

SENATE BILL NO. 2346

Introduced by

Senators Wanzek, Dotzenrod, Klein, Luick

Representatives D. Johnson, Kempenich

1 A BILL for an Act to create and enact a new section to chapter 60-02 and a new section to
2 chapter 60-10 of the North Dakota Century Code, relating to records confidentiality for
3 warehousemen and grain buyers and assessment refunds for grain producers; to amend and
4 reenact subsection 5 of section 60-02-07 and sections 60-02-11, 60-02.1-07, 60-02.1-37,
5 60-02.1-38, 60-04-09, 60-04-10, 60-10-01, 60-10-02, 60-10-03, 60-10-04, 60-10-05, 60-10-06,
6 60-10-07, 60-10-09, 60-10-10, 60-10-13, 60-10-14, and 60-10-15 of the North Dakota Century
7 Code, relating to warehouse and grain buyer licensing, scale ticket conversions, claims
8 distributions, assessments and refunds, subrogation, and unlicensed grain buyers; to provide a
9 penalty; to provide a continuing appropriation; and to provide for reports.

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

11 **SECTION 1. AMENDMENT.** Subsection 5 of section 60-02-07 of the North Dakota Century
12 Code is amended and reenacted as follows:

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

18 **SECTION 2. AMENDMENT.** Section 60-02-11 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **60-02-11. Scale ticket - Contents - Conversion.**

21 1. a. Every public warehouseman, upon receiving grain into the warehouse, shall
22 issue a uniform scale ticket for each load of grain received. The scale tickets
23 must be numbered consecutively, and one copy of each ticket must be retained

- 1 and remain as a permanent record. The original ticket must be delivered to the
2 person from whom the grain is received, upon receipt of each load of grain.
- 3 b. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale
4 contracts, or warehouse receipts, within ~~forty-five~~thirty days after the grain is
5 delivered to the warehouse, unless:
- 6 (1) The person to whom the scale ticket is issued signs a form waiving all rights
7 to trust benefits under section 60-04-03.1;
- 8 (2) The form identifies by number each scale ticket to which the waiver applies;
9 and
- 10 (3) The form is signed by the warehouseman.
- 11 c. The commission shall prepare the waiver form required by subdivision b and
12 make the form available to each warehouse.
- 13 d. The warehouseman shall keep one copy of the signed waiver form with the
14 records of the warehouse, provide one copy to the person who was issued the
15 scale ticket and signed the form, and file one copy with the commission.
- 16 e. If a warehouseman becomes insolvent under chapter 60-04, a producer who
17 failed to convert the producer's grain under subdivision b and files a claim
18 pursuant to chapter 60-04 must be treated as a credit-sale contract claimant.
- 19 2. Nothing in this chapter requires a warehouseman to receive grain for storage. A
20 warehouseman shall publish and post, in a conspicuous place in the warehouse, a
21 publication identifying whether storage will be available to patrons or whether grain will
22 be accepted via cash or a credit-sale contract arrangement.

23 **SECTION 3.** A new section to chapter 60-02 of the North Dakota Century Code is created
24 and enacted as follows:

25 **Release of records - Confidentiality.**

- 26 1. As a condition of licensure under sections 60-02-07 or 60-02.1-07, an applicant must
27 agree to provide to the commission, upon request, any financial record the
28 commission deems relevant for purposes related to:
- 29 a. The issuance of a public warehouse or grain buyer license; or
- 30 b. An investigation after issuance of a public warehouse or grain buyer license.

- 1 2. As a condition of licensure, an applicant shall file a records release with the
2 commission, authorizing the commission to obtain from any source any financial
3 record the commission deems relevant for purposes related to:
4 a. The issuance of a public warehouse or grain buyer license; or
5 b. An investigation after issuance of a public warehouse or grain buyer license.
6 3. Any information obtained by the commission under this section is confidential and may
7 be provided only:
8 a. To federal authorities in accordance with federal law;
9 b. To the attorney general, state agencies, and law enforcement agencies, for use in
10 the pursuit of official duties; and
11 c. As directed by an order of a court pursuant to a showing of good cause.

12 **SECTION 4. AMENDMENT.** Section 60-02.1-07 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement.**

15 Grain buyers must obtain an annual license from the commission. Except as provided in
16 this section, each license expires on July thirty-first of each year. When a licensee's initial
17 license is issued effective after May thirty-first, ~~that~~the license expires on July thirty-first of the
18 following year. A facility-based grain buyer must obtain a license for each receiving location
19 operated in the state. If a grain buyer operates two or more facilities in the same city or siding,
20 in conjunction with each other and with the same working force, ~~and where~~ but one set of books
21 and records is kept for all such facilities, and scale tickets and checks of but one series are
22 issued for the grain, purchased, only one license is required for the operation of all such
23 facilities. The annual license fee for a facility-based grain buyer is three hundred dollars and a
24 license renewal application that is received after July fifteenth must be assessed an additional
25 one hundred dollar fee per receiving location.

26 ~~If required to obtain United States department of agriculture approval of the commission's~~
27 ~~grain buyer inspection program, the~~The commission ~~may~~shall require that grain buyers to
28 submit a current financial statement prepared in accordance with generally accepted accounting
29 principles. A financial statement furnished under this section is a confidential trade secret and is
30 not a public record.

1 **SECTION 5. AMENDMENT.** Section 60-02.1-37 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **60-02.1-37. Report of trustee to court - Approval - Distribution.**

- 4 1. Upon the receipt and evaluation of claims, the commission shall file with the court a
5 report showing the amount and validity of each claim after recognizing:
- 6 a. Relevant liens or pledges.
 - 7 b. Relevant assignments.
 - 8 c. Relevant deductions due to advances or offsets accrued in favor of the licensee.
 - 9 d. In case of relevant cash claims or checks, the amount of the claim.
 - 10 e. In case of a relevant credit-sale contract or noncredit-sale contract, the amount
11 remaining to be paid based on the terms of the contract.
- 12 2. The report must also contain the proposed reimbursement to the commission for the
13 expenses of administering the insolvency, the proposed distribution of the trust fund
14 assets to receiptholders, less expenses incurred by the commission in the
15 administration of the insolvency, and the proposed ~~credit-sale contract~~grain producers
16 indemnity fund payments to credit-sale contract claimants. If the trust fund is
17 insufficient to redeem all receiptholder claims in full, the report should list the funds as
18 prorated.
- 19 3. The court shall set a hearing and the appropriate notice for interested persons to show
20 cause why the commission's report should not be approved and distribution of the
21 trust fund be made as proposed. Copies of the report and notice of hearing must be
22 served by the commission by certified mail upon the licensee and the surety and by
23 ordinary mail upon all persons having claims filed with the commission.
- 24 4. Any aggrieved person having an objection to the commission's report shall file the
25 objection with the court and serve copies on the commission, the licensee, and the
26 surety at least twenty days before the hearing. Failure to file and serve objections in
27 the time set is a waiver of the objection.
- 28 5. Following the hearing, the court shall approve or modify the report and issue an order
29 directing payment of the necessary bond proceeds, distribution of the trust fund,
30 payments from the ~~credit-sale contract~~grain producers indemnity fund, and discharge
31 of the commission from its trust.

1 6. If the trust fund is insufficient to redeem all receiptholder claims in full, a receiptholder
2 is eligible to receive reimbursement of the remaining amount from the grain producers
3 indemnity fund, subject to the limitations under section 60-10-06.

4 **SECTION 6. AMENDMENT.** Section 60-02.1-38 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **60-02.1-38. Filing fees and court costs - Expenses.**

7 The commission may not be required to pay any filing fee or other court costs or
8 disbursements. The attorney general may appoint outside legal counsel to assist the
9 commission in the prosecution of the action and the cost of employing outside counsel must be
10 paid from the trust fund and the ~~credit-sale contract~~grain producers indemnity fund as
11 appropriate. All other necessary expenses incurred by the commission in carrying out the
12 provisions of this chapter, including adequate insurance to protect the commission, its
13 employees, and others engaged in carrying out the provisions of sections 60-02.1-28 through
14 60-02.1-38, must be reimbursed to the commission from the trust fund and ~~credit-sale-~~
15 ~~contract~~grain producers indemnity funds as appropriate.

16 **SECTION 7. AMENDMENT.** Section 60-04-09 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **60-04-09. Report of trustee to court - Approval - Distribution.**

19 Upon the receipt and evaluation of claims filed with it, the commission shall file with the
20 court a report showing the amount and validity of each claim after recognizing:

- 21 1. Any proper liens or pledges thereon.
- 22 2. Assignments thereof.
- 23 3. Deductions therefrom by reason of advances or offsets accrued in favor of the
24 warehouseman.
- 25 4. In case of cash claims or checks, the amount thereof.
- 26 5. In the case of scale tickets or warehouse receipts, the amount thereof based upon the
27 market price prevailing on the date the commission first received a copy of the written
28 demand required by section 60-04-02.
- 29 6. In the case of a credit-sale or noncredit-sale contract, the amount remaining to be paid
30 based on the terms of the contract.

1 The report must also contain the proposed reimbursement to the commission for the
2 expenses of administering the insolvency, a proposed distribution of the trust fund assets, less
3 expenses incurred by the commission in the administration of this chapter, and the proposed
4 ~~credit-sale-contract~~grain producers indemnity fund payments to credit-sale contract claimants
5 as their interests are determined. If the trust fund is insufficient to redeem all receiptholder
6 claims in full, the fund must be shown prorated in the report in the manner the commission
7 deems fair and equitable. If the trust fund is insufficient to redeem all receiptholder claims in full,
8 a receiptholder is eligible to receive reimbursement of the remaining amount from the grain
9 producers indemnity fund, subject to the limitations under section 60-10-06.

10 The court shall set a hearing and the appropriate notice for interested persons to show
11 cause why the commission's report should not be approved and ~~credit-sale-contract~~grain
12 producers indemnity fund payments and distribution of the trust fund be made as proposed, and
13 payments from the credit-sale contracts be made as proposed. Copies of the report and notice
14 of hearing must be served by the commission by certified mail upon the warehouseman and the
15 surety and by ordinary mail upon all persons having claims filed with the commission.

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

20 Following hearing, the court shall approve or modify the report and issue an order directing
21 payment of the necessary bond proceeds, distribution of the trust fund, payments from the
22 ~~credit-sale-contract~~grain producers indemnity fund, and discharge of the commission from its
23 trust.

24 **SECTION 8. AMENDMENT.** Section 60-04-10 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **60-04-10. Filing fees and court costs - Expenses.**

27 In any action in a state court in this state, the commission ~~shall~~may not be required to pay
28 any filing fee or other court costs or disbursements if the fees accrue to the county or to the
29 state. The attorney general may employ outside legal services to assist the commission in the
30 prosecution of ~~such~~the action as in the attorney general's judgment may be necessary and the
31 commission shall deduct the expenses of the same from the trust fund and the ~~credit-sale-~~

1 ~~contract~~grain producers indemnity fund as appropriate. All other necessary expenses incurred
2 by the commission in carrying out the provisions of this chapter, including adequate insurance
3 to protect the commission, its employees, and others engaged in carrying out the provisions of
4 this chapter, must be reimbursed to the commission from the trust fund and ~~credit-sale~~grain
5 producers indemnity funds as appropriate.

6 **SECTION 9. AMENDMENT.** Section 60-10-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **60-10-01. Credit-sale contracts - Assessment on grain - Submission of assessment.**

9 An assessment at the rate of ~~two-tenths~~one-tenth of one percent is placed on the value of
10 all grain sold in this state under a ~~credit-sale contract~~, as provided for in sections ~~60-02-19.1-~~
11 ~~and 60-02.1-14~~. The licensee purchasing the grain shall note the assessment ~~on the contract~~
12 ~~required under sections 60-02-19.1 and 60-02.1-14~~ and shall deduct the assessment from the
13 purchase price payable to the seller. The licensee shall submit any assessment collected under
14 this section to the public service commission no later than thirty days after each calendar
15 quarter. The commission shall deposit the assessments received under this section in the
16 ~~credit-sale contract~~grain producers indemnity fund.

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

19 **60-10-02. ~~Credit-sale contract~~Grain producers indemnity fund - Creation - Continuing**
20 **appropriation.**

21 There is created in the state treasury the ~~credit-sale contract~~grain producers indemnity
22 fund. The state treasurer shall invest available moneys in the fund in accordance with section
23 21-10-07 and in cooperation with the public service commission and shall deposit any income
24 earned through the investments into the fund. The fund and earnings of the fund are
25 appropriated to the public service commission on a continuing basis to be used exclusively to
26 carry out the intent and purpose of this chapter.

27 **SECTION 11. AMENDMENT.** Section 60-10-03 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **60-10-03. ~~Credit-sale contract~~ Grain producers indemnity fund - Suspension of**
2 **assessment.**

3 ~~At the end of the calendar quarter~~ On the thirtieth day of June in years in which the
4 ~~credit-sale contract~~ grain producers indemnity fund reaches a level of ~~six~~ ten million dollars by
5 March thirty-first, the public service commission shall suspend collection of the assessment
6 required by this chapter, if there is no large claim anticipated against the fund, as determined by
7 the public service commission. If after suspension of collection, in years in which the balance in
8 the fund is less than ~~three~~ six million dollars by March thirty-first, the public service commission
9 shall require collection of the assessment to resume on June thirtieth.

10 **SECTION 12. AMENDMENT.** Section 60-10-04 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **60-10-04. ~~Credit-sale contract~~ Grain producers indemnity fund - Eligibility for**
13 **reimbursement.**

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

- 16 1. After August 1, 2003, the person sold grain to a licensed warehouse or a grain buyer
17 in this state under the provisions of a credit-sale contract;
- 18 2. The licensed warehouse to which the person sold grain or the grain buyer to whom the
19 person sold grain becomes insolvent; and
- 20 3. The licensed warehouse or the grain buyer, as a result of the insolvency, does not fully
21 compensate the person in accordance with the credit-sale contract.

22 **SECTION 13. AMENDMENT.** Section 60-10-05 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **60-10-05. ~~Credit-sale contract~~ Grain producers indemnity fund - Availability of money.**

25 Upon the insolvency of a licensed warehouse or a grain buyer and a declaration that the
26 public service commission serve as the trustee, the public service commission shall make the
27 proceeds of the ~~credit-sale contract~~ grain producers indemnity fund available for use in meeting
28 the licensee's obligations with respect to the reimbursement of any person who sold grain to the
29 licensee under a credit-sale contract and who was not fully compensated in accordance with the
30 contract.

1 **SECTION 14. AMENDMENT.** Section 60-10-06 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **60-10-06. ~~Credit-sale contract~~Grain producers indemnity fund - Reimbursement limit.**

4 The amount payable to any eligible person from the ~~credit-sale contract~~grain producers
5 indemnity fund for each insolvency may not exceed the lesser of eighty percent of the amount
6 owed to that eligible person in accordance with all of that person's unsatisfied credit-sale
7 contracts or two hundred eighty thousand dollars.

8 **SECTION 15. AMENDMENT.** Section 60-10-07 of the North Dakota Century Code is
9 amended and reenacted as follows:

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

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

16 **SECTION 16. AMENDMENT.** Section 60-10-09 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **60-10-09. ~~Credit-sale contract~~Grain producers indemnity fund - Reimbursement for
19 administrative expenses.**

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

23 **SECTION 17. AMENDMENT.** Section 60-10-10 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **60-10-10. ~~Credit-sale contract~~Grain producers indemnity fund assessment - Failure to
26 collect assessment - Penalty.**

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

1 **SECTION 18. AMENDMENT.** Section 60-10-13 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **60-10-13. Claims.**

4 A claim concerning a grain buyer must be administered in a manner consistent with chapter
5 60-02.1. A claim concerning a state licensed grain warehouse must be administered in a
6 manner consistent with chapter 60-04. A payment may not be made from the ~~credit-sale-~~
7 ~~contract~~grain producers indemnity fund for a claim based on losses resulting from the sale of
8 grain to a person not licensed under chapter 60-02, chapter 60-02.1, or the United States
9 Warehouse Act [Pub. L. 106-472; 114 Stat. 2061; 7 U.S.C. 241 et seq.].

10 **SECTION 19. AMENDMENT.** Section 60-10-14 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **60-10-14. Subrogation.**

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

21 **SECTION 20. AMENDMENT.** Section 60-10-15 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **60-10-15. Unlicensed facility-based grain buyer.**

24 This chapter also applies to a facility-based grain buyer, as defined in section 60-02.1-01,
25 which is licensed under the United States Warehouse Act but which does not possess a state
26 grain buyer license. The commission has the duty and power to examine and inspect, during
27 regular business hours, all books, documents, and records related to collections and
28 remittances pertaining to the ~~credit-sale-contract~~grain producers indemnity fund. In the case of
29 insolvency, credit-sale contract payments to valid claimants must be reduced by an amount
30 equal to the credit-sale contract indemnity payments received from payments administered by
31 the United States department of agriculture.

1 **SECTION 21.** A new section to chapter 60-10 of the North Dakota Century Code is created
2 and enacted as follows:

3 **Refund of assessment - Form.**

- 4 1. To receive a refund of any assessment paid in accordance with this chapter, a grain
5 producer shall submit to the commission a written request for a refund application
6 within one year after the date of the assessment or final settlement.
- 7 2. The producer shall complete the refund application and return the application to the
8 commission, together with a record of the assessment collected, within ninety days
9 after the date of the request for the refund application. The commission shall refund to
10 the producer the net amount of the assessment collected from the producer.
- 11 3. If a request for a refund is not submitted to the commission within the prescribed time
12 period, the producer is presumed to have agreed to the assessment.
- 13 4. A producer who receives a refund of an assessment under this section waives all
14 rights to protection under the grain producers indemnity fund, unless the producer
15 applies for and is granted reinstatement, as determined by the commission. An
16 applicant for reinstatement must pay back all previous refund amounts to the
17 commission to be considered for reinstatement.
- 18 5. A producer who receives a refund of an assessment under this section will continue to
19 be assessed on each subsequent sale, pursuant to section 60-10-01. A producer who
20 received a refund of an assessment under this section, but who did not request a
21 refund of the assessment amount on subsequent sales, may not receive protection
22 under the grain producers indemnity fund, unless the producer applies for and is
23 granted reinstatement under subsection 4.