North Dakota's wide variety of crops and vast distances between production areas and processing facilities makes it essential to have market participants that provide supply chain efficiency. An overreaction that hinders or limits Roving Grain Buyers from continuing these efforts would be unnecessary at best and harmful to farmers in the form of drastically decreased market access at worst.
- Cash Brokers are something different entirely. They simply align cash grain buyers and sellers and do so typically with no accountability for execution of the transactions. As an analogy, consider real estate brokerage, though with far less regulation, responsibility and involvement. It's worth noting most of the victims of a recent high-profile insolvency were introduced through a cash grain broker. The common refrain of "shame on them, they should have known better" becomes less convincing when this aspect is understood. In most instances, the counterparty a farmer is selling to isn't even revealed until after a deal is agreed upon, causing reliance solely on the cash grain broker's reputation and assurances. Coupled with the fact that the broker in this recent insolvency typically represented established, large companies in previous transactions and the problem with allowing cash brokers to operate without license or accountability becomes obvious.



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Lighthouse also offers the following recommendations:

- Require third-party audited financials as a condition for obtaining a new Roving Grain Buyer license.
 - Financial audits offer both expert, third-party validation of a company's financial statements and confirmation that its accounting, risk, separation of duties and operational policies and procedures are appropriate and adequate.
 - By offering a formal opinion on not just a company's financials but also its accounting, risk and internal controls; independent audits offer valuable and unique insight toward a company's suitability to conduct business of this nature and are far more useful than interim (internal) financial statements regardless of how frequent the latter are required.
 - Often trading companies have their financials audited already with it being common practice to share, in confidence, results as required with various business partners – lenders, investors, regulators, trading counterparties, etc. Making this a condition precedent to receiving a Roving Grain Buyer license would not represent an unreasonable barrier to entry.
- Require cash grain brokers to be licensed as such, submit monthly volume reports, carry corresponding bond coverage amounts and be contingently liable in the event of an insolvency.
 - Again, cash grain brokers operate with no accountability under the current system; highly unusual as virtually every other industry where brokers exist has both self and government regulations aligning it.
 - This would involve giving the Public Service Commission the authority to create and enforce a new class of licensure that doesn't exist today.

In closing, Lighthouse Commodities supports the original language of SB 2346. The language to create a self-insured indemnity fund with an opt-out provision represents good stewardship and a mechanism for relief in instances of an extremely unforeseen insolvency while allowing those who don't want to participate to simply opt out. And new requirements of audited financials for Roving Grain Buyers and licensing of cash grain brokers would provide necessary compliance measures; ones which almost certainly would prevent or at least greatly reduce an insolvency such as this most recent one while not disrupting the ability of well-suited market participants to continue competing for North Dakota farmers' grain.

Thank you, Chairman Johnson and committee. This completes my prepared testimony, but I would be happy to answer any questions.

Sincerely,

David Spickler
President, Lighthouse Commodities, LLC.

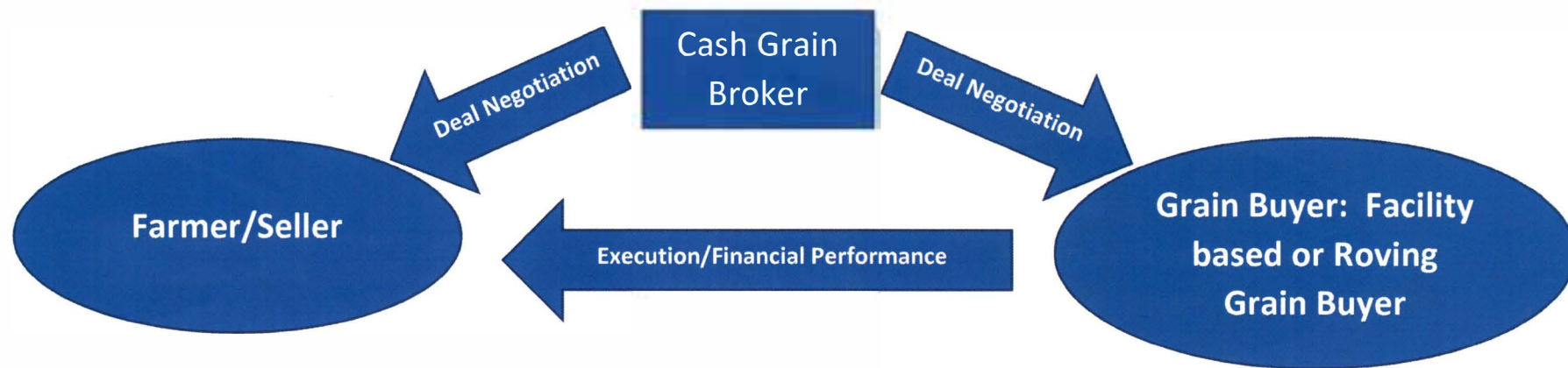
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Grain Transaction Illustration: Conventional (a) involving no broker and Brokered (b) involving cash grain broker

A.) Farmer sells directly to grain buyer, knowing all details of the transaction including who will be buying the grain and under what terms. All aspects of the trade; price, execution and financial performance are negotiated and carried out directly between buyer and seller.



B.) Farmer sells through a cash grain broker. Farmer often doesn't know who the ultimate buyer of grain is until after deal is done. Broker handles price negotiation but bears no responsibility for execution/financial performance and no accountability for failure by buyer to fulfill its obligations.





North Dakota Farm Credit Council

AgCountry Farm Credit Services Farm Credit Services of Mandan Farm Credit Services of North Dakota

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Testimony of Dana Bohn
North Dakota Farm Credit Council Executive Director
SB 2346
March 21, 2019

Chairman Johnson and members of the House Agriculture Committee, my name is Dana Bohn and on behalf of the North Dakota Farm Credit Council (NDFCC), I'd like to express our support for SB 2346 but ask you to consider increasing the amount of the maximum protection.

NDFCC is comprised of three farmer/rancher-owned independent Farm Credit associations that provide credit and financial services to farmers, ranchers and agribusinesses of all sizes and income ranges in every county in North Dakota. North Dakota Farm Credit associations provide about \$11 billion in credit in addition to providing financial services to approximately 25,900 customers.

Farm Credit Services provides financing to farmers, elevators and grain warehouses. The North Dakota Farm Credit Council is supportive of providing extra protection to its owners, the farmers, when dealing with elevators and grain warehouses. Although we recognize farmers are responsible for doing their own due diligence regarding entities with whom they are doing business, we appreciate this bill attempts to provide broader financial protection to producer claimants.

We are concerned that the expansion of the indemnity fund coverage in this bill may not provide adequate protection to farmers, as it creates a false sense of security, and would therefore support increasing the amount of the maximum protection.

In closing, we understand this is a work in progress. We would be happy to be a resource and participate in future conversations to improve the system, including discussion of the importance of development of other risk management options (e.g., private insurance, heightened bonding, etc.) to provide better protection for North Dakota farmers.

Thank you for the opportunity to express our support for SB 2346.

Independently owned and operated associations serving North Dakota and northwest and west central Minnesota.

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**Testimony of Doug Goehring, Agriculture Commissioner
North Dakota Department of Agriculture
Senate Bill 2346
House Agriculture Committee
Peace Garden Room
March 20, 2019**

Chairman Johnson and members of the House Agriculture Committee, I am Agriculture Commissioner Doug Goehring. Thank you for the opportunity to appear before the committee. I am here today to provide neutral testimony on Senate Bill 2346.

Unfortunately, this is a reoccurring conversation that we seem to be having every few years that has yet to be resolved. Insolvencies, fraud and grain marketing issues that have happened over the past year are serious. We need to strongly consider how the grain inspection program is structured and operates, and this is the time to have the conversation and find a solution. I have received numerous calls from hurt and frustrated farmers regarding grain they've sold to a grain buyer and why he wasn't stopped earlier.

The Ag Department currently has a livestock licensing program where we license livestock dealers and auction markets, and I would propose several adjustments to this bill for your consideration based off the structure of this program.

The first would be requiring applicants to submit annual financial statements for review prior to a license being issued, and that they file a release authorizing the regulator access to financial records of the applicant held by financial institutions, accountants or other sources. Both grain elevators and roving grain buyers would need to submit a financial balance sheet that would be used to determine their current debt to asset ratio, and one's ability to cover current liabilities including purchases. Plus, any business with annual purchases over \$5,000,000 needs to submit quarterly financial reports. Maintaining confidentiality of these documents could easily be

accomplished by adding confidentiality language similar to that in the Department's livestock dealers licensing law (4.1-83-09).

Second, grain inspectors should look at accounts payable, accounts receivable and a daily position report. All cash sales are settled within 10 or 20 days, and all deferred, delayed and hedge to arrive contracts are to be settled 30 days after the final delivery has been made. This minimizes risk and large exposures for both the purchaser and the seller. Reconciling inventory is also vitally important. I believe South Dakota's approach may be an option to consider. They use a third-party contractor and CCC to audit inventory and check warehouse receipts.

Now, to address the real elephant in the room, roving grain buyers. Roving grain buyers generally lack brick and mortar facilities to store, condition or move commodities. Because of this, we should consider limiting some of our roving grain buyers' annual purchases. They need to provide adequate bonding, a verified line of credit from a financial institution, and adequate assets. The statute could also limit how much exposure the state would allow a grain buyer. Additionally, roving grain buyers should submit documentation on an agreement with receiving facilities to avoid taking possession of a commodity that cannot be conditioned, processed or marketed. A final consideration would be to not allow a roving grain buyer to do business in North Dakota at all. But, I believe we have some reputable buyers and the proper way to address this issues is to have proper oversight.

If the state is going to continue to allow roving grain buyers the ability to do business in North Dakota, they need to be heavily scrutinized and treated differently than grain elevators. Regulatory oversight should not be burdensome but clearly assist the industry in understanding the rules, regulations and expectations. As regulators I believe our role is to protect the consumer, seller, purchaser, wholesaler and retailer. Essentially, monitoring the entire value chain.

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As you can tell, the real issue at hand is prevention and proper oversight. I also believe it would be beneficial to meet with grain merchandisers, managers, boards and owners of elevators to understand their policies on contracting, hedging and accounts payable to evaluate future adjustments to policy and regulations that reflect the present business environment.

I am apprehensive to support increasing the indemnity fund without addressing some concerns. The changes that were made to the indemnity fund in this bill are more tolerable, as it will build the fund slowly, is refundable, and prohibits individuals who received a refund from being eligible to receive an indemnity payment the following year. I still have concern that expanding the indemnity fund could potentially incentivize riskier behavior by both the seller and the purchaser by providing a false sense of security. I am not opposed to self-insured programs, but it must have certain elements included before it may widely supported. This is an assessment that the producer pays and is sometimes treated as the answer to the problem, when proper prevention and oversight are still the answer to the issue.

Chairman Johnson and committee members, I thank you for your consideration and would be happy to take any questions.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2346

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, a new section to chapter 60-02, and a new section to chapter 60-02.1 of the North Dakota Century Code, relating to the definition of agriculture commissioner and records confidentiality for warehousemen and grain buyers; and 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.

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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. "~~Commission~~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. CommissionCommissioner - Powers and duties.

The commissioner has the powers and duties imposed by the provisions 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 commissioncommissioner.

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:

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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 hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
 - (2) Four hundred fifty dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters]

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

- (3) Five 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 hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
 - (2) Nine hundred 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 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.

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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.

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- b. Covering the costs incurred by the ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commissioner~~ commissioner, and authorized to do business within the state. The ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner. ~~Whenif~~ 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 ~~commissioner~~ 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

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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 ~~shall~~ must 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.

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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 ~~commissioner~~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~~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 ~~commissioner~~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 ~~commissioner~~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 ~~commissioner~~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 ~~commissioner~~commissioner deems ~~it~~ necessary. Information pertaining

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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 ~~the~~grain will be priced and redeemed in cash in accordance with section 60-02-41.

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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 commissioner.

~~When~~If requested in writing, the ~~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 ~~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 ~~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 ~~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 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

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

Release of records - Confidentiality.

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

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

SECTION 24. 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 25. 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 ~~commission~~of the commissioner are enumerated in this chapter.

SECTION 26. 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 27. AMENDMENT. Section 60-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

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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 28. 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 29. 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 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 30. 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

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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 hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee.

SECTION 31. 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 ~~commissioner~~ commissioner which must:

1. Be in a sum not less than five thousand dollars.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner may require an increase in the amount of any bond, from time to time, as ~~the commissioner~~ 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 ~~commissioner~~ commissioner, and authorized to do business within the state. The ~~commissioner~~ commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in ~~the commissioner's~~ the commissioner's

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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 32. 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner.

SECTION 33. 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 ~~commissioner~~ 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 ~~commissioner'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 ~~commissioner~~ commissioner.

SECTION 34. 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 ~~commissioner~~ commissioner and shall make such reports of purchases of grain as may be required by the rules ~~made~~ adopted by the ~~commissioner~~ commissioner. The ~~commissioner~~ commissioner at all times ~~shall~~ must have access to such accounts, records, and memoranda.

SECTION 35. 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:

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1. Prepare for each month a report giving facts and information called for on the form of report prepared by the ~~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 ~~commissioner~~ deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The ~~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 ~~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 ~~commissioner~~ may refuse to renew a license to any grain buyer who fails to make a required report.

SECTION 36. 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 37. 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~~.

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SECTION 38. 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~~ 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~~ commissioner.
3. Surrender to the ~~commissioner~~ 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~~ 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~~ 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~~ commissioner except when made in accordance with the provisions of this section.

SECTION 39. 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 ~~commissioner~~ 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 40. AMENDMENT. Section 60-02.1-29 of the North Dakota Century Code is amended and reenacted as follows:

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

Upon the insolvency of any roving grain buyer, the ~~commissioner~~ 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

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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 ~~commissioner~~ secure and execute the trust, the court shall issue an order granting the application, without bond, and the ~~commissioner~~ shall proceed to exercise ~~the commissioner's~~ authority without further direction from the court.

Upon the filing of the ~~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 41. 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 ~~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 ~~commissioner~~ is appointed trustee must be remitted to the ~~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 42. 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~~ may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the ~~commissioner~~ shall publish a notice of

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~~it~~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 43. 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 ~~it~~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 44. AMENDMENT. Section 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

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

Upon ~~it~~the 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 45. 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 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.

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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 46. 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 ~~commission~~commissioner as trustee must be deposited in the Bank of North Dakota.

SECTION 47. 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~~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

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surety and by ordinary mail upon all persons having claims filed with the commissioner.

4. Any aggrieved person having an objection to the commissioner's report shall file the objection with the court and serve copies on the 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 commissioner from its commissioner's trust.

SECTION 48. 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 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 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 commissioner in carrying out the provisions of this chapter, including adequate insurance to protect the commissioner, its commissioner, 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 commissioner from the trust fund and credit-sale contract indemnity funds as appropriate.

SECTION 49. 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, upon its 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. 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 50. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Release of records - Confidentiality.

1. As a condition of licensure under section 60-02.1-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or

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

SECTION 51. AMENDMENT. Subsection 1 of section 60-04-01 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 52. AMENDMENT. Section 60-04-03 of the North Dakota Century Code is amended and reenacted as follows:

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

Upon the insolvency of any warehouseman, the ~~commission~~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 ~~commission~~commissioner secure and execute such trust, the court shall issue an order granting the application, without bond, ~~whereupon~~at which time 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 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 53. AMENDMENT. Section 60-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

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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 ~~commission~~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 54. 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 55. 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~~commissioner if the ~~commission~~commissioner believes ~~that~~proceeds from the warehouseman's bond may

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be needed to redeem outstanding receipts issued by the warehouseman. ~~When~~ If it appears in the best interests of the receiptholders, 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 56. 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 ~~commissioner~~ commissioner may take possession of relevant books and records of the warehouseman. The ~~commissioner~~ 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 ~~commissioner~~ commissioner along with the receipts, contracts, or any other evidence of the claims as 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 as prescribed by the ~~commissioner~~ commissioner, the ~~commissioner~~ 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 57. 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 ~~commissioner~~ 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 58. AMENDMENT. Section 60-04-06 of the North Dakota Century Code is amended and reenacted as follows:

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

Upon ~~its~~the commissioner's appointment by the district court, the ~~commissioner~~ commissioner may maintain suits at law or in equity, or any special

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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 shall deem~~ commissioner deems it necessary to the redemption of the receipts that all the above remedies be pursued at the same time.

SECTION 59. 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 60. 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.

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SECTION 61. 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 ~~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 ~~commissioner~~ 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 ~~commissioner~~ commissioner for the expenses of administering the insolvency, a proposed distribution of the trust fund assets, less expenses incurred by the ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner by certified mail upon the warehouseman and the surety and by ordinary mail upon all persons having claims filed with the ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner from ~~its~~ the commissioner's trust.

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SECTION 62. 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~~ 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 63. 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 64. 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 ~~whenever~~ 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.

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SECTION 65. 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~~ commissioner, the ~~commissioner~~ 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 66. 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 67. AMENDMENT. Section 60-06-05 of the North Dakota Century Code is amended and reenacted as follows:

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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~~ public service ~~commissioner~~ commissioner, shall construct and maintain a sidetrack for the use of shippers between such stations.

SECTION 68. 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~~ public service ~~commissioner~~ commissioner to determine rights governed under this chapter. The ~~commissioner~~ 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 ~~commissioner~~ commissioner, directly to the entities owed. The ~~commissioner~~ commissioner may adopt rules to carry out this section.

SECTION 69. 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~~ public service ~~commissioner~~ commissioner no later than thirty days after each calendar quarter. The ~~commissioner~~ commissioner shall deposit the assessments received under this section in the credit-sale contract indemnity fund.

SECTION 70. AMENDMENT. Section 60-10-02 of the North Dakota Century Code is amended and reenacted as follows:

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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 71. 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 72. 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 73. 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 74. 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

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

SECTION 75. 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 commission~~commissioner in administering the credit-sale contract indemnity must be reimbursed from the fund before any other claim for indemnity is paid.

SECTION 76. 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 commission~~commissioner for deposit in the credit-sale contract indemnity fund is guilty of a class A misdemeanor.

SECTION 77. AMENDMENT. Section 60-10-11 of the North Dakota Century Code is amended and reenacted as follows:

60-10-11. Revocation and suspension.

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

SECTION 78. 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 ~~commission~~commissioner, the ~~commission~~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 ~~commission~~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 79. 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 ~~commission~~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

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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 80. 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

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2346

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, a new section to chapter 60-02, and two new sections to chapter 60-02.1 of the North Dakota Century Code, relating to the definition of agriculture commissioner, licensing and bonding for cash grain brokers, and records confidentiality for warehousemen and grain buyers; and 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, sections 60-02.1-01, 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.

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- 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. "~~Commission~~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 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:

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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

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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.

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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.

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- b. Covering the costs incurred by the ~~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 ~~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 ~~commissioner~~ deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commissioner~~, and authorized to do business within the state. The ~~commissioner~~ may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond ~~when~~ if, in 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 ~~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 ~~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 ~~commissioner~~. ~~When~~ 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 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 ~~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

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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 ~~shall~~ must 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.

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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 ~~commissioner~~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 ~~commissioner~~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 ~~commissioner~~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 ~~commissioner~~commissioner. The report must contain or be verified by a written declaration ~~that it~~that the report is made under the penalties of perjury. The report may be called for more frequently if the ~~commissioner~~commissioner deems it necessary. Information pertaining

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

2. File the report with the ~~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 ~~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 ~~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 ~~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 ~~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 ~~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 ~~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 ~~it~~ the grain will be priced and redeemed in cash in accordance with section 60-02-41.

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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 commissioner.

~~When~~ If requested in writing, the 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 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 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 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 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, its commissioner, at which time, the commissioner, first being duly satisfied ~~that~~ all the outstanding receipts have been redeemed, or that the redemption thereof all outstanding

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

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

Release of records - Confidentiality.

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

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

SECTION 24. AMENDMENT. Section 60-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Cash grain broker" means a person who:
 - a. Is involved in the negotiation of cash grain transactions in the state;
 - b. Receives compensation from at least one party to the transaction; and
 - c. Does not take title to the grain and is not under any financial or contractual obligation related to the transaction.
2. "~~Commission~~Commissioner" means the public service ~~commission~~ agriculture commissioner.
- 2-3. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
- 3-4. "Facility" means a structure in which grain purchased by a grain buyer is received or held.
- 4-5. "Facility-based grain buyer" means a grain buyer who operates a facility licensed under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.
- 5-6. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans,

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corn, clover, millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" does not include grain or grass seeds owned by or in the possession of the grain buyer which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.

6.7. "Grain buyer" means any person, other than a public warehouseman as defined in chapter 60-02, who purchases or otherwise merchandises grain for compensation. The term does not include:

- a. A producer of grain who purchases grain from other producers to complete a carload or truckload in which the greater portion of the load is grain grown by the producer or on-farm feedlot operations in which at least fifty percent of the livestock is owned by the owner of the farm.
- b. A person who is permitted to sell seed under chapter 4.1-53, if that person buys grain only for processing and subsequent resale as seed.
- c. A person who is an authorized dealer or agent of a seed company holding a permit in accordance with section 4.1-53-38.

7.8. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.

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

9.10. "Roving grain buyer" means a grain buyer who does not operate a facility where grain is received.

SECTION 25. AMENDMENT. Section 60-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-02. 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 26. 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 commissioner.

The 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.

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- 4. Make all proper rules for carrying out and enforcing any law in this state regarding grain buyers.

SECTION 27. 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 28. 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 29. 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 30. AMENDMENT. Section 60-02.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

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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 31. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Cash grain broker license - Application - Bond - How obtained - Fee - Report - Disclosure.

1. Before conducting business in the state, a cash grain broker ~~and~~ must submit an application to ~~and~~ obtain an annual license from the commissioner. To conduct business in the state, a cash grain broker must also register and be in good standing with the secretary of state. Except as provided in this section, each license expires on July thirty-first of each year. When 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 of a cash grain broker is two hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee. A license issued under this section is not transferable.
2. An application for licensure must include:
 - a. The name under which the applicant intends to conduct business in the state as a cash grain broker;
 - b. The name of each partner if the cash grain broker is in a partnership;
 - c. The name of each corporate officer and the state of incorporation if the cash grain broker is a corporation;
 - d. The name of each manager and the state of organization if the cash grain broker is a limited liability company;
 - e. The mailing address of the applicant; and
 - f. The location of the principal place of business of the applicant.
3. The commissioner may refuse to issue, renew, or may revoke a license if:
 - a. The licensee or applicant has been convicted of a criminal offense;
 - b. The licensee or applicant has failed to comply with the requirements of this section;
 - c. The commissioner has evidence the licensee negotiated in bad faith;
or
 - d. Any other reason determined by the commissioner.



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4. A licensed cash grain broker must submit a monthly report to the commissioner by the tenth day of each month. The report must include:
 - a. The total volume of each commodity brokered in the preceding month; and
 - b. The name and contact information of any buyer who had more than two hundred and fifty thousand dollars in total purchases in transactions brokered by the cash grain broker during the preceding month.
5. A licensed cash grain broker must notify each potential commodity seller of the identity of the potential commodity buyer before the final confirmation of the transaction.
6. Before a license is effective for a cash grain broker under this section, the licensee or applicant must file a bond with the commissioner for ten thousand dollars.

SECTION 32. 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~~ 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.

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- 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 ~~it~~ 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 33. 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 34. 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 35. 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

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required by the ~~commissioner~~ and shall make such reports of purchases of grain as may be required by the rules ~~made~~ adopted by the ~~commissioner~~. The ~~commissioner~~ at all times ~~shall~~ must have access to such accounts, records, and memoranda.

SECTION 36. 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 ~~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 ~~commissioner~~ deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The ~~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 ~~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 ~~commissioner~~ may refuse to renew a license to any grain buyer who fails to make a required report.

SECTION 37. 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 38. AMENDMENT. Section 60-02.1-22 of the North Dakota Century Code is amended and reenacted as follows:

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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 39. 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 40. 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 ~~commissioner~~ and all receipt holders 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.

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SECTION 41. AMENDMENT. Section 60-02.1-29 of the North Dakota Century Code is amended and reenacted as follows:

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

Upon the insolvency of any roving grain buyer, the ~~commissioner~~ 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 receipt holders that the ~~commissioner~~ commissioner secure and execute the trust, the court shall issue an order granting the application, without bond, and the ~~commissioner~~ commissioner shall proceed to exercise ~~the commissioner's~~ authority without further direction from the court.

Upon the filing of the ~~commissioner'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 42. 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 receipt holders and to pay the costs incurred by the ~~commissioner~~ 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 ~~commissioner~~ commissioner is appointed trustee must be remitted to the ~~commissioner~~ 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.

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- 8. Unencumbered grain product assets.

SECTION 43. 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 ~~it~~the commissioner's appointment, the ~~com~~missioner may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the ~~com~~missioner shall publish a notice of ~~it~~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 ~~com~~missioner along with the receipts, contracts, or other evidence of the claims required by the ~~com~~missioner. 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 ~~com~~missioner, the ~~com~~missioner 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 44. 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 ~~com~~missioner fails or refuses to apply for ~~it~~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 45. AMENDMENT. Section 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

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

Upon ~~it~~the commissioner's appointment, the ~~com~~missioner shall marshal all of the trust fund assets. The ~~com~~missioner 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.

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SECTION 46. 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~~ to prosecute or compromise claims.

The ~~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 receipt holders.
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 47. 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~~ as trustee must be deposited in the Bank of North Dakota.

SECTION 48. 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~~ 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 ~~commissioner~~ for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receipt holders, less expenses incurred by the ~~commissioner~~ in the administration of the insolvency, and the proposed credit-sale contract

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indemnity fund payments to credit-sale contract claimants. If the trust fund is insufficient to redeem all receipt holder 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~~ commissioner's trust.

SECTION 49. 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, its~~ commissioner, 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 50. 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 ~~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.

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SECTION 51. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Release of records - Confidentiality.

1. As a condition of licensure under section 60-02.1-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
 - a. The issuance or renewal of a grain buyer license; or
 - b. An investigation after issuance or renewal of a grain buyer license.
3. Any information obtained by the commissioner under this section is confidential and may be provided only:
 - a. To federal authorities in accordance with federal law;
 - b. To the attorney general, state agencies, and law enforcement agencies for use in the pursuit of official duties; and
 - c. As directed by an order of a court pursuant to a showing of good cause.

SECTION 52. AMENDMENT. Subsection 1 of section 60-04-01 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 53. AMENDMENT. Section 60-04-03 of the North Dakota Century Code is amended and reenacted as follows:

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

Upon the insolvency of any warehouseman, the ~~commission~~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 ~~commission~~commissioner secure and execute such trust, the court shall issue an order granting the application, without bond, ~~whereupon~~at which time the ~~commission~~commissioner shall proceed to exercise ~~its~~the commissioner's authority without further direction from the court.

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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 54. 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 ~~commission~~ 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 55. 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.

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SECTION 56. 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 ~~commissioner~~ commissioner if the ~~commissioner~~ commissioner believes that proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. ~~When~~ When it appears in the best interests of the receiptholders, 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 57. 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 ~~commissioner~~ commissioner may take possession of relevant books and records of the warehouseman. The ~~commissioner~~ 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 ~~commissioner~~ commissioner along with the receipts, contracts, or any other evidence of the claims as 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 as prescribed by the ~~commissioner~~ commissioner, the ~~commissioner~~ 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 58. 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 ~~commissioner~~ 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.

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SECTION 59. AMENDMENT. Section 60-04-06 of the North Dakota Century Code is amended and reenacted as follows:

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

Upon ~~the~~ the commissioner's appointment by the district court, the ~~commissioner~~ 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~~ 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 ~~commissioner~~ commissioner shall seek possession of any grain in the warehouse before ~~recourse~~ 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 shall deem~~ commissioner deems it necessary to the redemption of the receipts that all the above remedies be pursued at the same time.

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

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

The ~~commissioner~~ 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 61. AMENDMENT. Section 60-04-08 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 62. 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 commissioner~~ the commissioner, the ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner for the expenses of administering the insolvency, a proposed distribution of the trust fund assets, less expenses incurred by the ~~commissioner~~ commissioner in the administration of this chapter, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants as ~~the~~ 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 ~~commissioner~~ commissioner deems fair and equitable.

The court shall set a hearing and the appropriate notice for interested persons to show cause why the ~~commissioner'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 ~~commissioner~~ commissioner by certified mail upon the warehouseman and the surety and by ordinary mail upon all persons having claims filed with the ~~commissioner~~ commissioner.

Any aggrieved person having an objection to the ~~commissioner's~~ commissioner's report shall file the objection with the court and serve copies on the ~~commissioner~~ commissioner, the warehouseman, and the surety at least twenty days

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

60-05-01. Public elevators and warehouses - 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 65. 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 ~~whenever~~ 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~~ commissioner is requested to

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

60-05-03. Certificate issued by commissioncommissioner 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 67. 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

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~~shall~~ must be audited and paid in the same manner as other expenses are audited and paid.

SECTION 68. 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~~ public service ~~commission~~ commissioner, shall construct and maintain a sidetrack for the use of shippers between such stations.

SECTION 69. 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~~ public service ~~commission~~ 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 70. 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~~ public service ~~commission~~ 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.

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SECTION 71. 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 72. 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 73. 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~~ serve as the trustee, the ~~public service 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 74. 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~~ shall prorate the claims and pay the prorated amounts. As future assessments are collected, the public service 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 75. AMENDMENT. Section 60-10-08 of the North Dakota Century Code is amended and reenacted as follows:

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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 76. 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 administering the credit-sale contract indemnity must be reimbursed from the fund before any other claim for indemnity is paid.

SECTION 77. 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 78. 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 79. 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 80. AMENDMENT. Section 60-10-14 of the North Dakota Century Code is amended and reenacted as follows:

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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 ~~commission~~ 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 ~~the~~ 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 81. 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

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PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2346

Page 13, after 7. Insert “Grain Processor” means an entity that purchases grain to process them into end products that are of a substantially different make up or nature than the original grain.

Page 16, after 6. insert:

“SECTION 32. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Grain processor license – Application – Bond – How obtained – Fee-Report-Disclosure.

1. Before conducting business in the state, a cash grain processor must submit an application to obtain an annual license from the commissioner. To conduct business in the state, a grain processor must also register and be in good standing with the secretary of state. Except as provided in this section, each license expires on July thirty-first of each year. When 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 of a cash grain broker is two hundred dollars, and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee. A license issued under this section is not transferable.
2. An application for licensure must include:
 - a. The name under which the applicant intends to conduct business in the state as a cash grain broker;
 - b. The name of each partner if the cash grain broker is in a partnership;
 - c. The name of each corporate officer and the state of incorporation if the cash grain broker is a corporation;
 - d. The name of each manager and the state of organization if the cash grain broker is a limited liability company;
 - e. The mailing address of the applicant; and
 - f. The location of the principal place of business of the applicant.
3. The commissioner may refuse to issue, renew, or may revoke a license if:
 - a. The license or applicant has been convicted of a criminal offense;
 - b. The licensee or applicant has failed to comply with the requirements of this section;
 - c. The commissioner has evidence the licensee negotiated in bad faith;
or
 - d. Any other reason determined by the commissioner.
4. A licensed grain processor must submit a monthly report to the commissioner by the tenth day of each month. The report must include:
 - a. The total volume of each commodity processed in the preceding month.
5. Before a license is effective for a grain processor under this section, the licensee or applicant must file a bond with the commissioner for ten thousand dollars.

Renumber Accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2346

That the House recede from its amendments as printed on pages 1594-1624 of the House Journal and pages 1397-1427 of the Senate 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.

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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 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 enumerated under this chapter and the powers conferred herein devolve upon the commissioner.

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 commissioner 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 ~~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 ~~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 ~~commissioner~~ deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the ~~commissioner~~, and authorized to do business within the state. The ~~commissioner~~ may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond ~~when~~ if, in ~~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 ~~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 ~~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 ~~commissioner~~. ~~When~~ 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 ~~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 ~~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

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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 ~~shall~~ must 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.

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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 ~~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 commission~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner deems it necessary. Information pertaining

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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 ~~the~~ 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 ~~the~~ the policy of the warehousemen which must be filed with the ~~commission~~ commissioner and posted in a conspicuous place in ~~the~~ 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 ~~the~~ 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 commissioner.

~~When~~ If requested in writing, the ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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~~ commissioner ~~its~~ the warehouseman's license for cancellation ~~and at such, 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, its~~ 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

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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 receipt holders 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 commission~~ of the commissioner are enumerated in this chapter.

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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.

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6. Be for the specific purpose of:
 - a. Protecting the sellers of grain.
 - b. Covering the costs incurred by the ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner, and authorized to do business within the state. The ~~commissioner~~ commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in ~~it~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner's~~ commissioner's approval, may operate its facility and purchase or redeliver grain previously received, but may not receive additional grain for purchase,

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shipping, or processing. Grain may be sold only with the prior approval of the 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 commissioner and shall make such reports of purchases of grain as may be required by the rules ~~made~~ adopted by the commissioner. The commissioner at all times ~~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 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 commissioner deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The 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 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 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

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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

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facility was closed, destroyed, or became insolvent. The holder of ~~such~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner.

Upon the insolvency of any roving grain buyer, the ~~commissioner~~ 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 ~~commissioner~~ commissioner secure and execute the trust, the court shall issue an order granting the application, without bond, and 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 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner is appointed trustee must be remitted to the ~~commissioner~~ 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 ~~commission~~commissioner may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the ~~commission~~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 ~~commission~~commissioner along with the receipts, contracts, or other evidence of the claims 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 set by the ~~commission~~commissioner, the ~~commission~~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 ~~commission~~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. Commissioner to marshal trust assets.

Upon ~~it~~the commissioner's appointment, the ~~commissioner~~ shall marshal all of the trust fund assets. The ~~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 to prosecute or compromise claims.

The ~~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~~ 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~~ 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 ~~commissioner~~ commissioner for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receipt holders, less expenses incurred by the ~~commissioner~~ 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 receipt holder 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 ~~commissioner~~ commissioner by certified mail upon the licensee and the surety and by ordinary mail upon all persons having claims filed with the ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner from ~~its~~ the ~~commissioner's~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ commissioner in carrying out the provisions of this chapter, including adequate insurance to protect the ~~commission, its~~ commissioner, the ~~commissioner's~~ 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 ~~commissioner~~ 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 ~~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 49. AMENDMENT. Subsection 1 of section 60-04-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "~~Commission~~ 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 ~~commission~~ commissioner.

Upon the insolvency of any warehouseman, the ~~commission~~ 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 ~~commission~~ commissioner secure and execute such trust, the court shall issue an order granting the application, without bond, ~~whereupon~~ at which time 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 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 ~~commission~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ 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 ~~commissioner~~ when commissioner if the ~~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 ~~it~~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 ~~it~~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 ~~it~~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. CommissionCommissioner to marshal trust assets.

Upon ~~it~~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 ~~it~~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 ~~it~~the receiptholder's just and pro rata share of grain,

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for the purpose of marshalling all of the trust fund assets and distributing the same among the receipt holders. The ~~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 ~~commissioner~~ ~~shall deem~~ 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 ~~commissioner~~ commissioner to prosecute or compromise claims.

The ~~commissioner~~ 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 receipt holders.
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 ~~commissioner~~ 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 commissioner~~ the ~~commissioner~~ 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~~ the claims.
2. Assignments ~~thereof~~ the claims.

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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 ~~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 ~~commissioner~~ for the expenses of administering the insolvency, a proposed distribution of the trust fund assets, less expenses incurred by the ~~commissioner~~ in the administration of this chapter, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants as ~~the~~ their 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 ~~commissioner~~ deems fair and equitable.

The court shall set a hearing and the appropriate notice for interested persons to show cause why the ~~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 ~~commissioner~~ by certified mail upon the warehouseman and the surety and by ordinary mail upon all persons having claims filed with the ~~commissioner~~.

Any aggrieved person having an objection to the ~~commissioner's~~ report shall file the objection with the court and serve copies on the ~~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 ~~commissioner~~ from ~~the~~ 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 ~~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 ~~commissioner~~ in the prosecution of such action as in the attorney general's judgment may be necessary and the ~~commissioner~~ shall deduct the expenses of the same from the trust fund and the credit-sale contract indemnity fund as appropriate. All other necessary

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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 ~~whenever~~ 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 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:

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

If the ~~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 ~~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 ~~commissioner~~, ~~the 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 ~~commissioner~~ shall mail a copy of ~~said~~ the statement or certificate to each of such shareholders or stockholders as may have requested the ~~commissioner~~ to make such examination. The ~~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 ~~commissioner~~. In case any such association, copartnership, corporation, or limited liability company shall wrongfully refuse or neglect to pay such fees, then the ~~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:

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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~~ 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~~ stations are ten miles [16.09 kilometers] or more apart the railroad company, ~~whenif~~ required so to do by the ~~public service~~ ~~commission~~ ~~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~~ ~~commission~~ ~~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~~ ~~commission~~ ~~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:

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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~~ serve as the trustee, the public service 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

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insolvencies is determined by the date the ~~public service commission~~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 commission~~commissioner in administering 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 commission~~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 ~~commission~~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 ~~commission~~commissioner, the ~~commission~~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 ~~commission~~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 ~~commission~~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

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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

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**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1467
(Representatives D. Johnson, Brandenburg, Hatlestad, Howe)
(Senators Klein, Luick, Wanzek)

AN ACT to provide for a legislative management study regarding agricultural issues in the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - AGRICULTURAL ISSUES - GRAIN BUYERS, ROVING GRAIN BUYERS, GRAIN HANDLING FACILITIES, FERTILIZER, SOIL AMENDMENTS, SEED, AND FUEL. During the 2019-20 interim, the legislative management shall consider studying agricultural issues in the state, including studying grain buyers, roving grain buyers, grain brokers, and grain handling facilities under title 60; and issues related to prepayment for fertilizer, soil amendments, seed, and fuel in situations of insolvency. The study must include a review of the current law, industry practices, and background checks relating to grain buyers, roving grain buyers, grain brokers, and handling facilities and a review of any potential efficiencies that may exist, methods of maintaining financial security during the grain buying process including consideration of facility operating capital to ensure adequate solvency during licensing, and the process of confidential financial and physical audits. The study also must include a review of the law pertaining to grain handling facility asset lists to determine if changes are required to ensure producers are protected from facility insolvency if an end product is refined and no longer reflects the original product, the indemnity fund under title 60, and grain handling facility bonding requirements. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.