

PUBLIC SERVICE COMMISSION

State of North Dakota

Laws and Rules

Governing

Warehousing, Storage, and Merchandising

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WAREHOUSING AND STORAGE

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CHAPTER 60-02

GRAIN AND SEED WAREHOUSES

60-02-01. 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 60-02-19.1. Where 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. "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 grain or grass seed. "Grain" as defined in this chapter shall not include grain or grass seeds owned by or in the possession of the warehouseman that 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.
4. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
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. 241-273] in which grain is received for storing, buying, selling, shipping, or processing for compensation. Provided, however, that nothing in this chapter shall be construed to require a processor to receive, store, or purchase any lot or kind of grain at said facility.
6. "Public warehouseman" means the person operating a public warehouse that is located or doing business within this state, whether or not such owner or operator resides within this state. The term does not include a person who is permitted to sell seed under chapter 4-09, if that person does not store grain for the public and buys grain only for processing and subsequent resale as seed, or an authorized dealer or agent of a seed company holding a permit in accordance with section 4-09-14.4.
7. "Receipts" means grain warehouse receipts, scale tickets, checks, or other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain except where such memoranda was received as a result of a credit-sale contract.

8. "Receiving station" means any facility other than an individually licensed warehouse that is used by a licensed public warehouseman to receive and temporarily store grain prior to transferring the grain to the warehouseman's primary licensed warehouse location or delivering it directly to market.

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

60-02-03. Duties and powers of the commission. The commission shall have the duty and power to:

1. Exercise general supervision of the public warehouses of this state, including the handling, weighing, and storing of grain, and the management of public warehouses.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any licensed warehouse including all books, documents, and records.
4. Require the filing of reports pertaining to the operation of the warehouse.
5. Make all proper rules for carrying out and enforcing any law in this state regarding public warehouses.

60-02-04. 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.

60-02-05. Grain marketing - Procedure for resolving disputes.

1. If any dispute or disagreement arises between the person receiving and the person delivering grain at any public warehouse in this state as to the proper grade, dockage, vomitoxin level, moisture content, or protein content of any grain, an average sample of at least three pints of the grain in dispute may be taken together by both parties interested. 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 delivered. 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) and (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 of the grain in dispute may be taken together by the parties interested. 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 delivered. 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.

60-02-05.1. Notice of procedures for resolving disputes over grain. A public warehouse shall post a notice containing the procedures specified in section 60-02-05 for resolving disputes. The commission shall prescribe the form of the notice and shall provide a copy of the notice to each public warehouse. The public warehouseman shall post the notice in the grain inspection room of the warehouse. 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.

60-02-06. Printing and publishing rules. Repealed by S.L. 1983, ch. 672, § 25.

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 three hundred 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.

60-02-07.1. Warehouseman to operate warehouse owned by another. A warehouseman may operate under its warehouse license a warehouse owned by another person. Storage performed for such person in the entire licensed warehouse is excepted from the storage rate and discrimination provisions contained in sections 60-02-17 and 60-02-20 to the extent of the person's owned capacity in the warehouse.

60-02-07.2. Receiving stations. A licensed public warehouseman may establish a receiving station without a separate warehouse license for that facility if all of the following conditions are met:

1. The station is colocated with another licensed public warehouse, the operator of which will take delivery of the grain on behalf of the warehouseman who established the receiving station.
2. The storage space used by the receiving station is used solely by the receiving station and is not licensed as part of the warehouse that is located at that site.
3. The grain taken in by the receiving station is not commingled with other grain at that site.
4. The warehouseman establishing the station requests and receives commission permission to increase licensed capacity to include the space to be used at the receiving station.
5. Grain received at the receiving station is recorded on scale tickets issued by the warehouseman who established the station and is covered by that warehouseman's bond.

6. Warehouse receipted grain received at the receiving station is available for redelivery to the receipt holder at that location even if the station has been closed. A charge for redelivery must be stated in the warehouseman's redelivery policy.

The storage space used by a receiving station need not be physically disconnected from the facilities of the other licensed warehouse located at that site.

60-02-08. Licensing track buyer - Fee - Regulations. Repealed by S.L. 1983, ch. 672, § 25.

60-02-09. Bond filed by public warehouseman. Before any license is issued to any public warehouseman under this chapter, the applicant for such license shall file a bond with the commission which shall:

1. Be in a sum not less than five thousand dollars for any one warehouse.
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 storing or selling grain in such warehouse.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a public warehouseman.
 - b. For compliance with the provisions of law and the rules of the commission relating to the storage and purchase of grain by such warehouseman.
5. Specify the location of each public warehouse intended to be covered by such bond.
6. Be for the specific purpose of:
 - a. Protecting the holders of outstanding receipts.
 - b. Covering the costs incurred by the commission in the administration of chapter 60-04 in the event of the licensee's insolvency.
7. Not accrue to the benefit of any person entering into a credit-sale contract with a public warehouseman.
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 shall set the amount of the bond and may require an increase in the amount of any bond, from time to time, as it shall, in its discretion, deem 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. One bond only shall be given for any line of elevators, mills, or warehouses, owned, controlled, or operated by one individual, firm, corporation, or limited liability company, and such bond shall be construed to cover such elevators, mills, or warehouses, as a whole and not a specific amount for each.

60-02-09.1. 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 warehouseman files a new bond at least thirty days before liability ceases, the commission, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new bond has been filed and approved by the commission. When a license is so suspended the warehouseman shall give notice of such suspension to each receipt holder having grain stored in the warehouse. The warehouseman shall further notify each receipt holder having grain stored in the warehouse that the grain must be removed from the warehouse or it will be priced and redeemed in cash in accordance with section 60-02-41.

60-02-10. Warehouse license to be posted. The license obtained by a public warehouseman shall be posted in a conspicuous place in the public warehouse.

60-02-10.1. Revocation and suspension. The commission may suspend or revoke the license of any warehouseman for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a warehouseman 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 the warehouseman may, upon the commission's approval, operate the warehouse and purchase or redeliver grain previously received, but may not receive additional grain for purchase, storage, shipping, or processing.

60-02-11. Scale ticket - Contents. Every public warehouseman, upon receiving grain into its warehouse, shall issue a uniform scale ticket for each load of grain received. Such tickets must be numbered consecutively, and one copy of each ticket must be retained and remain as a permanent record. The original ticket must be delivered to the person from whom the grain is received, upon receipt of each load of

grain. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts within thirty days after the grain is delivered to the warehouse.

60-02-12. Penalty. Any person who shall violate any of the provisions of this chapter or any rule adopted pursuant to this chapter, where punishment is not specifically provided for, shall be guilty of an infraction.

60-02-13. Purchase by warehouseman - Form of receipt. There may be printed on each warehouse receipt issued by a warehouseman a receipt executed by the owner for use in case the grain represented thereby is purchased by the warehouseman. The warehouseman shall record the purchase, as to the amount paid per bushel, on the stub record or copy of its warehouse receipt books. The receipt must be in substantially the following form:

Received from _____, _____ dollars and _____ cents net, in full payment for the grain represented by this warehouse receipt. Gross price per bushel _____, storage per bushel _____, net price per bushel _____. I certify that I am the owner of the grain for which this receipt was issued, and that there are no liens, chattel mortgages, or other claims against the grain represented by this receipt.

Dated _____, _____. Signed _____
Owner.

Nothing in this section contained may be construed to affect in any manner the conditions of the storage contract specified in sections 60-02-17 and 60-02-18.

60-02-14. Warehouse receipts - Copy. Provision shall be made for a stub record or copy of each warehouse receipt issued by a warehouseman, showing:

1. The serial number and date of receipt.
2. The kind and grade of grain.
3. The dockage and net weight of the grain.

The record or copy shall remain in the possession of the warehouseman for inspection by the commission and persons properly interested.

60-02-15. Warehouse receipts issued by public terminal elevators. Repealed by S.L. 1983, ch. 672, § 25.

60-02-16. Warehouse receipt - Contents and provisions. A warehouse receipt shall:

1. Be issued only upon the actual delivery of grain to the warehouse for storage.

2. Contain the following provisions:
 - a. The place and date when the grain was received;
 - b. The name and address of the owner of the grain;
 - c. The kind and grade of the grain according to the official standards established by the secretary of agriculture of the United States, except that receipts issued for dry edible beans must reference, in lieu of a grade designation, the number of the scale tickets containing a description of the beans including the percentage of foreign material, splits, check seed coats, total pick, and moisture; and
 - d. The gross weight, dockage, and net weight of the grain according to North Dakota standard weight.
3. Be numbered consecutively and no two receipts bearing the same number and series shall be issued during the same year.
4. Not be altered by any warehouseman by the insertion in such receipt of any language limiting or modifying its liability as imposed by the laws of this state.
5. Contain, either on its face or reverse side, the warehouse and storage contract provided for in section 60-02-17.
6. Have printed upon it the following words: "All storage contracts on grain in store at public grain warehouses shall terminate on June thirtieth of each year, except storage contracts for dry edible beans which shall terminate on April thirtieth of each year. If storage charges and warehouseman's advances remain unpaid at the time of such termination, the warehouseman shall sell sufficient of said grain to pay such charges and advances. The holder hereof shall surrender this receipt to the issuing warehouseman for settlement."

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

This grain is received, insured, and stored subject to the laws and rules of the state of North Dakota, the terms of this contract and the charges and conditions stated herein and as filed with the North Dakota public service commission. Upon surrender of this receipt and payment or tender of all applicable charges, the amount, kind, and grade of grain identified in this receipt will be delivered to the person named above or the person's order as rapidly as due diligence, care, and prudence will permit. At the option of the holder of this receipt, the amount, kind, and grade of grain for which this receipt is issued, upon demand, must be delivered back to the holder at any terminal point customarily shipped to, or at the place where received, upon the payment of any charges for receiving, handling,

storage, and insurance and in case of terminal delivery, the payment in addition to the above of the regular freight charges on the gross amount called for by this ticket or in lieu thereof, a receipt issued by a bonded warehouse or elevator company doing business at the terminal point. Nothing in this receipt requires the delivery of the identical grain specified herein, but an equal amount of grain of the same kind and grade must be delivered.

A warehouseman shall publish and post, in a conspicuous place in its warehouse, the fees that will be assessed for receiving, storing, processing, or redelivering grain. This fee schedule must be filed with the commission as a part of its warehouse license application or annual renewal. These fees must be stated on the warehouse receipt issued for the grain. The fees may be changed upon filing a revised schedule with the commission.

60-02-17.1. Warehouse charges for grain owned by the United States. Repealed by S.L. 1999, ch. 533, § 9.

60-02-18. Covenant against liens may be inserted in warehouse receipt. A public warehouseman also may insert in the warehouse receipt the following provision:

"If any of the grain embraced in this receipt shall prove to be covered by a chattel mortgage or other lien, or the partial or absolute title shall prove to be in someone other than the person to whom this receipt was issued, the same, if discovered before the delivery of the grain, shall be sufficient reason for the refusal to deliver to the holder of the receipt, or if discovered after the delivery of the grain, such delivery shall be deemed an overdelivery for which said holder of this receipt, to whom such delivery is made, shall be accountable."

60-02-19. Warehouse receipts issued for grain in special bin. Repealed by S.L. 1983, ch. 672, § 25.

60-02-19.1. Credit-sale contracts. A warehouseman shall 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 warehouseman 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 60-02-09, however, if the warehouseman has obtained bond coverage in addition to that required by section 60-02-09 and such coverage extends to the benefit of credit-sale contracts, the warehouseman may state the same 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 shall be retained by the warehouseman and one copy shall be delivered to the seller. Upon revocation, termination, or cancellation of a warehouseman's license, the payment date for all credit-sale contracts shall, 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 shall 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 warehouseman is transferred to another licensed warehouseman, credit-sale contracts may be assigned to the transferee.

60-02-20. Discrimination by public warehouseman prohibited - Posting prices. No public warehouseman shall discriminate:

1. In the buying, selling, receiving, and handling of grain or in the charges made or the service rendered to owners of stored grain;
2. In the receiving of grain offered for sale or storage;
3. In regard to the persons offering such grain for sale or storage; nor
4. Between points or stations except as the marketing factors or transportation costs or grain quality premiums may warrant.

No public warehouseman shall be required to receive for storage any grain which is heating or otherwise out of condition. Storing grain free of charge is prohibited except as prescribed by law. A warehouseman shall post grain prices paid in a conspicuous place in the office or driveway of the warehouseman's place of business.

60-02-21. Issuance of informal memoranda forbidden - Penalty. A warehouseman who fails to issue a receipt, as is provided in sections 60-02-13 and 60-02-14, or who issues slips, memoranda, or any other form of receipt embracing a different warehouse or storage contract than is provided for specifically in this chapter, shall be guilty of a class A misdemeanor.

60-02-22. Liability of warehouseman. A public warehouseman is liable to the owner for the delivery of the kind, grade, quality, and quantity of grain called for by the warehouse receipt. Unless otherwise agreed, the value of any difference in kind, grade,

quality, and quantity must be settled at the price on the local market on the day the warehouseman receives written request for delivery. The warehouseman may withhold from delivery a sufficient quantity of grain, based upon the local market price, to satisfy the value of any difference in kind, grade, or quality.

60-02-23. Records to be kept by public warehouseman. Every public warehouseman shall keep a record of all grain received, stored, and shipped, stating the:

1. Weight.
2. Grade.
3. Dockage for dirt or other causes.
4. Name of owner.
5. Price paid.
6. Storage charge collected.

Any warehouseman whose principal office or headquarters is located outside the state of North Dakota shall make available, if requested, all books, documents, and records relevant to the North Dakota warehouse for inspection during ordinary business hours at any of its warehouses located in the state of North Dakota or other mutually acceptable place.

60-02-24. Reports to be made by public warehouseman - Penalty for failure. Each licensed and bonded public warehouseman 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 the information available for use by other governmental entities, but the commission may not release the information 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, and failure to file this report promptly will be considered cause for revoking the warehouse license after due notice and hearing.
3. Keep a separate account of the grain business, if the warehouseman is engaged in handling or selling any other commodity, and under no circumstances shall the grain account and other accounts be mixed.

No license shall be reissued to any public warehouseman who fails to make a required report.

60-02-25. Bailment not a sale. Whenever any grain shall be delivered to any public warehouse and an unconverted scale ticket or a warehouse receipt is issued therefor, such delivery shall be a bailment and not a sale of the grain so delivered. In no case shall the grain so delivered be liable to seizure upon process of any court in any action against such bailee, except in an action by an owner of such unconverted scale ticket or warehouse receipt to enforce the terms thereof or obtain redelivery of such delivered grain. In the event of the failure or insolvency of the warehouseman, all the grain in the warehouse, whether the same is stored or not, first shall be applied at all times to the satisfaction of receipts issued by the warehouseman.

60-02-25.1. Receiptholder's lien. Grain contained in a warehouse, including grain owned by the warehouseman, is subject to a first priority lien in favor of outstanding receiptholders storing, selling, or depositing grain in the warehouse. The lien created under this section shall be preferred to any lien or security interest in favor of any creditor of the warehouseman regardless of the time when the creditor's lien or security interest attached to the grain. Notice of the lien created under this section need not be filed in order to perfect the lien. The lien created by this section is discharged as to grain sold by the warehouseman to a buyer in the ordinary course of business. Such sale does not discharge the lien in favor of an individual receiptholder in the remaining grain in the warehouse.

60-02-26. Standard weights to be used - Exception. No person purchasing, selling, or storing grain in any public warehouse in this state shall use any measure for such grain other than the standard bushel, and no number of pounds shall 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, and during the months of December and January, not exceeding seventy-six pounds, may be used as the standard weight per bushel of new ear corn.

60-02-27. Federal grades to control - Grades to be posted. All public warehousemen shall purchase and store 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. They shall post in a conspicuous place in their warehouse the official grades so established and also any change that may be made from time to time. Warehousemen of dry edible beans shall purchase, store, and deliver beans in accordance with their policy which must be filed with the commission and posted in a conspicuous place in their warehouse. Other grading standards may be used if mutually agreed to in writing by the warehouseman and the owner of the grain. However, the owner may demand the use of federal grading standards. The commission, after hearing, may prohibit the use of nonfederal grades.

60-02-28. Grading of grain. All public warehousemen 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.

60-02-29. Allowance for dockage - Penalty for violation. Any public warehouseman within this state, who shall violate the provisions of section 60-02-28, shall be guilty of a class B misdemeanor.

60-02-30. Termination of public grain warehouse storage contracts. All storage contracts on grain in store at public grain warehouses terminate on June thirtieth of each year, except for storage contracts on dry edible beans which terminate on April thirtieth of each year. Storage on any or all grain in storage at public grain warehouses may be terminated by the owner at any time before the date mentioned herein by the payment of all legal charges and the surrender of the warehouse receipt, together with a demand for delivery of the grain in storage, or notice to the warehouseman to sell the stored grain. In the absence of a demand for delivery, an order to sell, or a request for the renewal of the storage contract, entered into prior to the expiration of the storage contract, for all grains except dry edible beans, the warehouseman shall sell, upon the expiration of the storage contract and compliance with section 60-02-31, at the local market price on the close of business on that day, sufficient amounts of the stored grain to satisfy all accrued storage charges thereon and warehouseman's advances upon the storage contract, and shall issue a new warehouse receipt for the balance of the grain in storage to the owner thereof upon the surrender of the old warehouse receipt, properly canceled. Upon the expiration of the storage contract for dry edible beans, the warehouseman is not obligated to renew the storage contract. In the absence of a demand for delivery, an order to sell, or an agreement between the warehouseman and the receipt holder for the storage of dry edible beans after April thirtieth, the warehouseman may sell, upon the expiration of the storage contract, at the local market price on the close of business on that day, all the stored beans of the receipt holder and tender to the receipt holder the proceeds of the sale less an amount which will satisfy all accrued storage charges thereon and the warehouseman's advances upon any previous storage contract.

60-02-31. Notice to owner of termination of storage contract. On or before June first of each year, for all grains except dry edible beans, the warehouseman shall notify by mail the person in whose name the grain was stored of the termination of the storage contract on June thirtieth and the warehouseman's intention to sell a sufficient amount of the stored grain on June thirtieth to satisfy accrued storage charges unless the receipt holder prior to that time demands redelivery, authorizes sale, or continues the storage contract. On or before April first of each year, a warehouseman storing dry edible beans shall notify by mail the person in whose name the dry edible beans are stored of the warehouseman's intention to terminate the storage contract on April thirtieth, or at a later date pursuant to an agreement between the warehouseman and the receipt holder for the storage of dry edible beans after April thirtieth, and to sell all dry edible beans stored as of that date, unless the receipt holder prior to that time demands redelivery, authorizes sale, or enters into a new contract with the

warehouseman for restorage. Failure to comply with this section shall result in the forfeiture of storage charges accrued for the grain during the previous twelve months.

60-02-31.1. Delivery of dry edible beans to warehouse receipt holder. Repealed by S.L. 1991, ch. 696, § 6.

60-02-32. Reissue warehouse receipts - Provisions. Upon payment of all legal accrued charges and the surrender to the warehouseman of a receipt, for all grains except dry edible beans, if the receipt holder elects to continue the storage contract, the warehouseman then shall issue a new warehouse receipt to the owner and shall cancel the former receipt by endorsing thereon the words: "Canceled by the issuance of warehouse receipt no. _____", inserting the number of the reissue warehouse receipt thereafter, and the holder's name shall be signed thereto by the holder or by the holder's authorized agent. The reissue warehouse receipt shall be so designated by stamping thereon: "Reissue of warehouse receipt no. _____".

60-02-33. Delivery of grain - Demand terminates storage charge. On the return and surrender of any receipt and the payment of all lawful charges, the grain represented therein shall be deliverable to the owner, and shall not be subject to any further charge for storage after demand for delivery shall have been made and proper facilities for receiving or shipping the same have been provided. The owner of the receipt shall order the receptacle in which the grain covered by the owner's receipt is to be transported, and the grain shall be delivered when the receptacle so ordered is in proper condition for loading and is placed at the warehouse.

60-02-34. Refusal to deliver grain - Larceny. Repealed by S.L. 1975, ch. 106, § 673.

60-02-35. Grain to be kept insured for benefit of owner by warehouseman. No license may be issued to a public warehouseman unless all grain in storage or on deposit in the warehouse is kept fully insured at the expense of the warehouseman 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. No insurance policy covering grain in a public warehouse may be transferred or assigned to any person for any purpose, except for grain that is not on warehouse receipt or deposit. The insurance policy must be continuous and may only be canceled in accordance with section 60-02-35.1.

60-02-35.1. Insurance - Cancellation - Suspension of license. An insurance company shall give at least sixty days' notice to the commission and the insured by certified mail return receipt requested before cancellation of an insurance policy required in section 60-02-35. Unless the warehouseman files proof of new or renewed insurance at least thirty days before the existing policy ceases, the commission, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new policy has been filed and approved by the commission. When a license is so suspended the warehouseman shall give notice of such

suspension to each receipt holder having grain stored in the warehouse. The warehouseman shall further notify each receipt holder having grain stored in the warehouse that the grain must be removed from the warehouse or it will be priced and redeemed in cash in accordance with section 60-02-41.

60-02-36. Destruction of grain in public warehouse - First lien by holder of outstanding receipt. The holder of an unconverted scale ticket or warehouse receipt issued by any public warehouseman 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 warehouse 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.

60-02-37. Destruction of warehouse - Duty to notify commission. In case of the destruction by fire or other cause of any licensed public warehouse, the licensee thereof shall notify the commission within twenty-four hours after such loss.

60-02-38. Refund of license fee by commission. When requested in writing, the commission shall refund the license fee of a public warehouse, or so much as in its judgment is just and reasonable, when satisfactory proof is furnished that the warehouse has been transferred to some other person, and the new owner has applied for a license for the same warehouse for the unexpired period for which the original license was issued. When a warehouse is destroyed by fire or other cause, the license fee may be prorated as the commission may determine.

60-02-39. Warehouse not to be closed without permission from commission -Penalty. Every licensed warehouse shall be kept open for business in order to serve the public. Upon application and sufficient cause shown, the commission may allow any warehouse 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 public warehouseman who shall close a warehouse 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.

60-02-40. Transfer of warehouse - Redemption of receipts. Whenever a public warehouseman desires to transfer a warehouse, either by sale or lease to any other individual, firm, or corporation, the warehouseman shall:

1. Notify the commission first of its intention to transfer the warehouse, giving the name and address of the proposed lessee or purchaser.
2. Furnish a statement of all proper claims that may be filed or pending against the warehouseman pertaining to the storage, inspection, and marketing of grain, together with a statement of:
 - a. The number of bushels [cubic meters] of grain of each kind and grade in store in the warehouse;

- b. The number and amount of receipts outstanding; and
 - c. The names and addresses of the receiptholders.
3. Serve notice by registered or certified mail, at least thirty days before the transfer, upon all receiptholders having claims against the warehouse to call for delivery of the grain covered by the receipts, and to pay all storage charges due, the warehouseman in such case to make no charge for redelivery. The commission may waive the thirty-day notice period upon receipt of written consent of all receiptholders.
 4. Transfer all stored grain undelivered at the expiration of such thirty-day period to its successor, if licensed, or to the nearest licensed warehouse for restorage, taking receipts for the same in favor of the owner of the grain so transferred, such warehouse receipts to be filed with the commission until called for by the owner.
 5. 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 warehouse will be recognized or permitted by the commission except where made in accordance with the provisions of this section.

60-02-41. Going out of business - Redemption of receipts. When a public warehouseman ceases business through the destruction of a warehouse by fire or other cause, or through insolvency, such warehouseman shall redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse was destroyed or closed because of insolvency. The holder of such receipts, upon due notice, must accept this price and surrender the receipts. Any public warehouseman who voluntarily ceases business or fails to renew an existing warehouse license or whose warehouse license is revoked shall notify the commission and all outstanding receiptholders of such closing and redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the unconverted scale ticket or warehouse 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.

60-02-42. 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.

60-02-43. Agricultural contracts – Mediation and arbitration. If a written contract for the sale of grain does not contain provisions to settle disagreements concerning factors not governed by section 60-02-05, the parties shall attempt to resolve the disagreements through mediation or arbitration.

CHAPTER 60-02.1 GRAIN BUYERS

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CHAPTER 60-02.1

GRAIN BUYERS

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, tame 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) and (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 three hundred dollars. The annual license fee for a roving grain buyer is two hundred 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 the buyer's license in 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 insurance commissioner. 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 receipt holders 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, 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.
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.

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 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, 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.

60-02.1-39. 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.

60-02.1-40. Agricultural contracts – Mediation and arbitration. If a written contract for the sale of grain does not contain provisions to settle disagreements

concerning factors not governed by section 60-02.1-05, the parties shall attempt to resolve the disagreements through mediation or arbitration.

CHAPTER 60-03 HAY BUYERS

Section	
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60-03-22	Filing fees and court costs - Expenses.

CHAPTER 60-03 HAY BUYERS

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 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 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 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 hay is to be paid or may be paid more than thirty days after the delivery or release of the 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. "Hay buyer" means any person who is in the business of buying hay from the owner for resale or processing, or markets hay on behalf of the owner. The term does not include a producer of hay who purchases hay from other producers to complete a carload or truckload in which the greater portion of the load is 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.
6. "Licensee" means a hay buyer licensed under this chapter.

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

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

60-03-02. License - How obtained - Fee. Each 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 one hundred dollars.

60-03-03. Subject to public warehouse laws. Repealed by S.L. 1999, ch. 534, § 16.

60-03-04. Bond filing by hay buyer. Before a license is issued to any hay buyer, the applicant shall file with the commission a bond in an amount set by the commission. 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 hay to or through the licensee.
3. Be conditioned for the faithful performance of the duties of the licensee as a 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 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.

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

1. The 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 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 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 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 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.

60-03-05. 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 hay buyer and must exhibit the license to each person from whom the licensee purchases hay under the license. Any 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.

60-03-06. Penalty. Any person who violates any provisions of this chapter or any rule adopted pursuant to this chapter, is guilty of a class B misdemeanor.

60-03-07. Commission makes rules and regulations governing roving grain or hay buyers. Repealed by S.L. 1983, ch. 673, § 10.

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

60-03-09. Procedure for revocation of license. Repealed by S.L. 1983, ch. 673, § 10.

60-03-09.1. Complaint procedure. Repealed by S.L. 1989, ch. 743, § 17.

60-03-10. Records required to be kept by hay buyer - Reports. Each 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 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.

60-03-11. 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.

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

60-03-13. 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 60-03-14. 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.

60-03-14. 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. Hay of the insolvent licensee held in storage or the proceeds obtained from the conversion of stored hay.
2. The proceeds of insurance policies on 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.

60-03-15. 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.

60-03-16. 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.

60-03-17. 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 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.

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 hay, any person who may have converted any hay, and any who may have received preferential treatment by being paid by the insolvent licensee after the first default.

60-03-19. Power of commission to prosecute or compromise claims. The commission may:

1. Prosecute any action provided in sections 60-03-12 through 60-03-22 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.

60-03-20. 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.

60-03-21. 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.

60-03-22. 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 60-03-12 through 60-03-22, may be paid from the trust fund.

CHAPTER 60-04 INSOLVENT GRAIN WAREHOUSEMEN

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60-04-04	Notice to receiptholders.
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60-04-06	Commission to marshal trust assets.
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60-04-08	Money received by trustee - Deposited in Bank of North Dakota.
60-04-09	Report of trustee to court - Approval - Distribution.
60-04-10	Filing fees and court costs - Expenses.

CHAPTER 60-04 INSOLVENT GRAIN WAREHOUSEMEN

60-04-01. 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 60-02-19.1. Where 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. "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. "Grain" as defined in this chapter does not include grain or grass seeds owned by or in the possession of the warehouseman that 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.

4. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility in which grain is received for storing, buying, selling, or shipping for compensation. Provided, however, that nothing in this chapter requires any warehouseman doing manufacturing business only, to receive, store, or purchase any kind of grain at said mill.
5. "Public warehouseman" means the person owning or operating a public warehouse which is located or doing business within this state, whether such owner or operator resides within this state or not.
6. "Receipts" means grain warehouse receipts, scale tickets, checks, or other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain except where such memoranda was received as a result of a credit-sale contract.

60-04-02. Insolvency of warehouseman. Whenever any warehouseman, by reason of the destruction of the person's warehouse or for any other cause, shall refuse, neglect, or be unable, upon proper demand, to redeem any receipt issued by the warehouseman, through redelivery or cash payment, such warehouseman shall be deemed to be insolvent within the meaning of this chapter.

60-04-03. Appointment of commission. Upon the insolvency of any warehouseman, the commission shall apply to the district court of a county in which the warehouseman operates a licensed warehouse for authority to take all action necessary and appropriate to secure and act as trustee of the trust fund described in section 60-04-03.1. Upon such notice to the warehouseman as the court shall prescribe, but not exceeding twenty days, or upon waiver of such notice in writing by the warehouseman, the court shall proceed to hear and determine such application in a summary manner. If it shall appear to the court that such warehouseman is insolvent within the meaning of this chapter and that it would be for the best interests of the receiptholders that the commission secure and execute such trust, the court shall issue an order granting the application, without bond, whereupon 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 such temporary order as may be necessary to preserve or protect the assets of the trust fund, or the value thereof, until the court issues its order granting or denying the application.

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.
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.
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.

60-04-03.2. Possession of grain. Upon its appointment by the district court, the commission shall seek possession of the grain to be included in the trust fund. Upon its possession of any grain in the warehouse, the commission shall sell such grain and apply the proceeds to the trust fund.

60-04-03.3. Joinder of surety - Deposit of proceeds. The surety on the warehouseman's bond must be joined as a party to the insolvency proceeding upon a motion by the commission when the commission believes that proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. Where it appears in the best interests of the receiptholders, the court may order the surety to deposit the penal sum of the bond, or so much thereof as may be deemed necessary, into the trustee's trust account pending a final determination of the surety's liability under the bond.

60-04-04. Notice to receiptholders. Upon its appointment by the district court, the commission may take possession of relevant books and records of the warehouseman. The commission shall cause a notice of its appointment to be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located and may notify by ordinary mail the holders of record of outstanding receipts as shown by the warehouseman's records. The notices must require outstanding receiptholders to file their claims against the warehouseman with the commission along with the receipts or such other evidence of the claims as required by the commission. If an outstanding receiptholder fails to submit a claim within forty-five days after the last publication of the notice or such longer time as prescribed by the commission, the commission is relieved of further duty or action under this chapter on behalf of the receiptholder and the receiptholder may be barred from participation in the

trust fund. Outstanding receiptholders are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

60-04-05. Remedy of receiptholders. No receiptholder has a separate claim for relief upon the warehouseman's bond, nor for insurance, nor against any person converting grain, nor against any other receiptholder, except through the trustee, unless, upon demand of five or more receiptholders, the commission fails or refuses to apply for its own appointment from the district court or unless the district court denies the application for appointment. This chapter does not prohibit or prevent any receiptholder, either individually or in conjunction with other receiptholders, from pursuing concurrently such other remedy against the person or property of such warehouseman, for the whole, or any deficiency occurring in the redemption, of the receipts.

60-04-06. Commission to marshal trust assets. Upon its appointment by the district court, the commission may maintain suits at law or in equity, or any special proceeding, in the name of the state of North Dakota, upon its own relation, but for the benefit of all such receiptholders against:

1. The insurers of grain;
2. The warehouseman's bond;
3. Any person who may have converted any grain; or
4. Any receiptholder who shall have received more than its just and pro rata share of grain,

for the purpose of marshalling all of the trust fund assets and distributing the same among the receiptholders. The commission shall seek possession of any grain in the warehouse before recourse is had against the insurers of grain, and the remedy against the insurers of grain shall be exhausted before recourse is had against the bond, and against the bond before recourse is had against the person honestly converting grain, unless the commission shall deem it necessary to the redemption of the receipts that all the above remedies be pursued at the same time.

60-04-07. Power of commission to prosecute or compromise claims. The commission shall have power:

1. To prosecute any action provided in this chapter in any court in this state or in any other state.
2. To appeal from any adverse judgment to the courts of last resort.
3. To settle and compromise any action whenever, in its judgment, this will be for the best interests of the receiptholders.

4. Upon payment of the amount of such compromise or of the full amount of any insurance policy, bond, or conversion claim, to exonerate the person so compromising or paying in full from further liability growing out of the action.

60-04-08. Money received by trustee - Deposited in Bank of North Dakota.

All moneys collected and received by the commission as trustee under this chapter, pending the marshalling of the fund, shall be deposited in the Bank of North Dakota.

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, with interest at the weighted average prime rate charged by the Bank of North Dakota since the date of the insolvency.
5. In the case of scale tickets or warehouse receipts, the amount thereof based upon the market price prevailing on the date of the insolvency, with interest at the weighted average prime rate charged by the Bank of North Dakota since the date of the insolvency.

The report must also contain a proposed distribution of the trust fund assets, less expenses incurred by the commission in the administration of this chapter, to claimants as their interests are determined. If the trust fund is insufficient to redeem all claims in full, the fund must be shown prorated in the report in the manner the commission deems fair and equitable.

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 warehouseman and the surety and by ordinary mail upon all persons having claims filed with the commission.

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 warehouseman, 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 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.

60-04-10. Filing fees and court costs - Expenses. Upon the application to the district court as provided in this chapter, or in any action in a state court in this state, the commission shall not be required to pay any filing fee or other court costs or disbursements where the fees accrue to the county or to the state. The attorney general may employ outside legal services to assist the commission in the prosecution of such action as in the attorney general's judgment may be necessary and may deduct the expense of the same 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 this chapter, may be deducted from the trust fund.

CHAPTER 60-05
UNIFORM ACCOUNTING FOR PUBLIC ELEVATORS AND WAREHOUSES

Section	
60-05-01	<u>Public elevators and warehouses - Commission may require uniform accounting system.</u>
60-05-02	<u>Examination of financial accounts of elevator or warehouse by competent examiner - Request by percentage of stockholders.</u>
60-05-03	<u>Certificate issued by commission after its examination of accounts.</u>
60-05-04	<u>Fees of examiner for installing and examining accounting system.</u>
60-05-05	Penalty for interfering with examiner. Repealed.

CHAPTER 60-05
UNIFORM ACCOUNTING FOR PUBLIC ELEVATORS AND WAREHOUSES

60-05-01. Public elevators and warehouses - Commission may require uniform accounting system. The public service commission may require every association, copartnership, corporation, or limited liability company conducting a public elevator or warehouse in this state to adopt a uniform accounting system established by such commission.

60-05-02. Examination of financial accounts of elevator or warehouse by competent examiner - Request by percentage of stockholders. The commission may install, and whenever requested by not less than fifteen percent of the partners, stockholders, or members of any association, copartnership, corporation, or limited liability company conducting such public elevator or warehouse, shall install, the uniform system of accounting mentioned in section 60-05-01. The commission on its own motion may, or on request of the required percentage of partners, stockholders, or members, the commission shall, send a competent examiner to examine the books and financial accounts of such elevator or warehouse. Whenever a request for the examination of the accounts of any association, copartnership, corporation, or limited liability company has been made to the commission, as provided for in this section, an examination thereafter shall be made at least once every year until the commission shall be requested to discontinue such examination by resolution adopted by the partners, stockholders, or members at any annual meeting. When such examination has been made, the examiner shall report immediately the results thereof to the president and the secretary of such association, copartnership, corporation, or limited liability company and to the commission.

60-05-03. Certificate issued by commission after its examination of accounts. If the commission is satisfied from its examination that the person, association, copartnership, corporation, or limited liability company examined is solvent and its method of doing business is such as is likely to be beneficial to all of its

members or persons interested therein, the commission shall issue a certificate, countersigned by the examiner, to the agent or manager. Such certificate shall be kept posted conspicuously in the warehouse or elevator of such person, association, copartnership, corporation, or limited liability company and shall state:

1. That said methods of doing business are sound.
2. That such person, association, copartnership, corporation, or limited liability company is solvent.
3. That its books and accounts are kept properly.

If the affairs and methods of doing business of such person, association, copartnership, corporation, or limited liability company shall not seem sound or satisfactory to the commission, it shall issue a certificate or statement, countersigned by the person who made the examination, stating in what particular and in what respect the business methods practiced or methods of keeping books and accounts of such person, association, copartnership, corporation, or limited liability company are not deemed safe. The commission shall mail a copy of said statement or certificate to each of such shareholders or stockholders as may have requested the commission to make such examination. The commission also shall send a copy thereof to the president and the secretary of such association, copartnership, corporation, or limited liability company.

60-05-04. Fees of examiner for installing and examining accounting system.

For making installation of a uniform accounting system and examining the financial accounts of an elevator or public warehouse, an association, copartnership, corporation, or limited liability company shall pay the examiner a reasonable fee, as determined by the commission. In case any such association, copartnership, corporation, or limited liability company shall wrongfully refuse or neglect to pay such fees, then the commission may cancel the license to do business. All such fees shall be paid into the state treasury. The expenses incurred by the examiner under the provisions of this chapter shall be paid out of the appropriations made by the legislative assembly for this purpose and such expenses shall be audited and paid in the same manner as other expenses are audited and paid.

60-05-05. Penalty for interfering with examiner. Repealed by S.L. 1975, ch. 106, § 673.

CHAPTER 60-06
PUBLIC WAREHOUSES ON RAILROAD RIGHT OF WAY

Section	
60-06-01	<u>Who may make application for warehouse or elevator on railroad right of way.</u>
60-06-02	<u>Public warehouse on railroad right of way - Application - Contents.</u>
60-06-03	<u>When applicant is entitled to erect public warehouse.</u>
60-06-04	<u>Compensation for right, privilege, and easement - Notice to applicant.</u>
60-06-05	<u>Sidetracks to be provided by railroad company on its land.</u>
60-06-06	Penalty for violation of applicant's rights. Repealed.
60-06-06.1	<u>Determination - Appropriation.</u>
60-06-07	<u>Procedure in district court by applicant.</u>
60-06-08	<u>Procedure on trial.</u>
60-06-09	<u>Elevation of gross sum or annual rental.</u>
60-06-10	<u>Judgment - What it shall contain.</u>
60-06-11	<u>Forfeiture of right, privilege, and easement by applicant.</u>
60-06-12	<u>Appeal from judgment.</u>
60-06-13	<u>Costs and disbursements of actions.</u>
60-06-14	<u>Erection of warehouses after judgment.</u>
60-06-15	<u>Application to existing leaseholds.</u>

CHAPTER 60-06
PUBLIC WAREHOUSES ON RAILROAD RIGHT-OF-WAY

60-06-01. Who may make application for warehouse or elevator on railroad right of way. Any person, firm, corporation, or limited liability company desirous of erecting and operating at or contiguous to any railroad station or siding a warehouse or elevator for the purchase, sale, shipment, or storage of grain or potatoes for the public for hire, may make application in writing to the person, firm, corporation, or limited liability company owning, leasing, or operating the railway at such station or siding for the right, privilege, and easement of erecting and maintaining a public warehouse.

60-06-02. Public warehouse on railroad right of way - Application - Contents. A written application by a person, firm, corporation, or limited liability company desirous of erecting and operating a public warehouse on a railroad right of way shall contain the following provisions:

1. A description of that portion of the right of way of said railroad on which said person, firm, corporation, or limited liability company desires to erect a warehouse or elevator.
2. The size and capacity of the warehouse or elevator proposed to be erected.

3. The time for which it is desired to maintain said warehouse or elevator.
4. The amount the applicant deems a reasonable compensation for the right, privilege, and easement the applicant desires to acquire.

60-06-03. When applicant is entitled to erect public warehouse. Upon the payment or tender of money which the applicant deems reasonable compensation for the right, privilege, and easement to erect a public warehouse on a railroad right of way, the applicant immediately shall be entitled to erect, absolutely and unconditionally, the applicant's warehouse or elevator on such right of way for the time specified in the application made by the applicant and shall become invested immediately with the said right, privilege, and easement. The person, firm, corporation, or limited liability company owning, leasing, or operating said railway at such station or siding immediately shall render the applicant the same service the applicant would be entitled to had the said person, firm, corporation, or limited liability company sold or leased said site to the applicant.

60-06-04. Compensation for right, privilege, and easement - Notice to applicant. In case the sum tendered under section 60-06-03 is not accepted and the parties cannot agree upon the amount to pay for such right, privilege, and easement, the same shall be ascertained, assessed, and determined by proceedings in the district court of the county in which the station or siding at which the right, privilege, and easement sought is situated. Such court at all times shall be deemed open and in session for the purposes of this chapter. Any person, firm, corporation, or limited liability company to whom application is made for the right to erect and maintain an elevator or warehouse under the provisions of this chapter, within ten days after the receipt of the application, shall notify the applicant in writing of the acceptance or rejection of the amount offered as compensation for the right, privilege, and easement sought to be acquired. Failure to notify the applicant within such time shall be deemed an acceptance of said amount but whether it is accepted or not, the applicant for the site shall be deemed to have acquired the right, privilege, and easement asked for.

60-06-05. Sidetracks to be provided by railroad company on its land. Every railroad company or corporation organized under the laws of this state or doing business therein, upon application in writing, shall provide reasonable sidetrack facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right of way at such stations. Every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its sidetracks to and from any warehouse or elevator without reference to its size, cost, or capacity, where grain or potatoes are or may be stored. The railroad company is not required to construct or furnish any sidetracks except upon its own land or right of way. Such elevators and warehouses may not be constructed within one hundred feet [30.48 meters] of any existing structure and must be at safe fire distance from the station buildings so as not to conflict essentially with the safe and convenient operation of the road. Where stations are ten miles [16.09 kilometers] or more apart the railroad company, when required so to do by the public service commission, shall construct and maintain a sidetrack for the use of shippers between such stations.

60-06-06. Penalty for violation of applicant's rights. Repealed by S.L. 1975, ch. 106, § 673.

60-06-06.1. Determination - Appropriation. Any party may petition the public service commission to determine rights governed under this chapter. The commission shall determine the matter in accordance with chapter 28-32 and the parties' rights of appeal are as limited by chapter 28-32. The commission shall conduct each hearing required under this section in the county where the right of way at issue is located. The parties to the determination proceeding shall pay the expense of the proceeding, the compensation of any experts, and actual expenses of any employees of the commission while engaged in the proceeding. The commission shall ascertain those costs and expenditures and, after giving the parties notice and opportunity to be heard, and after a hearing to determine the amount of cost and expenditures if a hearing is demanded by either of the parties, shall render a bill and make and transmit to the parties an order for payment by registered mail. Within ten days after receipt of the order, the parties shall pay to the commission the amount of the costs and expenses. The commission shall deposit all costs and expenses collected under this section in the general fund in the state treasury.

60-06-07. Procedure in district court by applicant. Proceedings in district court shall be instituted and carried on as follows:

1. The corporation to which the application for the right to maintain and operate an elevator or warehouse on the railroad right of way is made shall present to and file with the district court a petition in writing and under oath specifying and describing:
 - a. The right, privilege, and easement sought and attained.
 - b. The time for which the same was sought and attained.
 - c. The fact that the parties to the proceedings are unable to agree upon the amount of the compensation therefor.
2. A copy of the application for such privilege shall be attached to said petition and thereupon the court at once by its order in writing shall fix a place and a time, not more than twenty days thereafter, where and when the court will try such proceeding and determine the amount of such compensation.
3. A certified copy of this order shall be served at least fifteen days before the time so fixed upon the party who sought and attained the right, privilege, and easement, as a summons is served in a civil action in said court. Such service when made shall be ample notice to and summons for the party so served to appear and join in the proceedings and shall give the court full jurisdiction over the party against whom the proceedings are instituted and the property involved in the proceedings.

60-06-08. Procedure on trial. At the time and place fixed for determining the compensation for applicant's right, privilege, and easement, the court shall proceed immediately to try said matter, without a jury, if the parties consent. If they do not consent and if the time and place fixed for said hearing is at a general or special term of said court where a petit jury has been summoned, the court shall proceed to a hearing of such matter with a jury. In case said proceedings are made returnable at any time other than at a term where a petit jury shall have been summoned, the court shall make an order requiring the selection of twenty-four jurors. Such jury shall be drawn and selected in the manner provided by law for the drawing of jurors for general terms of the district court. From the jurors so returned a jury shall be selected the same as in civil actions and the trial shall proceed after the manner of trials in civil actions.

60-06-09. Election of gross sum or annual rental. The court or jury, as the case may be, shall find and assess compensation both in the form of an annual rental and in the form of a gross sum for the right, privilege, and easement sought. Immediately after the finding or verdict has been made, the party against whom the proceedings have been taken shall elect whether to receive the annual rental or the gross sum found. In case such election is not made by such party, then the other party to the proceedings may make such election.

60-06-10. Judgment - What it shall contain. After election is made as provided in section 60-06-09, judgment shall be rendered adjudging among other things that upon payment of the gross sum found or the annual rental found yearly in advance, as the case may be, the party in whose favor said judgment is rendered shall be entitled to a writ of execution in proper form to invest such party immediately with the right, privilege, and easement of the applicant.

60-06-11. Forfeiture of right, privilege, and easement by applicant. In case the annual rental method of payment is elected, the same shall be paid yearly in advance, and if not so paid, after a default of thirty days, the right, privilege, and easement shall be forfeited absolutely.

60-06-12. Appeal from judgment. Within thirty days after the entry of judgment an appeal may be taken by either party to the supreme court. Such appeal shall not stay nor hinder the use or enjoyment to the fullest extent of the right, privilege, and easement asked for by the petition or conferred by the judgment, if the party instituting the proceedings shall make and file a bond with sureties, to be approved by the court, in an amount double the gross sum or annual rental, conditioned to pay such sum or rental and to abide and satisfy any judgment the supreme court may render in the premises.

60-06-13. Costs and disbursements of actions. Costs and disbursements shall be paid by the unsuccessful party in each court as in civil actions. If the finding of the court or jury is for a less, or the same, amount as was tendered by the applicant before the owner of the railway at such station or siding instituted the proceedings, then the applicant shall be deemed the successful party. If the amount found is larger than the sum tendered, then the owner of the railway at such station or siding shall be deemed to be the successful party.

60-06-14. Erection of warehouses after judgment. Any person, firm, corporation, or limited liability company taking advantage of the provisions of this chapter, within sixty days after the amount to be paid for the easement acquired thereunder finally is determined, by agreement or by proceedings in court, shall commence the erection of the warehouse or elevator stated in the application referred to in section 60-06-02 and shall complete the same within ninety days thereafter. In case of failure to comply with the provisions of this section, such person, firm, corporation, or limited liability company shall be deemed to have abandoned the right, privilege, and easement acquired, and the part or portion of the railroad right of way described in the application shall be subject to selection by other applicants who may desire to avail themselves of the provisions of this chapter.

60-06-15. Application to existing leaseholds. The provisions of this chapter apply to the renewal of existing leaseholds on railroad rights of way, and to existing leaseholds on lands that have ceased to be used for railroad rights of way after the leasehold was first created, and so long thereafter as the lease site remains under the ownership or control of the railroad or an entity that was or is under common ownership or control of the railroad. The value of a leaseholder's improvements may not be considered in determining annual rental or the gross sum for the right, privilege, and easement sought.

CHAPTER 60-07

STORAGE COMPANIES

[Repealed by S.L. 1997, ch. 510, § 1]

CHAPTER 60-08

WAREHOUSE RECEIPTS

[Repealed by S.L. 1965, ch. 296, § 32]

CHAPTER 60-09

GRAIN ELEVATOR GRAIN WEIGHING

[Repealed by S.L. 1991, ch. 375, § 1; S.L. 1993, ch. 590, § 1]

**CHAPTER 32-25
CONVERSION OF GRAIN BY PUBLIC WAREHOUSE**

Section	
32-25-01	<u>Who may bring action - Effect.</u>
32-25-02	<u>Consolidation of action.</u>
32-25-03	<u>Storage tickets prima facie evidence.</u>
32-25-04	<u>How value of grain may be proved.</u>
32-25-05	<u>Method of proof of value of grain not exclusive.</u>

32-25-01. Who may bring action - Effect. In any case where the grain of different owners has been stored in a warehouse or elevator and has become mingled in a common mass, and any part thereof has been converted or is detained wrongfully by any person, the owner of any part of such common mass may maintain an action against the wrongdoer for the recovery of the possession or the value, as the case may be, of the quantity of such person's contribution to such common mass. It shall not be necessary to join as a party any other person who likewise may have contributed, or be alleged to have contributed, to such common mass, but the commencement of such action shall be deemed to be a selection or segregation of such person's interest, in all things the same as though, upon a demand made therefor, such grain or the value thereof had been set aside and delivered to such party.

32-25-02. Consolidation of action. In case two or more persons shall have brought separate actions against the same defendant to recover the value or possession of different amounts of such common mass, the court in which such actions are pending, in its discretion, may consolidate such actions and dispose of them as justice and equity shall require.

32-25-03. Storage tickets prima facie evidence. In any action involving the ownership or right of possession of stored grain, the storage tickets or warehouse receipts issued by any public warehouseman or grain dealer who commonly receives such grain for storage, in substantially the form prescribed by statute, shall be received in evidence, and shall be prima facie evidence that grain of the kind and quantity recited therein was received by such warehouseman at about the date of such ticket, and that the same was the property of the person named in said receipt as having deposited the same.

32-25-04. How value of grain may be proved. In any action brought under the provisions of this chapter, it shall be permissible to prove the value of the grain in question by any of the following classes of evidence:

1. By market reports published in any newspaper or trade journal which commonly publishes such reports, purporting to give market values or selling prices of such grain at the market in question. No further foundation for the introduction of such reports in evidence shall be necessary than the showing that such newspaper or journal is in circulation as such or is commonly sold at public newsstands, and the court may take judicial notice of the character and circulation of such newspaper or journal without proof.
2. The buying and selling price of similar grain may be shown by the records of any chamber of commerce, board of trade, or similar organization which is shown to keep a record of permanent character of the prices at which such, or similar grain, is sold in the market at which such organization is situated.
3. A witness engaged in the business of buying or selling grain likewise may testify to the value of grain at any given market at any given time, upon showing his knowledge thereof, and for the purpose of refreshing his recollection such witness may examine and consider the permanent records of sales or purchases made in the regular course of business of such witness or the firm or concern with which he is or was connected.

32-25-05. Method of proof of value of grain not exclusive. The methods of proof herein provided for shall not be exclusive but cumulative, and shall be taken and received together with any other competent evidence tending to establish the value in question.

CHAPTER 41-07
WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

Section	
41-07-01	<u>Short title.</u>
41-07-02	<u>Definitions and index of definitions.</u>
41-07-03	<u>Relation of chapter to treaty, statute, tariff, classification, or regulation.</u>
41-07-04	<u>Negotiable and nonnegotiable warehouse receipt, bill of lading, or other document of title.</u>
41-07-05	<u>Construction against negative implication.</u>
41-07-06	<u>Laws not repealed.</u>
41-07-07	<u>Who may issue a warehouse receipt - Storage under government bond.</u>
41-07-08	<u>Form of warehouse receipt - Essential terms - Optional terms.</u>
41-07-09	<u>Liability for nonreceipt or misdescription.</u>
41-07-10	<u>Duty of care - Contractual limitation of warehouseman's liability.</u>
41-07-11	<u>Title under warehouse receipt defeated in certain cases.</u>
41-07-12	<u>Termination of storage at warehouseman's option.</u>
41-07-13	<u>Goods must be kept separate - Fungible goods.</u>
41-07-14	<u>Altered warehouse receipts.</u>
41-07-15	<u>Lien of warehouseman.</u>
41-07-16	<u>Enforcement of warehouseman's lien.</u>
41-07-17	<u>Liability for nonreceipt or misdescription - "Said to contain" - "Shipper's weight, load, and count" - Improper handling.</u>
41-07-18	<u>Through bills of lading and similar documents.</u>
41-07-19.	<u>Diversion - Reconsignment - Change of instructions.</u>
41-07-20	<u>Bills of lading in a set.</u>
41-07-21	<u>Destination bills.</u>
41-07-22	<u>Altered bills of lading.</u>
41-07-23	<u>Lien of carrier.</u>
41-07-24	<u>Enforcement of carrier's lien.</u>
41-07-25	<u>Duty of care - Contractual limitation of carrier's liability.</u>
41-07-26	<u>Irregularities in issue of receipt or bill or conduct of issuer.</u>
41-07-27	<u>Duplicate receipt or bill - Overissue.</u>
41-07-28	<u>Obligation of warehouseman or carrier to deliver - Excuse.</u>
41-07-29	<u>No liability for good faith delivery pursuant to receipt or bill.</u>
41-07-30	<u>Form of negotiation and requirements of "due negotiation".</u>
41-07-31	<u>Rights acquired by due negotiation.</u>
41-07-32	<u>Document of title to goods defeated in certain cases.</u>
41-07-33	<u>Rights acquired in the absence of due negotiation - Effect of diversion - Seller's stoppage of delivery.</u>
41-07-34	<u>Endorser not a guarantor for other parties.</u>
41-07-35	<u>Delivery without endorsement - Right to compel endorsement.</u>
41-07-36	<u>Warranties on negotiation or transfer of receipt or bill.</u>

41-07-37	Warranties of collecting bank as to documents.
41-07-38	Receipt or bill - When adequate compliance with commercial contract.
41-07-39	Lost and missing documents.
41-07-40	Attachment of goods covered by a negotiable document.
41-07-41	Conflicting claims - Interpleader.

41-07-01. (7-101) Short title. This chapter shall be known and may be cited as the Uniform Commercial Code - Documents of Title.

41-07-02. (7-102) Definitions and index of definitions.

1. In this chapter, unless the context otherwise requires:
 - a. "Bailee" means the person who by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.
 - b. "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.
 - c. "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.
 - d. "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier, or other person who in the ordinary course of business issues warehouse receipts or bills of lading.
 - e. "Document" means document of title as defined in the general definitions in chapter 41-01 (section 41-01-11).
 - f. "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.
 - g. "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.
 - h. "Warehouseman" is a person engaged in the business of storing goods for hire.

2. Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:
 - "Duly negotiate". Section 41-07-30.
 - "Person entitled under the document" Subsection 4 of section 41-07-28.
3. Definitions in other chapters applying to this chapter and the sections in which they appear are:
 - "Contract for sale" Section 41-02-06.
 - "Overseas" Section 41-02-40.
 - "Receipt" of goods. Section 41-02-03.
4. In addition chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

41-07-03. (7-103) Relation of chapter to treaty, statute, tariff, classification, or regulation. To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification, or regulation filed or issued pursuant thereto is applicable, the provisions of this chapter are subject thereto.

41-07-04. (7-104) Negotiable and nonnegotiable warehouse receipt, bill of lading, or other document of title.

1. A warehouse receipt, bill of lading, or other document of title is negotiable:
 - a. If by its terms the goods are to be delivered to bearer or to the order of a named person; or
 - b. Where recognized in overseas trade, if it runs to a named person or assigns.
2. Any other document is nonnegotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person.

41-07-05. (7-105) Construction against negative implication. The omission from either part 2 or part 3 of this chapter of a provision corresponding to a provision made in the other part does not imply that a corresponding rule of law is not applicable.

41-07-06. Laws not repealed. This chapter does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailee's businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (41-01-11).

41-07-07. (7-201) Who may issue a warehouse receipt - Storage under government bond.

1. A warehouse receipt may be issued by any warehouseman.
2. Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman.

41-07-08. (7-202) Form of warehouse receipt - Essential terms - Optional terms.

1. A warehouse receipt need not be in any particular form.
2. Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:
 - a. The location of the warehouse where the goods are stored.
 - b. The date of issue of the receipt.
 - c. The consecutive number of the receipt.
 - d. A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order.
 - e. The rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a nonnegotiable receipt.
 - f. A description of the goods or of the packages containing them.
 - g. The signature of the warehouseman, which may be made by his authorized agent.

- h. If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership.
 - i. A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (section 41-07-15). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.
3. A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this title and do not impair his obligation of delivery (section 41-07-28) or his duty of care (section 41-07-10). Any contrary provision shall be ineffective.

41-07-09. (7-203) Liability for nonreceipt or misdescription. A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown", "said to contain", or the like, if such indication be true, or the party or purchaser otherwise has notice.

41-07-10. (7-204) Duty of care - Contractual limitation of warehouseman's liability.

- 1. A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.
- 2. Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted

contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

3. Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.
4. This section does not impair or repeal chapter 60-02.

41-07-1. (7-205) Title under warehouse receipt defeated in certain cases. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

41-07-12. (7-206) Termination of storage at warehouseman's option.

1. A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (section 41-07-16).
2. If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection 1 for notification, advertisement, and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.
3. If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

4. The warehouseman must deliver the goods to any person entitled to them under this chapter upon due demand made at any time prior to sale or other disposition under this section.
5. The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods.

41-07-13. (7-207) Goods must be kept separate - Fungible goods.

1. Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.
2. Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

41-07-14. (7-208) Altered warehouse receipts. Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor.

41-07-15. (7-209) Lien of warehouseman.

1. A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so

specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

2. The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection 1, such as for money advanced and interest. Such a security interest is governed by the chapter on secured transactions (chapter 41-09).
3.
 - a. A warehouseman's lien for charges and expenses under subsection 1 or a security interest under subsection 2 is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under section 41-07-32.
 - b. A warehouseman's lien on household goods for charges and expenses in relation to the goods under subsection 1 is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. "Household goods" means furniture, furnishings, and personal effects used by the depositor in a dwelling.
4. A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

41-07-16. (7-210) Enforcement of warehouseman's lien.

1. Except as provided in subsection 2, a warehouseman's lien may be enforced by public or private sale of the goods in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

2. A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:
 - a. All persons known to claim an interest in the goods must be notified.
 - b. The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.
 - c. The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.
 - d. The sale must conform to the terms of the notification.
 - e. The sale must be held at the nearest suitable place to that where the goods are held or stored.
 - f. After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.
3. Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this chapter.
4. The warehouseman may buy at any public sale pursuant to this section.
5. A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was

valid, despite noncompliance by the warehouseman with the requirements of this section.

6. The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.
7. The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.
8. Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection 1 or 2.
9. The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

41-07-17. (7-301) Liability for nonreceipt or misdescription - "Said to contain" - "Shipper's weight, load, and count" - Improper handling.

1. A consignee of a nonnegotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load, and count", or the like, if such indication be true.
2. When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load, and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.
3. When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

4. The issuer may by inserting in the bill the words "shipper's weight, load, and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.
5. The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

41-07-18. (7-302) Through bills of lading and similar documents.

1. The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.
2. Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.
3. The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor.

41-07-19. (7-303) Diversion - Reconsignment - Change of instructions.

1. Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from:
 - a. The holder of a negotiable bill;
 - b. The consignor on a nonnegotiable bill notwithstanding contrary instructions from the consignee;
 - c. The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or
 - d. The consignee on a nonnegotiable bill if he is entitled as against the consignor to dispose of them.
2. Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.

41-07-20. (7-304) Bills of lading in a set.

1. Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.
2. Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.
3. Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.
4. Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.
5. The bailee is obliged to deliver in accordance with part 4 of this chapter against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill.

41-07-21. (7-305) Destination bills.

1. Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.
2. Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

41-07-22. (7-306) Altered bills of lading. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

41-07-23. (7-307) Lien of carrier.

1. A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.
2. A lien for charges and expenses under subsection 1 on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection 1 is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.
3. A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

41-07-24. (7-308) Enforcement of carrier's lien.

1. A carrier's lien may be enforced by public or private sale of the goods, in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a

commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

2. Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this chapter.
3. The carrier may buy at any public sale pursuant to this section.
4. A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.
5. The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.
6. The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.
7. A carrier's lien may be enforced in accordance with either subsection 1 or the procedure set forth in subsection 2 of section 41-07-16.
8. The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

41-07-25. (7-309) Duty of care - Contractual limitation of carrier's liability.

1. A carrier who issues a bill of lading whether negotiable or nonnegotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

2. Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.
3. Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff.

41-07-26. (7-401) Irregularities in issue of receipt or bill or conduct of issuer. The obligations imposed by this chapter on an issuer apply to a document of title regardless of the fact that:

1. The document may not comply with the requirements of this chapter or of any other law or regulation regarding its issue, form, or content;
2. The issuer may have violated laws regulating the conduct of his business;
3. The goods covered by the document were owned by the bailee at the time the document was issued; or
4. The person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt.

41-07-27. (7-402) Duplicate receipt or bill - Overissue. Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods, and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face.

41-07-28. (7-403) Obligation of warehouseman or carrier to deliver - Excuse.

1. The bailee must deliver the goods to a person entitled under the document who complies with subsections 2 and 3, unless and to the extent that the bailee establishes any of the following:
 - a. Delivery of the goods to a person whose receipt was rightful as against the claimant.

- b. Damage to or delay, loss, or destruction of the goods for which the bailee is not liable.
 - c. Previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage.
 - d. The exercise by a seller of his right to stop delivery pursuant to the provisions of the chapter on sales (section 41-02-84).
 - e. A diversion, reconsignment, or other disposition pursuant to the provisions of this chapter (section 41-07-19) or tariff regulating such right.
 - f. Release, satisfaction, or any other fact affording a personal defense against the claimant.
 - g. Any other lawful excuse.
2. A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.
 3. Unless the person claiming is one against whom the document confers no right under subsection 1 of section 41-07-32, he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.
 4. "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a nonnegotiable document.

41-07-29. (7-404) No liability for good faith delivery pursuant to receipt or bill. A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this chapter is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them.

41-07-30. (7-501) Form of negotiation and requirements of "due negotiation".

1. A negotiable document of title running to the order of a named person is negotiated by his endorsement and delivery. After his endorsement in blank or to bearer any person can negotiate it by delivery alone.
2.
 - a. A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer.
 - b. When a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.
3. Negotiation of a negotiable document of title after it has been endorsed to a specified person requires endorsement by the special endorsee as well as delivery.
4. A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.
5. Endorsement of a nonnegotiable document neither makes it negotiable nor adds to the transferee's rights.
6. The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

41-07-31. (7-502) Rights acquired by due negotiation.

1. Subject to the following section and to the provisions of section 41-07-11 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:
 - a. Title to the document;
 - b. Title to the goods;
 - c. All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
 - d. The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or

under this chapter. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any endorser will procure the acceptance of the bailee.

2. Subject to section 41-07-32, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

41-07-32. (7-503) Document of title to goods defeated in certain cases.

1. A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither;
 - a. Delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store, or sell or with power to obtain delivery under this chapter (section 41-07-28) or with power of disposition under this title (sections 41-02-48 and 41-09-40) or other statute or rule of law; nor
 - b. Acquiesced in the procurement by the bailor or his nominee of any document of title.
2. Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.
3. Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with part 4 of this chapter pursuant to its own bill of lading discharges the carrier's obligation to deliver.

41-07-33. (7-504) Rights acquired in the absence of due negotiation - Effect of diversion - Seller's stoppage of delivery.

1. A transferee of a document, whether negotiable or nonnegotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.
2. In the case of a nonnegotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:
 - a. By those creditors of the transferor who could treat the sale as void under section 41-02-47;
 - b. By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or
 - c. As against the bailee by good faith dealings of the bailee with the transferor.
3. A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.
4. Delivery pursuant to a nonnegotiable document may be stopped by a seller under section 41-02-84, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense.

41-07-34. (7-505) Endorser not a guarantor for other parties. The endorsement of a document of title issued by a bailee does not make the endorser liable for any default by the bailee or by previous endorsers.

41-07-35. (7-506) Delivery without endorsement - Right to compel endorsement. The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary endorsement but the transfer becomes a negotiation only as of the time the endorsement is supplied.

41-07-36. (7-507) Warranties on negotiation or transfer of receipt or bill. Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under section 41-07-37, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods:

1. That the document is genuine;

2. That he has no knowledge of any fact which would impair its validity or worth; and
3. That his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

41-07-37. (7-508) Warranties of collecting bank as to documents. A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected.

41-07-38. (7-509) Receipt or bill - When adequate compliance with commercial contract. The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the chapters on sales (chapter 41-02) and on letters of credit (chapter 41-05).

41-07-39. (7-601) Lost and missing documents.

1. If a document has been lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of nonsurrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.
2. A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after the delivery.

41-07-40. (7-602) Attachment of goods covered by a negotiable document. Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee

or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

41-07-41. (7-603) Conflicting claims - Interpleader. If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for nondelivery of the goods, or by original action, whichever is appropriate.

RULES

ARTICLE 69-07

GRAIN WAREHOUSES, GRAIN BUYERS, AND HAY BUYERS

Chapter	
69-07-01	General
69-07-02	Licensing
69-07-03	Records and Receipts
69-07-04	Grain Elevator Weighmasters [Repealed]

CHAPTER 69-07-01

GENERAL

Section	
69-07-01-01	Open Trades
69-07-01-02	Change of Commission Firms [Repealed]
69-07-01-03	Outstanding Storage at License Termination
69-07-01-04	Storage in Another Warehouse
69-07-01-05	Special Bin
69-07-01-06	Procedure for Temporary Closing
69-07-01-07	Modified Business Hours
69-07-01-08	Adequate Bond and Insurance Coverage - Suspension
69-07-01-09	Change in Capacity
69-07-01-10	License Suspension
69-07-01-11	Request to Discontinue Business
69-07-01-12	Assumption of Liability for Transfer of Grain
69-07-01-13	Delivery Policy
69-07-01-14	Grain Buyers License - Processed Grain

69-07-01-01. Open trades. A licensee is prohibited from carrying open trades more than the legitimate hedging needs. Violation of this section may be punishable by revocation of license.

History: Amended effective August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-03, 60-02.1-03

69-07-01-02. Change of commission firms. Repealed effective February 1, 1991.

69-07-01-03. Outstanding storage at license termination. A warehouseman having outstanding storage at the termination of the license period, must procure a license in the usual manner, even though elevator is closed, or will be closed.

General Authority: NDCC 60-02-03

Law Implemented: NDCC 60-02-03

69-07-01-04. Storage in another warehouse. All nontransit grain owned or held by a warehouseman licensed under North Dakota Century Code chapter 60-02 must be held in a licensed and bonded warehouse, either within or outside the state. When grain is held in space that is not licensed by the warehouseman under North Dakota Century Code chapter 60-02, a warehouse document issued for that grain must identify the originating warehouse as the receipt holder. When grain held subject to a warehouse receipt is stored in a warehouse that is not licensed under North Dakota Century Code chapter 60-02, the originating warehouse must increase its bond to provide protection for that grain as well as its own licensed warehouse space.

Daily position records must include inventories held under nonnegotiable warehouse receipts issued by another licensed warehouseman.

History: Amended effective May 1, 1984; February 1, 1994; August 1, 1999.

General Authority: NDCC 60-02-03

Law Implemented: NDCC 60-02-03

69-07-01-05. Special bin. Grain received for special bin storage shall go through the same procedure as cash or other stored grain.

History: Amended effective May 1, 1984.

General Authority: NDCC 60-02-03

Law Implemented: NDCC 60-02-03

69-07-01-06. Procedure for temporary closing. A facility may not be closed for more than fifteen days without the prior commission approval. Notice of the duration of the closing and the name, address, and telephone number of the facility's contact person must be posted in a conspicuous manner at the facility.

History: Amended effective May 1, 1984; February 1, 1994; August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-03, 60-02-39, 60-02.1-03, 60-02.1-25

69-07-01-07. Modified business hours. A facility may not deviate from normal business hours without prior commission approval. Notice of the revised business hours and the name, address, and telephone number of the facility's contact person must be posted in a conspicuous manner at the facility.

History: Effective February 1, 1991; amended effective August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-39, 60-02.1-25

69-07-01-08. Adequate bond and insurance coverage - Suspension. The license of a licensee who fails to maintain adequate insurance and bond coverage will be suspended automatically. The suspended license must be surrendered to the commission and the suspension notice must be posted in a conspicuous manner at the facility, if applicable.

History: Effective February 1, 1991; amended effective August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-09, 60-02-09.1, 60-02-10.1, 60-02-35, 60-02-35.1, 60-02.1-08, 60-02.1-09, 60-02.1-21, 60-02.1-22

69-07-01-09. Change in capacity. A licensee may not change its physical capacity without prior commission approval. A request to change capacity must be in writing and specifically identify the capacity being added or deleted. Deleted capacity must be physically disconnected from other capacity. Added capacity must be properly bonded. Additions not previously licensed must be accompanied by a diagram showing the location and capacity of the space involved.

History: Effective February 1, 1991; amended effective August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-09, 60-02.1-03

69-07-01-10. License suspension. Upon suspension of its license, a licensee must:

1. Notify each receipt holder that its license is suspended, if applicable, and that grain must be removed from the facility or it will be priced and redeemed in cash in accordance with state law.
2. If applicable, keep the commission's suspension notice conspicuously posted in the office window or on the front driveway door of the facility.
3. Surrender the license to the commission.
4. If applicable, not receive additional grain for purchase, storage, shipping, or processing.
5. If applicable, refrain from selling or shipping grain without prior written commission approval.

History: Effective February 1, 1991; amended effective August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-09.1, 60-02-10.1, 60-02-35.1, 60-02.1-09, 60-02.1-11, 60-02.1-22

69-07-01-11. Request to discontinue business. A licensee may not discontinue business without prior written approval from the commission.

History: Effective February 1, 1991; amended effective August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03, 60-03-01.1

Law Implemented: NDCC 60-02-41, 60-02.1-27, 60-03-02

69-07-01-12. Assumption of liability for transfer of grain. A licensee that intends to acquire a facility operated by another licensee and to assume responsibility for grain obligations of the former licensee must notify the commission of the assumption of the liability. The notice must be submitted on a form provided by the commission.

History: Effective February 1, 1991; amended effective August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-40, 60-02.1-26

69-07-01-13. Delivery policy. A warehouseman shall, during July of each year, publish and post in a conspicuous place in each warehouse, the warehouse's policy for delivery of grain to a warehouse receipt holder. The policy must remain in effect at least through the following June and must outline how the warehouseman will charge or compensate receipt holders for differences in quantity, kind, quality, and grade that exist between the grain described in the scale ticket and the grain that is actually delivered back to the receipt holder. A copy of the warehouse's policy for delivery must be provided to the commission as a part of its annual warehouse license application. A copy of the policy must also be attached to each warehouse receipt issued to an owner of grain.

History: Effective February 1, 1991; amended effective August 1, 1999.

General Authority: NDCC 28-32-02, 60-02-03

Law Implemented: NDCC 60-02-17, 60-02-22

69-07-01-14. Grain buyers license – Processed grain. A grain buyers license is not required if a purchaser is acquiring grain that is owned by the licensed entity and that has been:

1. Substantially altered by processing or blending with a nongrain product or;
2. Cleaned and bagged and made ready for consumption.

Any processed commodity will, however, be considered grain and thereby made an asset that is available to the commission in an insolvency proceeding.

History: Effective August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-03, 60-02.1-03

**CHAPTER 69-07-02
LICENSING**

Section

69-07-02-01	License Application
69-07-02-02	Grain Warehouse - Bond Schedule
69-07-02-02.1	Grain Buyer - Bond Schedule
69-07-02-02.2	Hay Buyer - Bond Schedule
69-07-02-03	License Renewal
69-07-02-04	Business Documents – Revisions

69-07-02-01. License application. An application for a license must be submitted on a form provided by the commission. Every business organization or sole proprietor using a trade name other than its given name must be registered and in good standing with the secretary of state. The application must be complete and must include:

1. The required license fee.
2. A surety bond, which must be countersigned by an authorized resident agent unless the bonding company is based in a state having reciprocity with North Dakota.
3. A copy of any receipt or credit-sale contract to be used by the licensee.
4. Certificate of continuous insurance in the required amount.
5. Partnership applicants shall file a copy of their partnership agreement if the partnership is not registered with the secretary of state.

History: Amended effective May 1, 1984; February 1, 1991; August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-07, 60-02.1-07

69-07-02-02. Grain warehouse – Bond schedule. The warehouse bond is determined by the total physical capacity licensed by the licensee in the state. The capacity of each warehouse, bin, annex, or any additional space must be specifically identified. The bond amounts are:

Capacity to 100,000 bushels	\$ 50,000
From 100,001 bushels through 125,000 bushels.....	62,500
From 125,001 bushels through 150,000 bushels.....	75,000

From 150,001 bushels through 175,000 bushels.....	\$ 87,500
From 175,001 bushels through 200,000 bushels.....	100,000
From 200,001 bushels through 225,000 bushels.....	112,500
From 225,001 bushels through 250,000 bushels.....	125,000
From 250,001 bushels through 275,000 bushels.....	137,500
From 275,001 bushels through 300,000 bushels.....	150,000

From 300,001 bushels through 325,000 bushels.....	\$ 162,500
From 325,001 bushels through 350,000 bushels.....	175,000
From 350,001 bushels through 375,000 bushels.....	187,500
From 375,001 bushels through 400,000 bushels.....	200,000

From 400,001 bushels through 425,000 bushels.....	\$ 212,500
From 425,001 bushels through 450,000 bushels.....	225,000
From 450,001 bushels through 475,000 bushels.....	237,500
From 475,001 bushels through 500,000 bushels.....	250,000

A licensee with a capacity in excess of five hundred thousand bushels must furnish additional bond coverage of five thousand dollars for each twenty-five thousand bushels of capacity or fraction thereof.

Unless the commission determines that an increase is necessary to accomplish the purpose of North Dakota Century Code chapter 60-02, the bond of a warehouseman shall not exceed one million five hundred thousand dollars.

History: Amended effective May 1 1984; August 1, 1999.

General Authority: NDCC 60-02-03

Law Implemented: NDCC 60-02-02, 60-02-07, 60-02-09

69-07-02-02.1. Grain buyer – Bond schedule. The grain buyer bond is determined by the three-year rolling average of grain purchased annually in this state by the grain buyer. The bond amounts are:

Up to 100,000 bushels	\$50,000
For each additional 100,000 bushels or fraction thereof in excess of 100,000 and up to 1,000,000	\$20,000
For each additional 100,000 bushels or fraction thereof in excess of 1,000,000	\$5,000

For a new licensee, the first year's bond shall be based on the projected purchase volume and the second year's bond and third year's bond shall be based on the average actual volume according to the above schedule.

Unless the commission determines that an increase is necessary to accomplish the purpose of North Dakota Century Code chapter 60-02.1, the bond of a facility-based grain buyer shall not exceed one million dollars nor shall the bond of a non-facility-based grain buyer exceed one million five hundred thousand dollars.

History: Effective August 1, 1999; amended effective August 1, 2000.

General Authority: NDCC 60-02.1-03

Law Implemented: NDCC 60-02.1-03, 60-02.1-08

69-07-02-02.2. Hay buyer – Bond schedule. The hay buyer bond is determined by the three-year rolling average of hay purchased annually in this state by the hay buyer. The bond amounts are:

Up to 2,500 tons	\$25,000
For each additional 2,500 tons or fraction thereof	\$25,000

Unless the commission determines that an increase is necessary to accomplish the purposes of North Dakota Century Code chapter 60-03, the bond of a hay buyer shall not exceed one million five hundred thousand dollars.

History: Effective August 1, 1999.

General Authority: NDCC 60-03-01.1

Law Implemented: NDCC 60-03-04

69-07-02-03. License renewal. A license is an annual license that expires on July thirty-first. A licensee must submit a renewal application to the commission by July fifteenth on a form that will be provided by the commission. Every business organization or sole proprietor using a trade name must be in good standing with the secretary of state. An application that is not received in a timely manner will result in the automatic discontinuance of business on August first.

History: Effective February 1, 1991; amended effective August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03, 60-03-01.1

Law Implemented: NDCC 60-02-07, 60-02.1-07, 60-03-02

69-07-02-04. Business documents – Revisions. A licensee must promptly notify the commission of a change in ownership, name, corporate structure, or format of any receipt or credit-sale contract.

History: Effective February 1, 1991; amended effective August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-03, 60-02.1-03

CHAPTER 69-07-03 RECORDS AND RECEIPTS

Section

69-07-03-01	Form of Scale Tickets
69-07-03-02	Cross-Referencing of Receipts
69-07-03-03	Storage Receipt - Form Prescribed [Repealed]
69-07-03-04	Records - Filing
69-07-03-05	Certificate of Weight and Grade - Account Sales
69-07-03-06	Credit-Sale Contracts
69-07-03-07	Non-Facility-Based Grain Buyers or Hay Buyers
69-07-03-08	Bean Scale Tickets – Contents
69-07-03-09	Collateral Warehouse Receipts
69-07-03-10	Grain on Hand

69-07-03-01. Form of scale tickets. Scale tickets must be consecutively numbered and issued in consecutive order and must contain the name of the licensee, receiving location, name of the depositor, type of grain, per centum of dockage, test weight, gross weight, tare weight, and net weight.

History: Amended effective May 1, 1984; August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-03, 60-02-11, 60-02.1-03, 60-02.1-12

69-07-03-02. Cross-referencing of receipts. Every account and record relating to grain storage and purchase, including every scale ticket, warehouse receipt, check, and credit-sale contract, must be properly cross-referenced to allow audit identification from delivery to purchase and final payment or redelivery of all grain.

History: Amended effective May 1, 1984; August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-03, 60-02.1-03

69-07-03-03. Storage receipt - Form prescribed. Repealed effective May 1, 1984.

69-07-03-04. Records - Filing. The licensee shall keep in a safe place all records of grain purchased and stored and all receipts and contracts issued and canceled. Such records must be kept current and open for inspection by commission personnel and must be retained for a period of three years. All receipts and contracts must be issued and filed in numerical sequence. The licensee shall provide the necessary assistance required for any examination of the licensee's books and records.

History: Amended effective May 1, 1984; August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-03, 60-02.1-03

69-07-03-05. Certificate of weight and grade - Account sales. The certificate of weights and grades and all account sales of grain shipped must be kept available at all times for local inspection by the public service commission, if necessary.

History: Amended effective August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-03, 60-02.1-03

69-07-03-06. Credit-sale contracts. Unless the licensee has secured independent bond coverage for credit-sale contracts, the following statement or a similar statement approved by the commission must be printed on the contract in a clear and prominent manner directly above the place for the seller to sign:

THIS CONTRACT IS NOT PROTECTED BY BOND COVERAGE IN THE EVENT OF THE BUYER'S INSOLVENCY.

If the licensee has obtained bond coverage in addition to that required by state law and rule and such coverage extends to the benefit of credit-sale contracts, the following statement or a similar statement approved by the commission must be printed on the contract in a clear and prominent manner directly above the place for the seller to sign:

THIS CONTRACT IS NOT PROTECTED BY NORTH DAKOTA STATUTORY BOND COVERAGE IN THE EVENT OF THE BUYER'S INSOLVENCY. HOWEVER, THE BUYER HAS SECURED INDEPENDENT BOND COVERAGE IN THE AMOUNT OF (state amount) FOR THE PROTECTION OF SELLERS UNDER CREDIT-SALE CONTRACTS IN THE EVENT OF THE BUYER'S INSOLVENCY.

A licensee securing independent bond coverage for the protection of sellers under credit-sale contract shall file a copy of such bond with the commission.

History: Effective May 1, 1984; amended effective August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03, 60-03-01.1

Law Implemented: NDCC 60-02, 60-02-19.1, 60-02.1-14, 60-03-04.1

69-07-03-07. Non-facility-based grain buyers or hay buyers. A roving grain buyer or a hay buyer shall issue receipts, certificates, and contracts and maintain records as described in this chapter but is exempt from the rules that apply to physical grain-handling facilities.

History: Effective February 1, 1991; amended effective August 1, 1999.

General Authority: NDCC 60-02.1-03, 60-03-01.1

Law Implemented: NDCC 60-02.1-03, 60-03-03

69-07-03-08. Bean scale tickets – Contents. Scale tickets for dry edible beans must contain the following information:

1. The date and place where the beans were received.
2. The name and address of the owner of the beans.
3. A description of the beans including the kind of beans, foreign material, splits, check seed coats, total pick, moisture, and the gross weight, total dockage, and net weight of the load.
4. The statement: "All storage contracts on dry edible beans terminate on April thirtieth of each year".
5. The statement: "This warehouse is not responsible for returning an identical percentage of check seed coats back to receipt holder in the event of redelivery".
6. A space for comments and other information.

History: Effective February 1, 1991; amended effective August 1, 1999.

General Authority: NDCC 28-32-02, 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-11, 60-02.1-12

69-07-03-09. Collateral warehouse receipts. A warehouseman may not issue a warehouse receipt to secure financing or for other security interests unless the grain represented by that receipt is owned by the warehouse.

History: Effective February 1, 1994.

General Authority: NDCC 60-02-03

Law Implemented: NDCC 60-02-03

69-07-03-10. Grain on hand. A warehouseman must maintain a grain inventory sufficient to cover outstanding scale tickets and warehouse receipts.

History: Effective February 1, 1994; amended effective August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-03, 60-02.1-03

CHAPTER 69-07-04
GRAIN ELEVATOR WEIGHMASTERS
[Repealed effective February 1, 1994]