

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,
one thousand nine hundred and ninety-nine**

SENATE BILL NO. 2153
(Agriculture Committee)
(At the request of the Public Service Commission)

AN ACT to create and enact chapter 60-02.1 of the North Dakota Century Code, relating to grain buyers and grain buyer insolvency proceedings; to amend and reenact subsection 5 of section 60-02-01, sections 60-03-01, 60-03-01.1, 60-03-02, 60-03-04, 60-03-04.1, 60-03-05, 60-03-08, 60-03-10, 60-03-11, 60-03-12, 60-03-14, 60-03-17, and 60-03-18 of the North Dakota Century Code, relating to the definition of a public warehouse, hay buyer procedures, and insolvency proceedings; to repeal section 60-03-03 of the North Dakota Century Code, relating to hay buyer procedures; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 60-02-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility not licensed under the United States Warehouse Act, 7 U.S.C. 241 et seq., in which grain is received for storing, buying, selling, ~~or shipping, or processing~~ for compensation. Provided, however, that nothing in this chapter shall be construed to require a ~~warehouseman doing manufacturing business only, processor~~ to receive, store, or purchase any lot or kind of grain at said mill facility.

SECTION 2. Chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

60-02.1-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the public service commission.
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 60-02.1-14. 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. "Facility" means a structure in which grain purchased by a grain buyer is received or held.
4. "Facility-based grain buyer" means a grain buyer who operates a facility where grain is received.
5. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tam 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. "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 4-09, 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 4-09-14.4.
7. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
8. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer 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. "Roving grain buyer" means a grain buyer who does not operate a facility where grain is received.

60-02.1-02. Commission - Powers and duties. The duties imposed and the powers conferred by this chapter devolve upon the commission.

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. 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.

60-02.1-04. Federal licensed inspector - Appointed by commission. The commission may employ a federal licensed inspector whose duties are hereinafter prescribed, and such other employees as may be necessary to carry out the provisions of this chapter.

60-02.1-05. Grain marketing - Procedure for resolving disputes.

- 1. If any dispute or disagreement arises between the person receiving and the person delivering grain as to the proper grade, dockage, vomitoxin level, moisture content, or protein content of any grain, an average sample of at least three pints [1.65 liters] of the grain in dispute may be taken together by both interested parties. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was transferred. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties for inspection by a federal licensed inspector, or a mutually agreed upon third party, who will examine the grain and adjudge what grade, dockage, vomitoxin level, moisture content, or protein content the sample of grain is entitled to under the inspection rules and grades adopted by the secretary of agriculture of the United States. The person requesting the inspection service shall pay for the inspection. If the grain in question is damp, otherwise out of condition, or if moisture content is in dispute, the sample must be placed in an airtight container. Payment for the grain involved in the dispute must be made and accepted on the basis of the determination made by the federal licensed inspector or third party. However, all other quality factors may also be considered in determining the price of the grain. An appeal of the determination made by a third party other than a federal licensed inspector may be made to a federal licensed inspector. An appeal of the determination made by a federal licensed inspector may be made as provided under the United States

Grain Standards Act [Pub. L. 103-354; 108 Stat. 3237; 7 U.S.C. 79(c) & (d)] and under 7 CFR 800.125-800.140. A person not abiding by a final determination is liable for damage resulting from not abiding by the determination.

2. If any dispute or disagreement arises between the person delivering grain and the person receiving grain as to the determination of quality factors of grain purchased or delivered in the state for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States, an average sample of at least three pints [1.65 liters] of the grain in dispute may be taken together by the interested parties. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was transferred. If the grain is damp or otherwise out of condition, the sample must be placed in an airtight container. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties, for inspection by a federal licensed inspector, or a mutually agreed upon third party, who may examine the grain and determine the quality factors in dispute. The person requesting the inspection service shall pay for the inspection. The determination made by the inspector, or the third party, must be used in the settlement of the dispute.

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 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.

60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement. Grain buyers must obtain an annual license from the commission. The license expires on July thirty-first of each 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 two hundred fifty dollars. The annual license fee for a roving grain buyer is one hundred fifty dollars.

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.

60-02.1-08. Bond filed by grain buyer. Before any license is issued to any grain buyer under this chapter, the applicant for such 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 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 aggregate liability of the surety under a bond accumulate for each successive annual license renewal period during which such bond is in force but, for losses during any annual license renewal period, shall be 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 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 cash, negotiable instrument, or 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 bond must be construed to cover such facilities as a whole and not a specific amount for each.

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 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, 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.

60-02.1-10. Grain buyer license to be posted or carried - Penalty. The license obtained by a facility-based grain buyer shall be posted in a conspicuous place in the buyer's facility. A roving grain buyer shall have his license in his possession at all times. A grain buyer who transacts business without first procuring a license and giving a bond is guilty of a class B misdemeanor.

60-02.1-11. Revocation and suspension. The commission 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 approval, may operate its facility and purchase or redeliver grain previously received, but may not receive additional grain for purchase, shipping, or processing.

60-02.1-12. Scale ticket - Contents. Every grain buyer, upon receiving grain, shall issue a uniform scale ticket or comparable receipt for each load of grain received. Receipts must be numbered consecutively and one copy of each receipt must be retained and remain as a permanent record. The original receipt must be delivered to the person from whom the grain is received, upon receipt of each load of grain.

60-02.1-13. Penalty. Any person who violates any provision of this chapter or any rule adopted pursuant to this chapter, if punishment is not specifically provided for, is guilty of an infraction.

60-02.1-14. 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.
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 60-02.1-15 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 the 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. However, if the license of the grain buyer is transferred to another grain buyer or licensed warehouseman, credit-sale contracts, if so agreed by the seller and transferee, may be assigned to the transferee.

60-02.1-15. Discrimination by grain buyer prohibited. A grain buyer may not discriminate:

1. In the buying, selling, receiving, and handling of grain or in the charges made or the service rendered to owners of purchased grain;
2. In the receiving of grain offered for sale, but this chapter may not be construed to require a processor to receive or purchase any lot or kinds of grain;
3. In regard to the persons offering such grain for sale; or
4. Between points or stations except as the marketing factors or transportation costs or grain quality premiums may warrant.

A grain buyer is not required to receive any grain that is heating or otherwise out of condition. A facility-based grain buyer shall post grain prices paid in a conspicuous place in the office or driveway of the buyer's place of business.

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

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. The report must contain or be verified by a written declaration that it is made under the penalties of perjury. The report may be called for more frequently if the commission deems it necessary. Information pertaining to the

volume of grain handled is a confidential trade secret and is not a public record. The commission 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 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.

A license may not be reissued to any grain buyer who fails to make a required report.

60-02.1-18. Standard weights to be used - Exception. A person purchasing grain may not use any measure for such grain other than the standard bushel, and a number of pounds may not be used or called a bushel other than the number of pounds provided by law as the standard weight of the kind of grain in question, except that during the months of October and November, not exceeding eighty-two pounds [37.19 kilograms], and during the months of December and January, not exceeding seventy-six pounds [34.47 kilograms], may be used as the standard weight per bushel of new ear corn.

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 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 their policy, which must be filed with the commission 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 may prohibit the use of nonfederal grades.

60-02.1-20. Grading of grain. All grain buyers before testing for grade any grain handled by them shall remove therefrom and make due allowance for any dockage of such grain made by reason of the presence of straw, weed seeds, dirt, or any other foreign matter. Any grain buyer within this state, who violates this provision is guilty of a class B misdemeanor.

60-02.1-21. Grain to be kept insured for benefit of owner by grain buyer. A license may not be issued to a facility-based grain buyer unless all company-owned and unconverted scale ticket grain is kept fully insured at the expense of the grain buyer 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 commissioner of insurance. An insurance policy may not be transferred or assigned to any person for any purpose.

60-02.1-22. Insurance - Cancellation - Suspension of license. An insurance company shall give at least sixty days' notice to the commission 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, 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 commission.

60-02.1-23. Destruction of grain - First lien by holder of outstanding receipt. The holder of an unconverted scale ticket or other comparable receipt issued by any 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 grain buyer for any loss sustained by the receipt holder, on account of the loss of such grain by fire, tornado, or any other cause covered by such insurance policy.

60-02.1-24. Destruction of facility - Duty to notify commission. In case of the destruction by fire or other cause of any facility operated by a facility-based grain buyer, the licensee thereof shall notify the commission within twenty-four hours after such loss.

60-02.1-25. Facility not to be closed without permission from commission - Penalty. Every facility operated by a facility-based grain buyer shall be kept open for business in order to serve the public. Upon application and sufficient cause shown, the commission may allow any such facility to be closed for such length of time as may be stated in the order issued therein. An application to close shall make provision for the redemption of outstanding receipts satisfactory to the commission. Any such grain buyer who shall close a facility without first having received permission from the commission to close shall be guilty of a class A misdemeanor and the license issued may be revoked by the commission.

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 its license for cancellation and at such time the proposed lessee or purchaser shall apply in due form for a new license and tender a new bond for approval 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 a new license to the lessee or purchaser.

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

60-02.1-27. Going out of business - Redemption of receipts. 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 at the price prevailing on the date the facility was closed, destroyed, or became insolvent. The holder of such receipts, 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 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 be settled in cash and priced on the market on the day of closing.

60-02.1-28. Insolvency of grain buyer. A licensee is insolvent when the licensee defaults in payment for grain purchased or marketed by the licensee.

60-02.1-29. Appointment of commission. Upon the insolvency of any licensee, the commission shall apply to the district court of Burleigh County, North Dakota for authority to take all action necessary to act as trustee of the trust fund described in section 60-02.1-30. Upon notice to the licensee as the court shall prescribe, 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 claimants 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.

60-02.1-30. Trust fund established. Upon the insolvency of any licensee, a trust fund must be established for the benefit of claimants and to pay the costs incurred by the commission 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 of insurance policies on destroyed grain.
3. 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.

60-02.1-31. Joinder of surety - Deposit of proceeds. 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 claimants, the court may order a surety to deposit some or all of the penal sum of the bond into the trustee's trust account pending determination of the surety's liability under the bond.

60-02.1-32. Notice to claimants. Upon its appointment the commission may take possession of relevant books and records of the licensee. The commission shall publish a notice of its appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, potential claimants disclosed by the licensee's records. The notice must require claimants to file their claims with the commission along with the receipts or other evidence of the claims required by the commission. If a 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 claimant and the claimant may be barred from participation in the trust fund. Claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

60-02.1-33. Remedy of claimants. No claimant 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 claimant, except through the trustee, unless, upon demand of five or more claimants, the commission fails or refuses to apply for its own appointment or unless the district court denies the application. Provisions of this chapter do not prohibit any claimant, either individually or in conjunction with other claimants, from pursuing concurrently any other remedy against the person or property of the licensee.

60-02.1-34. Commission to marshall trust assets. 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 claimants against the licensee's bonds, insurers of grain, any person who may have converted any grain, and any who may have received preferential treatment by being paid by the insolvent licensee after the first default.

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 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.

60-02.1-36. Money received by trustee - Deposited in Bank of North Dakota. All funds received by the commission as trustee must be deposited in the Bank of North Dakota.

60-02.1-37. Report of trustee to court - Approval - Distribution. Upon the receipt and evaluation of claims the commission shall file with the court a report showing the amount and validity of each claim after recognizing relevant:

1. Liens or pledges.
2. Assignments.
3. Deductions due to advances or offsets accrued in favor of the licensee.
4. In case of 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.

The report must also contain the proposed distribution of the trust fund assets, less expenses incurred by the commission in the administration of the insolvency. If the trust fund is insufficient to redeem all claims in full, the report should list the funds as prorated.

The court shall set a hearing and the appropriate notice for interested persons to show cause why the commission's report should not be approved and distribution of the 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 claimants.

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

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, and discharge of the commission from its trust.

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 and the cost of employing outside counsel may be paid from the trust 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 be paid from the trust fund.

SECTION 3. AMENDMENT. Section 60-03-01 of the North Dakota Century Code is amended and reenacted as follows:

60-03-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Claimant" means any person claiming to be injured by the default of the licensee in the payment for any ~~grain or~~ hay purchased or marketed by the licensee.
2. "Commission" means the public service commission.
3. "Credit-sale contract" means a written contract for the sale of ~~grain or~~ hay under which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the ~~grain or~~ hay for sale and which contains the notice required in subdivision g of subsection 5 of section 60-03-04.1. Where a part of the sale price of a contract for the sale of ~~grain or~~ hay is to be paid or may be paid more than thirty days after the delivery or release of the ~~grain or~~ hay for sale, only that part of the contract is a credit-sale contract.
4. "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 domestic grain or grass seed.
5. "~~Licensee~~" means a ~~roving grain or hay buyer licensed under this chapter.~~
6. "~~Roving grain or hay~~ Hay buyer" means any person, ~~other than a public warehouseman,~~ who is in the business of buying ~~grain or~~ hay from the owner for resale or processing, or markets ~~grain or~~ hay on behalf of the owner. The term does not include:

- a. ~~A a producer of grain or hay who purchases grain or hay from other producers to complete a carload or truckload in which the greater portion of the load is grain or hay 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 4-09, if that person buys grain only for processing and subsequent resale as seed.~~
- e. ~~A person who is an authorized dealer or agent of a seed company holding a permit in accordance with section 4-09-14.4.~~

6. "Licensee" means a hay buyer licensed under this chapter.

SECTION 4. AMENDMENT. Section 60-03-01.1 of the North Dakota Century Code is amended and reenacted as follows:

60-03-01.1. Duties and powers of the commission. The commission shall have the power to:

1. Exercise general supervision of the ~~roving grain or~~ hay 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 of any ~~roving grain or~~ hay buyer.
4. Make all proper rules for carrying out and enforcing any law in this state regarding ~~roving grain or~~ hay buyers.

SECTION 5. AMENDMENT. Section 60-03-02 of the North Dakota Century Code is amended and reenacted as follows:

60-03-02. License - How obtained - Fee. Each ~~roving grain or~~ hay buyer operating within this state must obtain a license through the commission to expire on July thirty-first of each year. Each license must designate the business address of the licensee, and each licensee shall have and maintain an agent for process within this state. The license fee which must accompany the application for license is ~~seventy five~~ one hundred dollars.

SECTION 6. AMENDMENT. Section 60-03-04 of the North Dakota Century Code is amended and reenacted as follows:

60-03-04. Bond filing by ~~roving grain or~~ hay buyer. Before a license is issued to any ~~roving grain or~~ hay buyer, the applicant shall file with the commission a bond in an amount set by the commission, ~~but not less than one hundred thousand dollars, except when the licensee pays cash for ninety percent of all grain or hay at the time of delivery and the remaining ten percent within twenty four hours of the time of delivery to the licensee in which case the bond amount may not be less than fifty thousand dollars.~~ The bond shall:

1. Cover the period of the license.
2. Run to the state of North Dakota for the use and benefit of all persons selling ~~grain or~~ hay to or through the licensee.
3. Be conditioned for the faithful performance of the duties of the licensee as a ~~roving grain or~~ hay buyer, and be for the specific purpose of protecting persons dealing with the licensee or its agent or agents within the state of North Dakota from loss or damage by reason of any violation of this chapter.
4. Not accrue to the benefit of any person entering into a credit-sale contract with the licensee.

5. Be governed by all of the provisions of law and rules applicable to the business of a ~~roving grain or~~ hay buyer.

The commission shall set the amount of the bond at a level it deems necessary to accomplish the purposes of this section. The surety on each bond must be a corporate surety company, approved by the commission, and authorized to do business in 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, the cash, negotiable instrument, or personal surety bond will properly protect persons dealing with the licensee or its agent within the state.

SECTION 7. AMENDMENT. Section 60-03-04.1 of the North Dakota Century Code is amended and reenacted as follows:

60-03-04.1. Credit-sale contract. A ~~roving grain or~~ hay buyer may not purchase or market ~~grain or~~ hay by a credit-sale contract unless all of the following are complied with:

1. The ~~roving grain or~~ hay buyer shall file with the commission a bond in addition to that required by section 60-03-04 and in an amount set by the commission, but not less than one hundred thousand dollars. The bond must cover the period of the license and run to the state of North Dakota for the use and benefit of all persons selling ~~grain or~~ hay to or through the licensee by credit-sale contract. The commission shall set the amount of the bond at a level it deems necessary to accomplish the purposes of this section. The surety on such a 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, the cash, negotiable instrument, or personal surety bond will properly protect persons selling ~~grain or~~ hay to or through the licensee by credit-sale contracts.
2. The licensee shall file with the commission a current financial statement setting forth the licensee's financial position and results in operations for the licensee's most recent fiscal period. The financial statement must conform to generally accepted accounting principles.
3. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing. A copy of the printed form used for the credit-sale contract must be filed with and approved by the commission at the beginning of each license period. A series of consecutively numbered approved contracts shall not be used in any other state.
4. The licensee shall maintain an accurate record of the disposition of each credit-sale contract form.
5. Each credit-sale contract must contain or provide for all of the following:
 - a. The seller's name and address.
 - b. The terms and conditions of delivery.
 - c. The amount and kind of ~~grain or~~ hay delivered.
 - d. The price per unit or basis of value.
 - e. The date payment is to be made which must not exceed one hundred twenty days from the date the ~~grain or~~ hay is delivered.
 - f. The duration of the credit-sale contract, which must not exceed twelve months from the date the contract is executed.
 - g. Notice in a clear and prominent manner that the sale is by credit-sale contract which is not protected by the bond coverage provided for in section 60-03-04 and that an additional bond covering credit-sale contracts is required by section 60-03-04.1.

6. The contract must be executed in duplicate by both parties. One copy must be retained by the licensee and one copy must be delivered to the seller.
7. Upon revocation, termination, or cancellation of a license, the payment date for all credit-sale contracts must, at the seller's option, be advanced to a date not later than thirty days after the effective date of the 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.

SECTION 8. AMENDMENT. Section 60-03-05 of the North Dakota Century Code is amended and reenacted as follows:

60-03-05. ~~Reving grain or hay~~ Hay buyer must carry license - Penalty for transacting business without license and giving a bond. The licensee shall have the license in the licensee's possession at all times while the licensee is engaged in the business of a ~~reving grain or~~ hay buyer and must exhibit the said license to each ~~and every~~ person from whom the licensee purchases ~~grain thereunder~~ hay under the license. Any ~~reving grain or~~ hay buyer who shall transact business without first procuring a license and giving a bond as herein provided shall be guilty of a class B misdemeanor.

SECTION 9. AMENDMENT. Section 60-03-08 of the North Dakota Century Code is amended and reenacted as follows:

60-03-08. Revocation and suspension. The commission may revoke or suspend the license of any ~~reving grain or~~ hay buyer for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a ~~reving grain or~~ hay buyer shall automatically be suspended for failure at any time to have or to maintain a bond in the amount and type required.

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

60-03-10. Records required to be kept by ~~reving grain or~~ hay buyer - Reports. Each ~~reving grain or~~ hay buyer shall keep such accounts, records, and memoranda concerning the person's dealings as such buyer as from time to time may be required by the commission and shall make such reports of purchases of ~~grain or~~ hay as may be required by the rules made by the commission. The commission at all times shall have access to such accounts, records, and memoranda.

SECTION 11. AMENDMENT. Section 60-03-11 of the North Dakota Century Code is amended and reenacted as follows:

60-03-11. ~~Reving grain or hay~~ Hay buyer's fee - Paid into state treasury. All fees collected by the commission under the provisions of this chapter shall be paid into the state treasury monthly.

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

60-03-12. Insolvency of ~~reving grain or~~ hay buyer. A licensee is insolvent when the licensee defaults in payment for ~~grain or~~ hay purchased or marketed by the licensee.

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

60-03-14. Trust fund established. Upon the insolvency of any licensee, a trust fund must be established for the benefit of claimants and to pay the costs incurred by the commission in the administration of the insolvency. The trust fund must consist of the following:

1. ~~Grain~~ Hay of the insolvent licensee held in storage or the proceeds obtained from the conversion of stored ~~grain~~ hay.
2. The proceeds of insurance policies on ~~grain~~ hay destroyed in storage.

3. 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.
4. Unencumbered accounts receivable for hay sold at the time or following the filing of a claim that precipitates an insolvency.

SECTION 14. AMENDMENT. Section 60-03-17 of the North Dakota Century Code is amended and reenacted as follows:

60-03-17. Remedy of claimants. No claimant has a separate claim for relief upon any insolvent licensee's bond, nor for insurance, nor against any person converting ~~grain~~ hay, nor against any other claimant, except through the trustee, unless, upon demand of five or more claimants, the commission fails or refuses to apply for its own appointment or unless the district court denies the application. Sections 60-03-12 through 60-03-22 do not prohibit any claimant, either individually or in conjunction with other claimants, from pursuing concurrently any other remedy against the person or property of the licensee.

SECTION 15. AMENDMENT. Section 60-03-18 of the North Dakota Century Code is amended and reenacted as follows:

60-03-18. Commission to marshal trust assets. Upon its appointment the commission shall marshal 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 claimants against the licensee's bonds, insurers of ~~grain~~ hay, any person who may have converted any ~~grain~~ hay, and any who may have received preferential treatment by being paid by the insolvent licensee after the first default.

SECTION 16. REPEAL. Section 60-03-03 of the North Dakota Century Code is repealed.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2153.

Senate Vote: Yeas 48 Nays 0 Absent 1

House Vote: Yeas 98 Nays 0 Absent 0

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,

at _____ o'clock _____ M.

Secretary of State