

Sixty-fifth
Legislative Assembly
of North Dakota

Introduced by

A BILL for an Act to amend and reenact sections 60-02-03, 60-02-09, 60-02-17, 60-02-25, 60-02-35, 60-02-38, 60-02-40, 60-02-44, 60-02.1-03, 60-02.1-08, 60-02.1-26, 60-02.1-28, 60-02.1-29, 60-02.1-30, 60-02.1-31, 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, 60-04-02, 60-04-03, 60-04-03.1, 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, 60-10-01, 60-10-02, 60-10-04, 60-10-05, 60-10-06, 60-10-07, 60-10-08, 60-10-09, 60-10-10, 60-10-13, 60-10-14, and 60-10-15 of the North Dakota Century Code, relating to public warehouse and grain buyer licensing, conditions and attributes of licensure and accepting delivery of grain, when a licensee is insolvent, the insolvency process, the credit-sale contract indemnity fund and the grain indemnity fund; to repeal sections 60-02-02, 60-02-25.1, 60-02-39, 60-02.1-02, 60-02.1-25, 60-04-03.2, and 60-10-03 of the North Dakota Century Code relating to duties of the commission, receiptholders' lien, warehouse closure, grain of insolvent warehouseman as trust asset, and suspension of indemnity fund assessments; and to provide for a transfer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 commission.

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The commission ~~shall have the duty and power to~~ may:

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.~~2. Examine and inspect, during ordinary business hours, any licensed warehouse, including all books, documents, and records.
- ~~4.~~3. Require the filing of reports pertaining to the operation of the warehouse.
- ~~5.~~4. Make all proper rules for carrying out and enforcing any law in this state regarding public warehouses.

SECTION 2. 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 ~~issued to~~ effective for any public warehouseman under this chapter, the applicant for ~~such~~ the license shall file a bond with the commission which ~~shall~~ 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 that the surety bond will be canceled ninety days after receipt of the notice of cancellation.

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3. Run to the state of North Dakota for the benefit of all persons storing or selling grain in such 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 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 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. ~~In no event shall the~~ The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which ~~such~~ the bond is in force but, for losses during any annual license renewal period, ~~shall be~~ is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The commission shall set the amount of the bond and may require an increase in the amount of any bond, from time to time, as it shall, ~~in its discretion, deem~~ the commission deems necessary to accomplish the purposes of this section. The surety on ~~such a~~ 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 personal sureties in lieu of a surety bond when, in its judgment, ~~such~~ the cash, negotiable instrument, or personal surety bond properly will protect the holders of outstanding receipts. One bond only ~~shall~~ 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 ~~such~~ the bond ~~shall~~ must be construed to cover such elevators, mills, or warehouses, as a whole and not a specific amount for each.

SECTION 3. 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.

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. 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. ~~Nothing in this~~ This receipt requires 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. 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 as a part of the warehouse license ~~application~~ 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.

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~~ is delivered to any public warehouse and an unconverted scale ticket or a warehouse receipt is issued therefor, ~~such~~ the delivery

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~~shall be~~ is a bailment and not a sale of the grain so delivered. ~~In no case shall the~~
~~The delivered~~ grain ~~so delivered be liable~~ is not subject to seizure upon process of
any court in any action against ~~such~~ the bailee, except in an action by an owner of
~~such~~ an unconverted scale ticket or warehouse receipt to enforce the terms thereof
or obtain redelivery of ~~such~~ the 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 by
warehouseman.**

~~No~~ A public warehouseman license ~~may be issued to a public~~
~~warehouseman~~ 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 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. ~~No~~ 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 60-02-38 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 7. 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 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 first of its 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

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- 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 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 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 license for cancellation and at such time the proposed lessee or purchaser shall ~~apply~~ file in due form for a new license and tender a new bond for ~~approval~~ review by the commission, 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 may ~~issue~~ permit a new license to become effective for the lessee or purchaser.

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

SECTION 8. AMENDMENT. Section 60-02-44 of the North Dakota Century Code is amended and reenacted as follows:

60-02-44. Licensed warehouse capacity and condominium storage.

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

SECTION 9. 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.

The commission 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.~~2. Examine and inspect, during ordinary business hours, any books, documents, and records.
- ~~4.~~3. Make all proper rules for carrying out and enforcing any law in this state regarding grain buyers.

SECTION 10. 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 ~~issued to~~ effective for any grain buyer under this chapter, the applicant for such 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 such 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. ~~In no event shall the~~ The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which ~~such~~ the bond is in force but, for losses during any annual license renewal period, ~~shall be~~ 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 ~~such a~~ 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 personal sureties in lieu of a surety bond when, in its judgment, ~~such~~ 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 ~~such~~ the bond must be construed to cover ~~such~~ those facilities as a whole and not a specific amount for each.

SECTION 11. 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 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 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.
3. Surrender to the commission ~~it's~~ the grain buyer's license for cancellation and at ~~such~~ that time the proposed lessee or purchaser shall ~~apply~~ file in due form for a new license and tender a new bond for ~~approval~~-review by the commission, 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 may ~~issue~~ permit a new license to become effective for the lessee or purchaser.

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

SECTION 12. AMENDMENT. Section 60-02.1-28 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-28. Insolvency of grain buyer.

A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper written demand to make payment for grain purchased or marketed by the licensee or is unable to make redelivery upon proper written demand.

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

SECTION 13. 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~~Commission insolvency proceeding.

Upon the insolvency of any roving grain buyer, the commission, on its own motion, 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-~~commence an administrative insolvency proceeding under chapter 28-32 to secure the bond proceeds, identify potential receipt holder and credit-sale claimants, determine the amount of each claim, determine the recommended payment on each claim from the insolvency fund and the grain indemnity fund, make payments on claims, and take any action necessary and appropriate to accomplish the purposes of this chapter. ~~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 commission secure and execute the trust, the court shall issue an order granting the application, without bond, and the~~

~~commission shall proceed to exercise its authority without further direction from the court. Upon the filing of the commission's application, the court may issue ex parte a temporary order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the application.~~

SECTION 14. AMENDMENT. Section 60-02.1-30 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-30. Trust Insolvency fund established.

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

- ~~1. Nonwarehouse receipt grain of the insolvent licensee held in storage
or the proceeds obtained from the conversion of such grain.~~
- ~~2. The proceeds, including accounts receivable, from any grain sold
from the time of the filing of the claim that precipitated an insolvency
until the commission is appointed trustee must be remitted to the
commission and included in the trust fund.~~
- ~~3. The proceeds of insurance policies on destroyed grain.~~
- ~~4. The claims for relief, and proceeds therefrom, for damages upon
bond given by the licensee to ensure faithful performance of the
duties of a licensee.~~
- ~~5. The claim for relief, and proceeds therefrom, for the conversion of any
grain stored in the warehouse.~~

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

60-02.1-31. Joinder of and notice to surety - Deposit of proceeds.

~~Each~~ The commission shall join each surety on the insolvent licensee's bonds ~~must be joined~~ as a party to the insolvency proceeding. If it is in the best interests of the receiptholders, the ~~court~~ commission may order a surety to deposit some or all of the penal sum of the bond into the ~~trustee's trust~~ insolvency account pending determination of the surety's liability under the bond.

SECTION 16. 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 appointment~~ an insolvency, the commission may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the commission shall publish a notice of ~~its appointment~~ the insolvency and the commencement of the insolvency proceeding 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

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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 along with the receipts, contracts, or other evidence of the claims required by the commission. 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, the commission is relieved of further duty in the administration of the insolvency on behalf of the receiptholder or credit-sale contract claimant and the receiptholder or credit-sale contract claimant may be barred from ~~participation in the trust fund~~ payment for any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court commission upon a motion for intervention.

SECTION 17. 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 receiptholder has a separate claim for relief upon any insolvent licensee's bond, ~~nor for insurance, nor against any person converting grain, nor against any other receiptholder,~~ except through the trustee commission, unless, upon demand of five or more receiptholders, the commission fails or refuses to ~~apply for its own appointment or unless the district court denies the application~~ commence an insolvency proceeding and join the surety. This chapter does not

prohibit any receipt holder, either individually or in conjunction with other receipt holders, from pursuing concurrently any other remedy against the person or property of the licensee.

SECTION 18. AMENDMENT. Section 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-34. Commission to ~~marshall trust assets~~ may maintain suit.

~~Upon its appointment, the commission shall marshall all of the trust fund assets.~~ The commission may maintain suits in the name of the state of North Dakota for the benefit of all receipt holders 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 19. 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 to prosecute or compromise claims.

The commission 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 it will be in the best interests of the receipt holders and credit-sale contract claimants.
4. 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.

5. Take any other action necessary and appropriate to accomplish the purposes of this chapter.

SECTION 20. 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 ~~as trustee~~ under this chapter must be deposited in the Bank of North Dakota.

SECTION 21. 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 and order of commission - Approval - Distribution.

1. Upon the receipt and evaluation of claims, the commission shall file ~~with the court~~ issue a notice consistent with chapter 28-32, together with 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, ~~with interest from the date of default at the weighted~~

~~average prime rate charged by the Bank of North Dakota.~~

e. 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.

2. The report must also contain the proposed reimbursement to the commission for the expenses of administering the insolvency, the proposed distribution of the trust insolvency fund assets, less expenses incurred by the commission in the administration of the insolvency, and the proposed indemnity fund payments to receiptholder and credit-sale contract claimants. If the ~~trust~~ insolvency fund is insufficient to redeem all receiptholder claims in full, the report should list the funds as prorated.
3. The ~~court~~ commission shall set a hearing and issue the appropriate notice at least forty-five days before the hearing, for interested persons to show cause why the commission's report should not be ~~approved~~ become final, and grain indemnity fund payments and distribution of the insolvency fund be made as proposed. Copies of the report and notice of hearing must be served by the commission by certified mail upon the licensee and the surety and by ordinary mail upon all persons having claims filed with the commission.
4. Any aggrieved person having an objection to the commission's report shall file the objection with the ~~court~~ commission and serve copies on ~~the commission, the licensee, and the surety~~ at least ten 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~~ commission shall ~~approve~~ adopt or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the ~~trust~~ insolvency fund, and ~~discharge of the commission from its trust~~ payments from the grain indemnity fund.

SECTION 22. 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 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 in the prosecution of ~~the action~~ any proceeding and the cost of employing outside counsel ~~may~~ must be paid from the ~~trust~~ insolvency fund and the grain indemnity fund. All other necessary expenses incurred by the commission in carrying out the provisions of this chapter, including adequate insurance to protect the commission, its employees, and others engaged in carrying out the provisions of sections 60-02.1-28 through 60-02.1-38, ~~may~~ must be ~~paid~~ reimbursed to the commission from the ~~trust~~ insolvency and grain indemnity fund~~s~~.

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

60-04-02. Insolvency of warehouseman.

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

SECTION 24. AMENDMENT. Section 60-04-03 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03. ~~Appointment of commission~~ Commission insolvency proceeding.

Upon the insolvency of any warehouseman, the commission, on its own motion, 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~~ commence an administrative insolvency proceeding under chapter 28-32 to secure the bond proceeds, identify potential receipt holder and credit-sale claimants, determine the amount of each claim, determine the recommended payment on each claim from the insolvency fund and the grain indemnity fund, make payments on claims, and take any action necessary and appropriate to accomplish the purposes of this chapter. ~~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 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 secure and execute such trust, the court shall issue an order granting the application,~~

~~without bond, whereupon the commission shall proceed to exercise its authority
without further direction from the court.~~

~~Upon the filing of the commission's application, the court may issue ex parte
such temporary order as may be necessary to preserve or protect the assets of
the trust fund, or the value thereof, until the court issues its order granting or
denying the application.~~

SECTION 25. AMENDMENT. Section 60-04-03.1 of the North Dakota
Century Code is amended and reenacted as follows:

60-04-03.1. Trust insolvency fund established.

1. Upon the insolvency of any warehouseman, a trust an insolvency 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 in the administration of this chapter.
2. The trust insolvency 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 is appointed trustee;~~
- ~~c. The proceeds of insurance policies upon grain destroyed in the elevator;~~
- ~~d. The claims for relief, and proceeds therefrom, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman;~~
- ~~e. The claims for relief, and proceeds therefrom, or the conversion of any grain stored in the warehouse;~~
- ~~f. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency;~~
- ~~g. Unencumbered equity in grain hedging accounts; and~~
- ~~h. Unencumbered grain product assets.~~

SECTION 26. AMENDMENT. Section 60-04-03.3 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.3. Joinder of and Notice to surety - Deposit of proceeds.

The commission shall join the surety on the warehouseman's bond ~~must be joined as a party to the insolvency proceeding upon a motion by the commission when the commission believes that proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. When it appears in the best interests of the receiptholders, the court~~ the commission may order the surety to deposit the penal sum of the bond, ~~or so much thereof as may be deemed necessary,~~ into the trustee's trust insolvency account pending a final determination of the surety's liability under the bond.

SECTION 27. 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 appointment by the district court~~ an insolvency, the commission may take possession of relevant books and records of the warehouseman. The commission shall cause a notice of ~~its appointment~~ the insolvency and the commencement of the insolvency proceeding 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 along with the receipts, contracts, or ~~such~~ any other evidence of the claims as required by the commission. 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 ~~such~~ a longer time as prescribed by the commission, the commission 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 ~~participation in the trust fund~~ payment for any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the ~~court~~ commission upon a motion for intervention.

SECTION 28. AMENDMENT. Section 60-04-05 of the North Dakota Century

Code is amended and reenacted as follows:

60-04-05. Remedy of receiptholders.

No receiptholder has 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 commission,~~ unless, upon demand of five or more receiptholders, the commission fails or refuses to ~~apply for its own appointment from the district court or unless the district court denies the application for appointment~~ commence an insolvency proceeding and join the surety. This chapter does not prohibit or prevent any receiptholder, either individually or in conjunction with other receiptholders, from pursuing concurrently ~~such~~ any 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 29. AMENDMENT. Section 60-04-06 of the North Dakota Century Code is amended and reenacted as follows:

60-04-06. Commission ~~to marshal trust assets~~ may maintain suit.

~~Upon its appointment by the district court, the~~The commission may maintain suits at law or in equity, or any special proceeding, in the name of the state of North Dakota, upon its 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 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 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 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 it necessary to the redemption of the receipts that all the above remedies be pursued at the same time.~~

SECTION 30. AMENDMENT. Section 60-04-07 of the North Dakota Century Code is amended and reenacted as follows:

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

The commission shall ~~have power~~ may:

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

liability growing out of the action.

5. Take any other action necessary and appropriate to accomplish the purposes of this chapter.

SECTION 31. 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 ~~as trustee~~ under this chapter, ~~pending the marshalling of the fund, shall~~ must be deposited in the Bank of North Dakota.

SECTION 32. 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 and~~ order of commission - Approval - Distribution.

Upon the receipt and evaluation of claims filed with it, the commission shall ~~file with the court~~ issue a notice consistent with chapter 28-32, together with a report showing the amount and validity of each claim after recognizing:

1. Any proper liens or pledges thereon.
2. Assignments thereof.
3. Deductions therefrom by reason of advances or offsets accrued in favor of the warehouseman.
4. In case of cash claims or checks, the amount thereof, ~~with interest at the weighted average prime rate charged by the Bank of North~~

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~~Dakota since the date of the insolvency.~~

5. In the case of scale tickets or warehouse receipts, the amount thereof based upon the market price prevailing on the date of the ~~insolvency~~ commission first received a copy of the written demand required by section 60-04-02, with interest at the weighted average prime rate charged by the Bank of North Dakota since the date of the insolvency.
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 for the expenses of administering the insolvency, a proposed distribution of the ~~trust fund assets~~ bond proceeds in the insolvency fund, less an appropriate portion of the expenses incurred by the commission in the administration of this chapter, and the proposed indemnity fund payments to receiptholder and credit-sale contract claimants as their interests are determined. If the ~~trust-insolvency~~ fund is insufficient to redeem all receiptholder claims in full, the ~~fund~~ claims must be shown prorated in the report in the manner the commission deems fair and equitable.

The ~~court shall set~~ commission shall hold a hearing and issue the appropriate notice at least forty-five days before the hearing, for interested persons to show cause why the commission's report should not be approved become final, and grain indemnity fund payments and distribution of the insolvency fund be made as proposed. Copies of the report and notice of hearing must be served by the commission by certified mail upon the warehouseman and the surety and by

ordinary mail upon all persons having claims filed with the commission.

Any aggrieved person having an objection to the commission's report shall file the objection with the ~~court~~ commission and serve copies on ~~the commission,~~ the warehouseman, and the surety at least ~~ten~~ 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~~ commission shall ~~approve~~ adopt or modify the report and issue an order directing payment of the necessary bond proceeds, from the insolvency fund and distribution of from the trust grain indemnity fund, and discharge of the ~~commission from its trust.~~

SECTION 33. 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.

~~Upon the application to the district court as provided in this chapter, or in~~ In any action in a state court in this state, the commission shall 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 in the prosecution of ~~such action~~ any proceeding as in the attorney general's judgment may be necessary and ~~may~~ shall deduct the expense of the same from the ~~trust grain indemnity fund and the insolvency fund.~~ All other necessary expenses incurred by the commission in carrying out the provisions of this chapter, including adequate insurance to protect the commission, its employees, and others engaged in carrying out the provisions of this chapter, ~~may~~ must be deducted reimbursed to the commission from the ~~trust fund~~ insolvency

and grain indemnity funds.

SECTION 34. 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~~ two-one hundredths of one percent is placed on the value of all grain sold in this state under a noncredit-sale contract, credit-sale contract, as provided for in sections 60-02-19.1 and 60-02.1-14, or for cash. The licensee purchasing the grain shall note the assessment on the check, noncredit-sale contract, or 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 the last day of each calendar quarter. An assessment at the same rate is placed on all grain delivered for storage in this state when a receiptholder claim based on stored grain is payable by the commission under chapter 60-04. The licensee receiving grain for storage shall note the potential assessment on the warehouse receipt. In the event of an insolvency proceeding, the commission shall deduct the assessment from the amount payable to a receiptholder from the grain indemnity fund for a claim based on stored grain. The commission shall deposit the assessments received under this section in the ~~credit-sale contract~~ grain indemnity fund.

SECTION 35. AMENDMENT. Section 60-10-02 of the North Dakota Century Code is amended and reenacted as follows:

60-10-02. ~~Credit-sale contract~~ Grain indemnity fund - ~~Creation~~

Continuing appropriation.

~~There is created~~ The grain indemnity fund is a special fund 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 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 on a continuing basis to be used exclusively to carry out the intent and purpose of this chapter.

SECTION 36. AMENDMENT. Section 60-10-04 of the North Dakota Century Code is amended and reenacted as follows:

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

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

1. After August 1, 2003, the person sold grain to a licensed warehouse or a grain buyer in this state under the provisions of a credit-sale contract;
2. After August 1, 2017, the person delivered or sold grain to a licensed warehouse or a grain buyer in this state;
3. The licensed warehouse to which the person sold or delivered grain or the grain buyer to whom the person sold grain becomes insolvent;
and

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

SECTION 37. AMENDMENT. Section 60-10-05 of the North Dakota Century Code is amended and reenacted as follows:

60-10-05. ~~Credit-sale contract~~ Grain 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 commence an insolvency proceeding under chapter 60-04 to make the proceeds of the ~~credit-sale contract~~ grain indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of any person who delivered or sold grain to the licensee ~~under a credit-sale contract~~ and who was not fully compensated in accordance with the sale, contract, or storage contract.

SECTION 38. AMENDMENT. Section 60-10-06 of the North Dakota Century Code is amended and reenacted as follows:

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

The amount payable to any eligible person from the ~~credit-sale contract~~ grain 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, storage contracts, noncredit-sale contracts, or sales, or ~~two~~ four hundred ~~eighty~~-thousand dollars.

SECTION 39. AMENDMENT. Section 60-10-07 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 40. 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 grain 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 is ~~appointed trustee under~~ first received a copy of the written demand required by section ~~60-02.1-29~~ 60-02.1-28 or ~~60-04-03~~ 60-04-02.

SECTION 41. AMENDMENT. Section 60-10-09 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 42. AMENDMENT. Section 60-10-10 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 43. AMENDMENT. Section 60-10-13 of the North Dakota Century Code is amended and reenacted as follows:

60-10-13. Claims.

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

SECTION 44. 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~~ grain indemnity fund in satisfaction of a valid claim constitutes a debt obligation of the person against whom the claim was made. The commission may take action on behalf of the fund against a person to recover the amount of payment made, plus costs and attorney's fees. Any recovery for reimbursement to the fund must include interest computed at the weight average prime rate charged by the Bank of North Dakota. Upon payment of a claim from the ~~credit-sale contract~~ grain indemnity fund, the claimant shall subrogate its interest, if any, to the commission in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the fund.

SECTION 45. 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 ~~has the duty and power to~~ may examine and inspect, during regular business hours, all books, documents, and records related to collections and remittances pertaining to the ~~credit-sale contract~~ grain 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

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the United States department of agriculture.

SECTION 46. REPEAL. Sections 60-02-02, 60-02-25.1, 60-02-39, 60-02.1-02, 60-02.1-25, 60-04-03.2, and 60-10-03 of the North Dakota Century Code are repealed.

SECTION 47. TRANSFER. On August 1, 2017 the state treasurer shall transfer the balance of the credit-sale contract indemnity fund to the grain indemnity fund.