

**FIRST ENGROSSMENT
with Senate Amendments**

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED 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 three new subsections to section 60-04-03.1 of the North
2 Dakota Century Code, relating to warehousemen; to amend and reenact subsections 3 and 5 of
3 section 60-02-01, subsection 1 of section 60-02-05, sections 60-02-07, 60-02-17, subsection 1
4 of section 60-02-24, sections 60-02-27, and 60-02-37 of the North Dakota Century Code,
5 relating to warehouseman disputes, warehouse storage contracts, and hay buyers; and to
6 repeal section 60-02-17.1 of the North Dakota Century Code, relating to warehouse charges for
7 grain owned by the United States.

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

9 **SECTION 1. AMENDMENT.** Subsections 3 and 5 of section 60-02-01 of the North
10 Dakota Century Code are amended and reenacted as follows:

- 11 3. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz,
12 safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover,
13 millet, alfalfa, and any other commercially grown ~~domestic~~ grain or grass seed.
14 "Grain" as defined in this chapter shall not include grain or grass seeds owned by
15 or in the possession of the warehouseman that have been cleaned, processed,
16 and specifically identified for an intended use of planting for reproduction and for
17 which a warehouse receipt has not been issued.
- 18 5. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain
19 warehouse, terminal warehouse, or other structure or facility not licensed under the
20 United States Warehouse Act [7 U.S.C. 241-273] in which grain is received for
21 storing, buying, selling, ~~or shipping,~~ or processing for compensation. Provided,
22 however, that nothing in this chapter shall be construed to require a
23 ~~warehouseman doing manufacturing business only,~~ processor to receive, store, or
24 purchase any lot or kind of grain at said mill facility.

1 **SECTION 2. AMENDMENT.** Subsection 1 of section 60-02-05 of the North Dakota
2 Century Code is amended and reenacted as follows:

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

27 **SECTION 3. AMENDMENT.** Section 60-02-07 of the 1997 Supplement to the North
28 Dakota Century Code is amended and reenacted as follows:

29 **60-02-07. Public warehouse license - How obtained - Fee - Financial statement.**

30 An annual license must be obtained from the commission for each public warehouse in
31 operation in this state. The license expires on July thirty-first of each year. No license may

1 describe more than one public warehouse nor grant permission to operate any public
2 warehouse other than the one described. The annual license fee for a public warehouse is two
3 hundred fifty dollars for a warehouse of a bushel capacity of two hundred thousand [7047.8
4 cubic meters] or less, four hundred dollars for a warehouse of a bushel capacity of more than
5 two hundred thousand and not more than five hundred thousand [7047.8 to not more than
6 17619.54 cubic meters], and five hundred dollars for a warehouse of a bushel capacity of more
7 than five hundred thousand [17619.54 cubic meters]. If a public warehouseman operates two
8 or more warehouses in the same city or siding, in conjunction with each other and with the
9 same working force, and keeps one set of books and records for all such warehouses, and
10 issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts for the
11 grain stored and purchased therein, only one license is required for the operation of all such
12 warehouses. Where two or more warehouses are operated under one license, the license fee
13 is based upon the combined bushel capacity of the warehouses. If the commission employs
14 fewer than two full-time equivalent warehouse inspectors, each annual fee under this section is
15 reduced by one hundred dollars.

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

21 **SECTION 4. AMENDMENT.** Section 60-02-17 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery.** A
24 warehouse receipt must contain, either on its face or reverse side, the following warehouse and
25 storage contract:

26 "This grain is received, insured, and stored subject to the following charges: ~~one-tenth~~
27 ~~of one cent per net bushel [35.24 liters] per day, except for dry edible beans which are~~
28 ~~subject to a daily storage rate fixed at the time of delivery no greater than one-half of~~
29 ~~one cent per net hundredweight [45.36 kilograms] per day, provided, however, that no~~
30 ~~storage may be charged for grain so stored for fifteen days from date of delivery if such~~
31 ~~grain is sold within such fifteen day period; however, if such grain is not sold within the~~

1 ~~fifteen days, storage charges commence from the date a warehouse receipt was~~
2 ~~issued. All grain received for storage is subject to a charge of seven cents per net~~
3 ~~bushel [35.24 liters], except for flax which is subject to a charge of seven cents per~~
4 ~~gross bushel [35.24 liters] and dry edible beans which are subject to a charge of ten~~
5 ~~cents per net hundredweight [45.36 kilograms]. Grain purchased by the warehouseman~~
6 ~~is exempt from the receiving and redelivery charges. Except for dry edible beans, upon~~
7 ~~laws and rules of the state of North Dakota, the terms of this contract and the charges~~
8 ~~and conditions stated herein and as filed with the North Dakota public service~~
9 ~~commission. Upon surrender of this receipt and payment or tender of a delivery charge~~
10 ~~per gross bushel [35.24 liters] of five cents on flax and five cents per net bushel [35.24~~
11 ~~liters] on all other grains and all other stated lawful charges accrued up to the time of~~
12 ~~surrender of this receipt, the above all applicable charges, the amount, kind, and grade~~
13 ~~of grain identified in this receipt will be delivered to the person named above or the~~
14 ~~person's order as rapidly as due diligence, care, and prudence will permit. At the option~~
15 ~~of the holder of this receipt, the amount, kind, and grade of grain for which this receipt is~~
16 ~~issued, upon demand, must be delivered back to the holder at any terminal point~~
17 ~~customarily shipped to, or at the place where received, upon the payment of ~~the above~~~~
18 ~~any charges for receiving, handling, storage, and insurance and in case of terminal~~
19 ~~delivery, the payment in addition to the above of the regular freight charges on the~~
20 ~~gross amount called for by this ticket or in lieu thereof, a receipt issued by a bonded~~
21 ~~warehouse or elevator company doing business at the terminal point. Nothing in this~~
22 ~~receipt requires the delivery of the identical grain specified herein, but an equal amount~~
23 ~~of grain of the same kind and grade must be delivered. ~~Dry edible beans will be~~~~
24 ~~delivered to the holder in accordance with the warehouseman's delivery policy upon the~~
25 ~~surrender of this receipt and payment or tender of all lawful charges accrued up to the~~
26 ~~time of surrender including the charge for delivery contained in the delivery policy."~~
27 ~~A warehouseman may charge a different storage rate for grain stored for the United States~~
28 ~~government under the Food Security Wheat Reserve Act, Pub. L. 101-624, as amended, if the~~
29 ~~rate is filed with the commission and identified on the warehouse receipt. A warehouseman~~
30 ~~shall publish and post, in a conspicuous place in its warehouse, the fees that will be assessed~~
31 ~~for receiving, storing, processing, or redelivering grain. This fee schedule must be filed with the~~

1 commission as a part of its warehouse license application or annual renewal. These fees must
2 be stated on the warehouse receipt issued for the grain. The fees may be changed upon filing
3 a revised schedule with the commission.

4 **SECTION 5. AMENDMENT.** Subsection 1 of section 60-02-24 of the North Dakota
5 Century Code is amended and reenacted as follows:

6 1. Prepare for each month a report giving facts and information called for on the form
7 of report prepared by the commission, ~~which.~~ The report shall must contain or be
8 verified by a written declaration that it is made under the penalties of perjury. Such
9 The report may be called for more frequently if the commission deems it
10 necessary. Information pertaining to the volume of grain handled is a confidential
11 trade secret and is not a public record. The commission may make the information
12 available for use by other governmental entities, but the commission may not
13 release the information in a manner that jeopardizes the confidentiality of individual
14 licensees.

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

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

29 **SECTION 7. AMENDMENT.** Section 60-02-37 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **60-02-37. Destruction of warehouse - Duty to notify commission.** In case of the
2 destruction by fire or other cause of any licensed public warehouse, the licensee thereof shall
3 notify the commission ~~by telephone and registered or certified mail~~ within twenty-four hours
4 after such loss.

5 **SECTION 8.** Three new subsections to section 60-04-03.1 of the North Dakota Century
6 Code are created and enacted as follows:

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

9 Unencumbered equity in grain hedging accounts.

10 Unencumbered grain product assets.

11 **SECTION 9. REPEAL.** Section 60-02-17.1 of the North Dakota Century Code is
12 repealed.