

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, a new section to chapter
2 60-02.1, and a new section to chapter 60-10 of the North Dakota Century Code, relating to
3 records confidentiality for warehousemen and grain buyers and assessment refunds for grain
4 producers; to amend and reenact subsection 5 of section 60-02-07 and sections 60-02-11,
5 60-02.1-07, 60-02.1-37, 60-02.1-38, 60-04-09, 60-04-10, 60-10-01, 60-10-02, 60-10-03,
6 60-10-04, 60-10-05, 60-10-06, 60-10-07, 60-10-09, 60-10-10, 60-10-13, 60-10-14, and 60-10-15
7 of the North Dakota Century Code, relating to warehouse and grain buyer licensing, scale ticket
8 conversions, claims distributions, assessments and refunds, subrogation, and unlicensed grain
9 buyers; to provide a 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~~claimant
17 who failed to convert the ~~producer's~~claimant's grain or sign a waiver under
18 subdivision b, and files a claim pursuant to chapter 60-04 must be treated as a
19 credit-sale contract claimant.
- 20 2. Nothing in this chapter requires a warehouseman to receive grain for storage. A
21 warehouseman shall publish and post, in a conspicuous place in the warehouse, a
22 publication identifying whether storage will be available to patrons or whether grain will
23 be accepted via cash or a credit-sale contract arrangement.

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

26 **Release of records - Confidentiality.**

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

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

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

17 **60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement.**

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

29 ~~If required to obtain United States department of agriculture approval of the commission's~~
30 ~~grain buyer inspection program, the~~The commission ~~may~~shall require that grain buyers to
31 submit a current financial statement prepared in accordance with generally accepted accounting

1 principles. A financial statement furnished under this section is a confidential trade secret and is
2 not a public record.

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

5 **60-02.1-37. Report of trustee to court - Approval - Distribution.**

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

1 payments from the ~~credit-sale-contract~~ grain-producers indemnity fund, and discharge
2 of the commission from its trust.

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

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

8 **60-02.1-38. Filing fees and court costs - Expenses.**

9 The commission may not be required to pay any filing fee or other court costs or
10 disbursements. The attorney general may appoint outside legal counsel to assist the
11 commission in the prosecution of the action and the cost of employing outside counsel must be
12 paid from the trust fund and the ~~credit-sale-contract~~ grain-producers indemnity fund as
13 appropriate. All other necessary expenses incurred by the commission in carrying out the
14 provisions of this chapter, including adequate insurance to protect the commission, its
15 employees, and others engaged in carrying out the provisions of sections 60-02.1-28 through
16 60-02.1-38, must be reimbursed to the commission from the trust fund and ~~credit-sale-~~
17 ~~contract~~ grain-producers indemnity funds as appropriate.

18 **SECTION 7.** A new section to chapter 60-02.1 of the North Dakota Century Code is created
19 and enacted as follows:

20 **Release of records - Confidentiality.**

21 1. As a condition of licensure under section 60-02.1-07, an applicant shall agree to
22 provide to the commission, upon request, any financial record the commission deems
23 relevant for purposes related to:

24 a. The issuance or renewal of a grain buyer license; or

25 b. An investigation after issuance or renewal of a grain buyer license.

26 2. As a condition of licensure, an applicant shall file a records release with the
27 commission, authorizing the commission to obtain from any source any financial
28 record the commission deems relevant for purposes related to:

29 a. The issuance or renewal of a grain buyer license; or

30 b. An investigation after issuance or renewal of a grain buyer license.

3. Any information obtained by the commission under this section is confidential and may be provided only:
 - a. To federal authorities in accordance with federal law;
 - b. To the attorney general, state agencies, and law enforcement agencies for use in the pursuit of official duties; and
 - c. As directed by an order of a court pursuant to a showing of good cause.

SECTION 8. AMENDMENT. Section 60-04-09 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

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

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

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

15 **SECTION 9. AMENDMENT.** Section 60-04-10 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **60-04-10. Filing fees and court costs - Expenses.**

18 In any action in a state court in this state, the commission ~~shall~~may not be required to pay
19 any filing fee or other court costs or disbursements if the fees accrue to the county or to the
20 state. The attorney general may employ outside legal services to assist the commission in the
21 prosecution of ~~such~~the action as in the attorney general's judgment may be necessary and the
22 commission shall deduct the expenses of the same from the trust fund and the ~~credit-sale-~~
23 ~~contract~~grain-producers indemnity fund as appropriate. All other necessary expenses incurred
24 by the commission in carrying out the provisions of this chapter, including adequate insurance
25 to protect the commission, its employees, and others engaged in carrying out the provisions of
26 this chapter, must be reimbursed to the commission from the trust fund and ~~credit-sale~~grain
27 producers indemnity funds as appropriate.

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

1 **60-10-01. ~~Credit-sale contracts~~ – Assessment on grain - Submission of assessment.**

2 An assessment at the rate of ~~two-tenths~~ one-tenth ~~one-twentieth~~ of one percent is placed on
3 the value of all grain sold in this state under a credit-sale contract, as provided for in sections
4 ~~60-02-19.1 and 60-02.1-14~~. The licensee purchasing the grain shall note the assessment on the
5 contract required under sections ~~60-02-19.1 and 60-02.1-14~~ and shall deduct the assessment
6 from the purchase price payable to the seller. The licensee shall submit any assessment
7 collected under this section to the public service commission no later than thirty days after each
8 calendar quarter. The commission shall deposit the assessments received under this section in
9 the ~~credit-sale contract~~ grain-producers indemnity fund.

10 **SECTION 11. AMENDMENT.** Section 60-10-02 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **60-10-02. ~~Credit-sale contract~~ Grain-producers indemnity fund - Creation - Continuing**
13 **appropriation.**

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

20 **SECTION 12. AMENDMENT.** Section 60-10-03 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **60-10-03. ~~Credit-sale contract~~ Grain-producers indemnity fund - Suspension of**
23 **assessment.**

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

1 **SECTION 13. AMENDMENT.** Section 60-10-04 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **60-10-04. ~~Credit-sale contract~~Grain ~~producers~~ indemnity fund - Eligibility for**
4 **reimbursement.**

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

- 7 1. After August 1, 2003, the person sold grain to a licensed warehouse or a grain buyer
8 in this state under the provisions of a credit-sale contract;
- 9 2. After August 1, 2019, the person delivered or sold grain to a licensed warehouse or a
10 grain buyer in the state;
- 11 3. The licensed warehouse to which the person sold grain or the grain buyer to whom the
12 person sold grain becomes insolvent; and
- 13 3.4. The licensed warehouse or the grain buyer, as a result of the insolvency, does not fully
14 compensate the person in accordance with the credit-sale contract, noncredit-sale
15 contract, sale, or storage contract.

16 **SECTION 14. AMENDMENT.** Section 60-10-05 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **60-10-05. ~~Credit-sale contract~~Grain ~~producers~~ indemnity fund - Availability of money.**

19 Upon the insolvency of a licensed warehouse or a grain buyer and a declaration that the
20 public service commission serve as the trustee, the public service commission shall make the
21 proceeds of the ~~credit-sale contract~~grain ~~producers~~ indemnity fund available for use in meeting
22 the licensee's obligations with respect to the reimbursement of any person who delivered or
23 sold grain to the licensee ~~under a credit-sale contract~~ and who was not fully compensated in
24 accordance with the contract, sale, or storage contract.

25 **SECTION 15. AMENDMENT.** Section 60-10-06 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **60-10-06. ~~Credit-sale contract~~Grain ~~producers~~ indemnity fund - Reimbursement limit.**

28 The amount payable to any eligible person from the ~~credit-sale contract~~grain ~~producers~~
29 indemnity fund for each insolvency may not exceed the lesser of eighty percent of the amount
30 owed to that eligible person in accordance with all of that person's unsatisfied credit-sale

1 | contracts, storage contracts, noncredit-sale contracts, or sales or two hundred eighty thousand
2 | dollars.

3 | **SECTION 16. AMENDMENT.** Section 60-10-07 of the North Dakota Century Code is
4 | amended and reenacted as follows:

5 | **60-10-07. ~~Credit-sale contract~~Grain ~~producers~~ indemnity fund - Prorated claims.**

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

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

13 | **60-10-09. ~~Credit-sale contract~~Grain ~~producers~~ indemnity fund - Reimbursement for**
14 | **administrative expenses.**

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

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

20 | **60-10-10. ~~Credit-sale contract~~Grain ~~producers~~ indemnity fund assessment - Failure to**
21 | **collect assessment - Penalty.**

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

26 | **SECTION 19. AMENDMENT.** Section 60-10-13 of the North Dakota Century Code is
27 | amended and reenacted as follows:

28 | **60-10-13. Claims.**

29 | A claim concerning a grain buyer must be administered in a manner consistent with chapter
30 | 60-02.1. A claim concerning a state licensed grain warehouse must be administered in a
31 | manner consistent with chapter 60-04. A payment may not be made from the ~~credit-sale-~~

1 | ~~contract~~~~grain-producers~~ indemnity fund for a claim based on losses resulting from the sale of
2 | grain to a person not licensed under chapter 60-02, chapter 60-02.1, or the United States
3 | Warehouse Act [Pub. L. 106-472; 114 Stat. 2061; 7 U.S.C. 241 et seq.].

4 | **SECTION 20. AMENDMENT.** Section 60-10-14 of the North Dakota Century Code is
5 | amended and reenacted as follows:

6 | **60-10-14. Subrogation.**

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

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

17 | **60-10-15. Unlicensed facility-based grain buyer.**

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

26 | **SECTION 22.** A new section to chapter 60-10 of the North Dakota Century Code is created
27 | and enacted as follows:

28 | **Refund of assessment - Form.**

- 29 | 1. To receive a refund of any assessment paid in accordance with this chapter, a grain
30 | producer shall submit to the commission a written request for a refund application
31 | within one year after the date of the assessment or final settlement.

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