

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2074
(Agriculture Committee)
(At the request of the Public Service Commission)

AN ACT to create and enact a new section to chapter 60-02 and a new section to chapter 60-02.1 of the North Dakota Century Code, relating to cease and desist orders against grain warehouses and grain buyers; and to amend and reenact sections 60-02-07, 60-02.1-07, 60-02.1-30, and 60-04-03.1 of the North Dakota Century Code, relating to the licensing fees for public warehouses and for grain buyers and assets of the trust fund upon the insolvency of a grain warehouse or grain buyer licensee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-02-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

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

SECTION 2. A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

Cease and desist. Whenever an entity engages in an activity or practice that is contrary to the provisions of this chapter or related rules, the commission, upon its own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the commission. Such orders may include any corrective action up to and including license suspensions. Cease and desist orders must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

SECTION 3. AMENDMENT. Section 60-02.1-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement. Grain buyers must 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~~ three hundred fifty dollars. The annual license fee for a roving grain buyer is ~~one~~ two 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.

SECTION 4. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Cease and desist. Whenever an entity engages in an activity or practice that is contrary to the provisions of this chapter or related rules, the commission, upon its own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the commission. Such orders may include any corrective action up to and including license suspensions. Cease and desist orders must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

SECTION 5. AMENDMENT. Section 60-02.1-30 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

60-02.1-30. Trust fund established. Upon the insolvency of any licensee, a trust fund must be established for the benefit of 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, 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.
- ~~3.~~ 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.
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 6. AMENDMENT. Section 60-04-03.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

60-04-03.1. Trust fund established. Upon the insolvency of any warehouseman, a trust fund shall be established for the benefit of receiptholders of the insolvent warehouseman and to pay the costs incurred by the commission in the administration of this chapter. The trust fund must consist of the following:

1. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale 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 upon grain destroyed in the elevator.
- ~~3.~~ 4. 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.
4. 5. The claim for relief, and proceeds therefrom, for the conversion of any grain stored in the warehouse.
- ~~5.~~ 6. Unencumbered accounts receivable for grain sold ~~at the time or following the filing of a claim that precipitates an insolvency~~ prior to the filing of the claim that precipitated an insolvency.
- ~~6.~~ 7. Unencumbered equity in grain hedging accounts.
- ~~7.~~ 8. Unencumbered grain product assets.

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-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2074.

Senate Vote: Yeas 48 Nays 1 Absent 0

House Vote: Yeas 86 Nays 8 Absent 4

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,

at _____ o'clock _____ M.

Secretary of State