

HOUSE BILL NO. 1156

Introduced by

Agriculture Committee

(At the request of the Public Service Commission)

1 A BILL for an Act to create and enact a new section to chapter 60-02 and three new
2 subsections to section 60-04-03.1 of the North Dakota Century Code, relating to
3 warehousemen; to amend and reenact subsections 3 and 5 of section 60-02-01, subsection 1
4 of section 60-02-05, sections 60-02-07, 60-02-17, 60-02-19.1, 60-02-27, and 60-02-37 of the
5 North Dakota Century Code, relating to warehouseman disputes, warehouse bonding and
6 storage contracts, and hay buyers; and to repeal section 60-02-17.1 of the North Dakota
7 Century Code, relating to warehouse charges for grain owned by the United States.

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

9 **SECTION 1.** A new section to chapter 60-02 of the North Dakota Century Code is
10 created and enacted as follows:

11 **Credit-sale contract bond.** A warehouseman purchasing grain by credit-sale contract
12 shall file a bond with the commission which must:

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

- 1 b. Covering the costs incurred by the commission in the administration of
2 chapter 60-04 in the event of the licensee's insolvency.
- 3 7. Not accrue to the benefit of any person entering into a noncredit-sale contract with
4 a public warehouseman.
- 5 8. Not provide that aggregate liability of the surety under the bond will accumulate for
6 each successive annual license renewal period during which the bond is in force
7 but, for losses during any annual license renewal period, must be limited in the
8 aggregate to the bond amount stated or changed by appropriate endorsement or
9 rider.

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

20 **SECTION 2. AMENDMENT.** Subsections 3 and 5 of section 60-02-01 of the North
21 Dakota Century Code are amended and reenacted as follows:

- 22 3. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz,
23 safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover,
24 millet, alfalfa, and any other commercially grown ~~domestic~~ grain or grass seed.
25 "Grain" as defined in this chapter shall not include grain or grass seeds owned by
26 or in the possession of the warehouseman that have been cleaned, processed,
27 and specifically identified for an intended use of planting for reproduction and for
28 which a warehouse receipt has not been issued.
- 29 5. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain
30 warehouse, terminal warehouse, or other structure or facility not licensed under the
31 United States Warehouse Act [7 U.S.C. 241-273] in which grain is received for

1 storing, buying, selling, ~~or shipping,~~ or processing for compensation. Provided,
2 however, that nothing in this chapter shall be construed to require a
3 ~~warehouseman doing manufacturing business only,~~ processor to receive, store, or
4 purchase any lot or kind of grain at said ~~mill~~ facility.

5 **SECTION 3. AMENDMENT.** Subsection 1 of section 60-02-05 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 1. If any dispute or disagreement arises between the person receiving and the person
8 delivering grain at any public warehouse in this state as to the proper grade,
9 dockage, moisture content, or protein content of any grain, an average sample of
10 at least three pints of the grain in dispute may be taken together by both parties
11 interested. The sample must be certified by each party as a true and
12 representative sample of the grain in dispute on the day the grain was delivered.
13 The sample must be forwarded in a suitable container by parcel post or express,
14 prepaid with the name and address of both parties for inspection by a federal
15 licensed inspector, or a mutually agreed upon third party, who will examine the
16 grain and adjudge what grade, dockage, moisture content, or protein content the
17 sample of grain is entitled to under the inspection rules and grades adopted by the
18 secretary of agriculture of the United States. The person requesting the inspection
19 service shall pay for the inspection. If the grain in question is damp, otherwise out
20 of condition, or if moisture content is in dispute, the sample must be placed in an
21 airtight container. Payment for the grain involved in the dispute must be made and
22 accepted on the basis of the determination made by the federal licensed inspector
23 or third party. However, all other quality factors may also be considered in
24 determining the price of the grain. An appeal of the determination made by a third
25 party other than a federal licensed inspector may be made to a federal licensed
26 inspector. An appeal of the determination made by a federal licensed inspector
27 may be made as provided under the United States Grain Standards Act [Pub. L.
28 ~~90-487 103-354; 82 108 Stat. 764 3237;~~ 7 U.S.C. 79(c) and (d)] and under 7 CFR
29 800.125-800.140. A person not abiding by a final determination is liable for
30 damage resulting from not abiding by the determination.

1 **SECTION 4. AMENDMENT.** Section 60-02-07 of the 1997 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **60-02-07. Public warehouse license - How obtained - Fee - Financial statement.**

4 An annual license must be obtained from the commission for each public warehouse in
5 operation in this state. The license expires on July thirty-first of each year. No license may
6 describe more than one public warehouse nor grant permission to operate any public
7 warehouse other than the one described. The annual license fee for a public warehouse is two
8 hundred fifty dollars for a warehouse of a bushel capacity of two hundred thousand [7047.8
9 cubic meters] or less, four hundred dollars for a warehouse of a bushel capacity of more than
10 two hundred thousand and not more than five hundred thousand [7047.8 to not more than
11 17619.54 cubic meters], and five hundred dollars for a warehouse of a bushel capacity of more
12 than five hundred thousand [17619.54 cubic meters]. If a public warehouseman operates two
13 or more warehouses in the same city or siding, in conjunction with each other and with the
14 same working force, and keeps one set of books and records for all such warehouses, and
15 issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts for the
16 grain stored and purchased therein, only one license is required for the operation of all such
17 warehouses. Where two or more warehouses are operated under one license, the license fee
18 is based upon the combined bushel capacity of the warehouses. If the commission employs
19 fewer than two full-time equivalent warehouse inspectors, each annual fee under this section is
20 reduced by one hundred dollars.

21 The commission may require that the applicant submit a current financial statement
22 prepared in accordance with generally accepted accounting principles, subject to consideration
23 for maintaining trade secrets or commercial confidentiality.

24 **SECTION 5. AMENDMENT.** Section 60-02-17 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery.** A
27 warehouse receipt must contain, either on its face or reverse side, the following warehouse and
28 storage contract:

29 ~~"This grain is received, insured, and stored subject to the following charges: one tenth~~
30 ~~of one cent per net bushel [35.24 liters] per day, except for dry edible beans which are~~
31 ~~subject to a daily storage rate fixed at the time of delivery no greater than one half of~~

1 ~~one cent per net hundredweight [45.36 kilograms] per day, provided, however, that no~~
2 ~~storage may be charged for grain so stored for fifteen days from date of delivery if such~~
3 ~~grain is sold within such fifteen day period; however, if such grain is not sold within the~~
4 ~~fifteen days, storage charges commence from the date a warehouse receipt was issued.~~
5 ~~All grain received for storage is subject to a charge of seven cents per net bushel [35.24~~
6 ~~liters], except for flax which is subject to a charge of seven cents per gross bushel~~
7 ~~[35.24 liters] and dry edible beans which are subject to a charge of ten cents per net~~
8 ~~hundredweight [45.36 kilograms]. Grain purchased by the warehouseman is exempt~~
9 ~~from the receiving and redelivery charges. Except for dry edible beans, upon laws and~~
10 ~~rules of the state of North Dakota, the terms of this contract and the charges and~~
11 ~~conditions stated herein and as filed with the North Dakota public service commission.~~
12 ~~Upon surrender of this receipt and payment or tender of ~~a delivery charge per gross~~~~
13 ~~bushel [35.24 liters] of five cents on flax and five cents per net bushel [35.24 liters] on all~~
14 ~~other grains and all other stated lawful charges accrued up to the time of surrender of~~
15 ~~this receipt, the above all applicable charges, the amount, kind, and grade of grain~~
16 ~~identified in this receipt will be delivered to the person named above or the person's~~
17 ~~order as rapidly as due diligence, care, and prudence will permit. At the option of the~~
18 ~~holder of this receipt, the amount, kind, and grade of grain for which this receipt is~~
19 ~~issued, upon demand, must be delivered back to the holder at any terminal point~~
20 ~~customarily shipped to, or at the place where received, upon the payment of ~~the above~~~~
21 ~~any charges for receiving, handling, storage, and insurance and in case of terminal~~
22 ~~delivery, the payment in addition to the above of the regular freight charges on the gross~~
23 ~~amount called for by this ticket or in lieu thereof, a receipt issued by a bonded~~
24 ~~warehouse or elevator company doing business at the terminal point. Nothing in this~~
25 ~~receipt requires the delivery of the identical grain specified herein, but an equal amount~~
26 ~~of grain of the same kind and grade must be delivered. ~~Dry edible beans will be~~~~
27 ~~~~delivered to the holder in accordance with the warehouseman's delivery policy upon the~~~~
28 ~~~~surrender of this receipt and payment or tender of all lawful charges accrued up to the~~~~
29 ~~~~time of surrender including the charge for delivery contained in the delivery policy."~~~~
30 ~~A warehouseman may charge a different storage rate for grain stored for the United States~~
31 ~~government under the Food Security Wheat Reserve Act, Pub. L. 101-624, as amended, if the~~

1 ~~rate is filed with the commission and identified on the warehouse receipt.~~ A warehouseman
2 shall publish and post, in a conspicuous place in its warehouse, the fees that will be assessed
3 for receiving, storing, processing, or redelivering grain. This fee schedule must be filed with the
4 commission as a part of its warehouse license application or annual renewal. These fees must
5 be stated on the warehouse receipt issued for the grain. The fees may be changed upon filing
6 a revised schedule with the commission.

7 **SECTION 6. AMENDMENT.** Section 60-02-19.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **60-02-19.1. Credit-sale contracts.** A warehouseman shall not purchase grain by a
10 credit-sale contract except as provided in this section. All credit-sale contracts must be in
11 writing and must be consecutively numbered at the time of printing the contract. The
12 warehouseman shall maintain an accurate record of all credit-sale contract numbers including
13 the disposition of each numbered form, whether by execution, destruction, or otherwise. Each
14 credit-sale contract must contain or provide for all of the following:

- 15 1. The seller's name and address.
- 16 2. The conditions of delivery.
- 17 3. The amount and kind of grain delivered.
- 18 4. The price per unit or basis of value.
- 19 5. The date payment is to be made.
- 20 6. The duration of the credit-sale contract.
- 21 7. Notice in a clear and prominent manner that the sale is not protected by the bond
22 coverage provided for in section 60-02-09, however, if the warehouseman has
23 obtained bond coverage in addition to that required by section 60-02-09 and such
24 coverage extends to the benefit of credit-sale contracts and is sufficient to cover
25 the full value of all outstanding credit-sale contracts, the warehouseman may state
26 the same in the credit-sale contract ~~along with the extent of such coverage.~~

27 The contract must be signed by both parties and executed in duplicate. One copy shall be
28 retained by the warehouseman and one copy shall be delivered to the seller. Upon revocation,
29 termination, or cancellation of a warehouseman's license, the payment date for all credit-sale
30 contracts shall, at the seller's option, be advanced to a date not later than thirty days after the
31 effective date of the revocation, termination, or cancellation, and the purchase price for all

1 unpriced grain shall be determined as of the effective date of revocation, termination, or
2 cancellation in accordance with all other provisions of the contract. However, if the license of
3 the warehouseman is transferred to another licensed warehouseman, credit-sale contracts may
4 be assigned to the transferee.

5 **SECTION 7. AMENDMENT.** Section 60-02-27 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **60-02-27. Federal grades to control - Grades to be posted.** All public
8 warehousemen shall purchase and store grain except dry edible beans in accordance with the
9 official grades established from time to time by the secretary of agriculture of the United States,
10 except as otherwise provided in rules and regulations applicable thereto adopted by federal
11 officials pursuant to law. They shall post in a conspicuous place in their warehouse the official
12 grades so established and also any change that may be made from time to time.
13 Warehousemen of dry edible beans shall purchase, store, and deliver beans in accordance with
14 their policy which must be filed with the commission and posted in a conspicuous place in their
15 warehouse. Other grading standards may be used if mutually agreed to in writing by the
16 warehouseman and the owner of the grain. However, the owner may demand the use of
17 federal grading standards. The commission, after hearing, may prohibit the use of nonfederal
18 grades.

19 **SECTION 8. AMENDMENT.** Section 60-02-37 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **60-02-37. Destruction of warehouse - Duty to notify commission.** In case of the
22 destruction by fire or other cause of any licensed public warehouse, the licensee thereof shall
23 notify the commission ~~by telephone and registered or certified mail~~ within twenty-four hours
24 after such loss.

25 **SECTION 9.** Three new subsections to section 60-04-03.1 of the North Dakota Century
26 Code are created and enacted as follows:

27 Unencumbered accounts receivable for grain sold at the time or following the filing
28 of a claim that precipitates an insolvency.

29 Unencumbered equity in grain hedging accounts.

30 Unencumbered grain product assets.

- 1 **SECTION 10. REPEAL.** Section 60-02-17.1 of the North Dakota Century Code is
- 2 repealed.