

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1393

Introduced by

Representatives D. Johnson, Brandenburg, Thomas

Senators Luick, Weber

1 A BILL for an Act to create and enact chapters 4.1-58, 4.1-59, 4.1-61, and 4.1-62 of the North
2 Dakota Century Code, relating to grain and seed warehouses, grain buyers, insolvent grain
3 warehousemen, uniform accounting for public elevators and warehouses, and credit-sale
4 contracts indemnity from title 60; to amend and reenact subsection 4 of section 41-07-10 and
5 section 51-23-04 of the North Dakota Century Code, relating to cross-references to repealed
6 laws; to repeal chapters 60-02, 60-02.1, 60-04, 60-05, and 60-10 of the North Dakota Century
7 Code, relating to grain and seed warehouses, grain buyers, insolvent grain warehousemen,
8 uniform accounting for public elevators and warehouses, and credit-sale contracts indemnity; to
9 provide a penalty; and to provide a continuing appropriation.

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

11 **SECTION 1.** Chapter 4.1-58 of the North Dakota Century Code is created and enacted as
12 follows:

13 **4.1-58-01. Definitions.**

14 In this chapter, unless the context or subject matter otherwise requires:

- 15 1. "Credit-sale contract" means a written contract for the sale of grain under which the
16 sale price is to be paid or may be paid more than thirty days after the delivery or
17 release of the grain for sale and which contains the notice provided in section
18 4.1-58-21. If a part of the sale price of a contract for the sale of grain is to be paid or
19 may be paid more than thirty days after the delivery or release of the grain for sale,
20 only that part of the contract is a credit-sale contract.
- 21 2. "Deferred-payment contract" means a credit-sale contract for which the amount owed
22 for the sale of grain has been established, but the payment is postponed until a later
23 date.

- 1 3. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower,
2 sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa,
3 and any other commercially grown grain or grass seed. "Grain" as defined in this
4 chapter does not include grain or grass seeds owned by or in the possession of the
5 warehouseman which have been cleaned, processed, and specifically identified for an
6 intended use of planting for reproduction and for which a warehouse receipt has not
7 been issued.
- 8 4. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale
9 contract.
- 10 5. "Public warehouse" means an elevator, mill, warehouse, subterminal, grain
11 warehouse, terminal warehouse, or other structure in which grain is received for
12 storing, buying, selling, shipping, or processing for compensation.
- 13 6. "Public warehouseman" means the person operating a public warehouse located or
14 doing business within this state, regardless of whether the owner or operator resides
15 within this state. The term does not include a person permitted to sell seed under
16 chapter 4.1-53, if that person does not store grain for the public and buys grain only for
17 processing and subsequent resale as seed, or an authorized dealer or agent of a seed
18 company holding a permit in accordance with section 4.1-53-43.
- 19 7. "Receipts" means grain warehouse receipts, scale tickets, checks, or other
20 memoranda given by a public warehouseman for, or as evidence of, the receipt,
21 storage, or sale of grain except when the memoranda was received as a result of a
22 credit-sale contract.
- 23 8. "Receiving station" means any facility other than an individually licensed warehouse
24 which is used by a licensed public warehouseman to receive and temporarily store
25 grain before transferring the grain to the warehouseman's primary licensed warehouse
26 location or delivering it directly to market.

27 **4.1-58-02. Duties of the commissioner.**

28 The commissioner shall:

- 29 1. Exercise general supervision of the public warehouses of this state, including the
30 handling, weighing, and storing of grain, and the management of public warehouses.

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

8 **4.1-58-03. Federal licensed inspector and employees.**

9 The commissioner may employ a federal licensed inspector and other employees as
10 necessary to carry out this chapter.

11 **4.1-58-04. Grain marketing - Procedure for resolving disputes.**

- 12 1. If any dispute or disagreement arises between the person receiving and the person
- 13 delivering grain at any public warehouse as to the proper grade, dockage, vomitoxin
- 14 level, moisture content, or protein content of any grain, an average sample of at least
- 15 three pints [1.65 liters] of the grain in dispute may be taken together by both parties
- 16 interested.
- 17 a. The sample must be certified by each party as a true and representative sample
- 18 of the grain in dispute on the day the grain was delivered.
- 19 b. The sample must be forwarded in a suitable container by parcel post or express,
- 20 prepaid with the name and address of both parties for inspection by a federal
- 21 licensed inspector, or a mutually agreed-upon third party, who will examine the
- 22 grain and adjudge what grade, dockage, vomitoxin level, moisture content, or
- 23 protein content the sample of grain is entitled to under the inspection rules and
- 24 grades adopted by the secretary of agriculture of the United States.
- 25 c. The person requesting the inspection service shall pay for the inspection.
- 26 d. If the grain in question is damp, otherwise out of condition, or if moisture content
- 27 is in dispute, the sample must be placed in an airtight container.
- 28 e. Payment for the grain involved in the dispute must be made and accepted on the
- 29 basis of the determination made by the federal licensed inspector or third party.
- 30 f. All other quality factors may also be considered in determining the price of the
- 31 grain.

- 1 g. An appeal of the determination made by a third party other than a federal
2 licensed inspector may be made to a federal licensed inspector.
- 3 h. An appeal of the determination made by a federal licensed inspector may be
4 made as provided under the United States Grain Standards Act [Pub. L. 103-354;
5 108 Stat. 3237; 7 U.S.C. 79(c) and (d)] and under 7 CFR 800.125-800.140.
- 6 i. A person not abiding by a final determination is liable for damage resulting from
7 not abiding by the determination.
- 8 2. If a dispute or disagreement arises between the person delivering grain and the
9 person receiving grain as to the determination of quality factors of grain purchased or
10 delivered for which inspection rules and grades have not been adopted by the
11 secretary of agriculture of the United States, an average sample of at least three pints
12 [1.65 liters] of the grain in dispute may be taken together by the parties interested.
- 13 a. The sample must be certified by each party as a true and representative sample
14 of the grain in dispute on the day the grain was delivered.
- 15 b. If the grain is damp or otherwise out of condition, the sample must be placed in
16 an airtight container.
- 17 c. The sample must be forwarded in a suitable container by parcel post or express,
18 prepaid with the name and address of both parties, for inspection by a federal
19 licensed inspector, or a mutually agreed-upon third party, who may examine the
20 grain and determine the quality factors in dispute.
- 21 d. The person requesting the inspection service shall pay for the inspection.
- 22 e. The determination made by the inspector, or the third party, must be used in the
23 settlement of the dispute.

24 **4.1-58-05. Notice of procedures for resolving disputes over grain.**

25 A public warehouse shall post a notice containing the procedures specified in section
26 4.1-58-04 for resolving disputes. The commissioner shall prescribe the form of the notice and
27 shall provide a copy of the notice to each public warehouse. The public warehouseman shall
28 post the notice in the grain inspection room of the warehouse. The notice must specifically
29 mention the procedure for resolving disputes applies to the grade, dockage, moisture content,
30 and protein content of grain and to the quality factors of grain for which inspection rules and
31 grades have not been adopted by the secretary of agriculture of the United States.

1 **4.1-58-06. Release of records - Confidentiality.**

- 2 1. As a condition of licensure under section 4.1-58-08, an applicant shall agree to provide
3 to the commissioner, upon request, any financial record the commissioner deems
4 relevant for purposes related to:
- 5 a. The issuance or renewal of a public warehouse license; or
6 b. An investigation after issuance or renewal of a public warehouse license.
- 7 2. As a condition of licensure, an applicant shall file a records release with the
8 commissioner, authorizing the commissioner to obtain from any source any financial
9 record the commissioner deems relevant for purposes related to:
- 10 a. The issuance or renewal of a public warehouse license; or
11 b. An investigation after issuance or renewal of a public warehouse license.
- 12 3. Information obtained by the commissioner under this section is confidential and may
13 be provided only:
- 14 a. To federal authorities in accordance with federal law;
15 b. To the attorney general, state agencies, and law enforcement agencies, for use in
16 the pursuit of official duties; and
- 17 c. As directed by an order of a court pursuant to a showing of good cause.

18 **4.1-58-07. Public warehouse license - Financial criteria to be met.**

- 19 1. To be eligible to receive an annual public warehouse license, an applicant shall submit
20 financial documentation to the commissioner verifying the applicant has satisfactory
21 net worth and working capital, as determined by the commissioner.
- 22 2. A licensed public warehouseman or an applicant for initial licensure shall report
23 balance sheets and income statements to the commissioner annually on written
24 application for initial licensure or license renewal if the applicant purchased up to
25 ten million dollars worth of grain during the previous licensing period, or intends to
26 purchase up to ten million dollars worth of grain during the first year of operation.
- 27 3. As a condition of licensure, an applicant shall provide the commissioner, upon request,
28 any financial record or bank verification release the commissioner deems relevant for
29 the purpose of verifying the financial information of an applicant pursuant to the
30 requirements of this section.
- 31 4. As a condition of licensure, a new applicant must:

- 1 a. Pass a background check;
- 2 b. Have a satisfactory credit score, as determined by the commissioner; and
- 3 c. Be a responsible person with a good business reputation, as determined by the
4 commissioner, that:
 - 5 (1) Is in the public warehouse business;
 - 6 (2) Has knowledge of, and experience with, generally accepted grain
7 warehousing and handling practices;
 - 8 (3) Is competent and willing to operate a public warehouse in accordance with
9 state and federal regulations; and
 - 10 (4) Has not committed fraud or a criminal offense indicating a lack of business
11 integrity or honesty that undermines the person's responsibility as a
12 warehouse operator.

13 **4.1-58-08. Public warehouse license - Fee - Posting of license.**

- 14 1. A license must be obtained from the commissioner for each public warehouse in
15 operation in this state. A license issued is for one year and terminates on the thirty-first
16 day of July in the year of expiration. An initial annual license application that becomes
17 effective after June first does not expire until July thirty-first of the following calendar
18 year.
- 19 2. A license may not describe more than one public warehouse nor grant permission to
20 operate a public warehouse other than the one described.
- 21 3. a. The annual license fee for a public warehouse is:
 - 22 (1) Four hundred dollars for a warehouse that purchased up to one million
23 dollars worth of grain during the previous licensing period, or intends to
24 purchase up to one million dollars worth of grain during the first year of
25 operation;
 - 26 (2) Eight hundred dollars for a warehouse that purchased more than one million
27 dollars worth of grain but not more than ten million dollars worth of grain
28 during the previous licensing period, or intends to purchase more than
29 one million dollars worth of grain but not more than ten million dollars worth
30 of grain during the first year of operation; and

1 (3) One thousand two hundred dollars for a warehouse that purchased more
2 than ten million dollars worth of grain during the previous licensing period, or
3 intends to purchase more than ten million dollars worth of grain during the
4 first year of operation.

5 b. An application for an annual license renewal received after July fifteenth must
6 include an additional one hundred dollar fee per warehouse.

7 4. If a public warehouseman operates two or more warehouses in the same city or
8 railroad siding, in conjunction with each other and with the same working force, and
9 keeps one set of books and records for the warehouses, and issues one series of
10 scale tickets, warehouse receipts, checks, and credit-sale contracts for the grain
11 stored and purchased, only one license is required for the operation of all the
12 warehouses. When two or more warehouses are operated under one license, the
13 license fee is based upon the combined value of the grain purchased by the
14 warehouses during the previous licensing period.

15 5. The license must be posted in a conspicuous place in the public warehouse.

16 **4.1-58-09. Warehouseman to operate warehouse owned by another.**

17 A warehouseman may operate under its license a warehouse owned by another person.
18 Storage performed for the person in the entire licensed warehouse is excepted from the storage
19 rate and discrimination provisions contained in sections 4.1-58-19 and 4.1-58-22 to the extent of
20 the person's owned capacity in the warehouse.

21 **4.1-58-10. Receiving stations.**

22 1. A licensed public warehouseman may establish a receiving station without a separate
23 warehouse license for that facility if:
24 a. The station is colocated with another licensed public warehouse, the operator of
25 which takes delivery of the grain on behalf of the warehouseman that established
26 the receiving station.
27 b. The storage space used by the receiving station is used solely by the receiving
28 station and is not licensed as part of the warehouse located at that site.
29 c. The grain taken in by the receiving station is not commingled with other grain at
30 that site.

- 1 d. The warehouseman establishing the station requests and receives permission
2 from the commissioner to increase licensed capacity to include the space to be
3 used at the receiving station.
- 4 e. Grain received at the receiving station is recorded on scale tickets issued by the
5 warehouseman that established the station and is covered by that
6 warehouseman's bond.
- 7 f. Warehouse-receipted grain received at the receiving station is available for
8 redelivery to the receipt holder at that location even if the station has been closed.
9 A charge for redelivery must be stated in the warehouseman's redelivery policy.
- 10 2. The storage space used by a receiving station need not be physically disconnected
11 from the facilities of the other licensed warehouse located at that site.

12 **4.1-58-11. Bond filed by public warehouseman.**

- 13 1. Before a license is effective for a public warehouseman, the applicant for the license
14 shall file a bond with the commissioner which must:
- 15 a. Be in a sum not less than one hundred thousand dollars for any one warehouse.
- 16 b. Be continuous, unless the corporate surety by certified mail notifies the licensee
17 and the commissioner the surety bond will be canceled ninety days after receipt
18 of the notice of cancellation.
- 19 c. Run to this state for the benefit of all persons storing or selling grain in that
20 warehouse.
- 21 d. Be conditioned:
- 22 (1) For the faithful performance of the licensee's duties as a public
23 warehouseman.
- 24 (2) For compliance with the provisions of law and the rules of the commissioner
25 relating to the storage and purchase of grain by the warehouseman.
- 26 e. Specify the location of each public warehouse intended to be covered by the
27 bond.
- 28 f. Be for the specific purpose of:
- 29 (1) Protecting the holders of outstanding receipts.
- 30 (2) Covering the costs incurred by the commissioner in the administration of
31 this chapter in the event of the licensee's insolvency.

- 1 g. Not accrue to the benefit of any person entering a credit-sale contract with a
2 public warehouseman.
- 3 2. The aggregate liability of the surety under a bond does not accumulate for each
4 successive annual license renewal period during which the bond is in force but, for
5 losses during an annual license renewal period, is limited in the aggregate to the bond
6 amount stated or changed by appropriate endorsement or rider.
- 7 3. The commissioner shall set the amount of the bond and may require an increase in
8 the amount of a bond as the commissioner deems necessary to accomplish the
9 purposes of this section. The amount of the bond must be:
- 10 a. Based on the dollar value of the grain purchased; and
11 b. Calculated using the value of the amount of grain intended to be purchased by a
12 new licensee during the first year of operation, or the three-year rolling annual
13 average of the value of grain purchased at the time of license renewal.
- 14 4. The surety on the bond must be a corporate surety company, approved by the
15 commissioner, and authorized to do business within the state. The commissioner may
16 accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu
17 of a surety bond if, in the commissioner's judgment, the cash, negotiable instrument,
18 or personal surety bond properly will protect the holders of outstanding receipts.
- 19 5. One bond only may be given for a line of elevators, mills, or warehouses, owned,
20 controlled, or operated by one individual, firm, corporation, or limited liability company,
21 and the bond must be construed to cover the elevators, mills, or warehouses, as a
22 whole and not a specific amount for each.

23 **4.1-58-12. Bond cancellation - Release of surety.**

- 24 1. The surety on a bond is released from all future liability accruing on the bond after the
25 expiration of ninety days from the date of receipt by the commissioner of notice of
26 cancellation by the surety or on a later date specified by the surety. This provision
27 does not operate to relieve, release, or discharge the surety from any liability already
28 accrued or which accrues before the expiration of the ninety-day period.
- 29 2. Unless the warehouseman files a new bond at least thirty days before liability ceases,
30 the commissioner, without hearing, immediately shall suspend the warehouseman's

1 license and the suspension may not be removed until a new bond has been filed and
2 approved by the commissioner.

3 3. If a license is suspended under this section, the warehouseman shall give notice of the
4 suspension to each receipt holder having grain stored in the warehouse.

5 4. The warehouseman shall notify each receipt holder having grain stored in the
6 warehouse that the grain must be removed from the warehouse or the grain will be
7 priced and redeemed in cash in accordance with section 4.1-58-40.

8 **4.1-58-13. Bond discount.**

9 1. The licensee may request a bond reduction based upon the licensee's conversion
10 policy.

11 a. The required bond is reduced by thirty percent for a licensee that establishes and
12 follows a conversion policy approved by the commissioner of ten days or fewer.

13 b. The required bond is reduced by fifteen percent for a licensee that establishes
14 and follows a conversion policy approved by the commissioner of eleven to
15 twenty-one days.

16 2. A reduction under this section may not be used to reduce the required bond below the
17 minimum bond set in law.

18 **4.1-58-14. Revocation and suspension.**

19 1. Except as provided in subsection 2, the commissioner may suspend or revoke the
20 license of a warehouseman for cause upon notice and hearing.

21 2. Notwithstanding any other provision of this chapter, the commissioner immediately
22 shall suspend the license of a warehouseman for failure at any time to have or to
23 maintain either a bond or insurance policy in the amount and type required.

24 3. During a license suspension, the warehouseman, upon the commissioner's approval,
25 may operate the warehouse and purchase or redeliver grain previously received, but
26 may not receive additional grain for purchase, storage, shipping, or processing. The
27 warehouseman may sell grain only with the prior approval of the commissioner.

28 **4.1-58-15. Scale ticket - Contents - Conversion.**

29 1. Every public warehouseman, upon receiving grain into the warehouse, shall issue a
30 uniform scale ticket for each load of grain received.

- 1 a. The scale tickets must be numbered consecutively, and one copy of each ticket
2 must be retained and remain as a permanent record.
- 3 b. The original ticket must be delivered to the individual from which the grain is
4 received, upon receipt of each load of grain.
- 5 c. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale
6 contracts, or warehouse receipts, within thirty days after the grain is delivered to
7 the warehouse.
- 8 2. This chapter does not require a warehouseman to receive, store, or purchase grain. A
9 warehouseman shall publish and post, in a conspicuous place in the warehouse, a
10 publication identifying whether storage will be available to patrons or whether grain will
11 be accepted via cash or a credit-sale contract arrangement.
- 12 3. A producer that fails to convert a scale ticket in accordance with subsection 1 forfeits
13 any trust fund or credit-sale contract indemnity fund protection provided under sections
14 4.1-58-11, 4.1-58-21, and 4.1-58-45.

15 **4.1-58-16. Purchase by warehouseman - Form of receipt.**

- 16 1. A warehouseman may print on each warehouse receipt issued by the warehouseman
17 a receipt executed by the owner for use if the grain represented on the receipt is
18 purchased by the warehouseman. The warehouseman shall record the purchase, as
19 to the amount paid per bushel, on the stub record or copy of the warehouseman's
20 warehouse receipt books. The receipt must be in substantially the following form:

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

26 Dated _____, _____. Signed _____ Owner.

- 27 2. This section does not affect in any manner the conditions of the storage contract
28 specified in sections 4.1-58-19 and 4.1-58-20.

29 **4.1-58-17. Warehouse receipts - Copy.**

- 30 1. A warehouseman shall provide a stub record or copy of each warehouse receipt
31 issued by the warehouseman, showing:

- 1 a. The serial number and date of receipt.
- 2 b. The kind and grade of grain.
- 3 c. The dockage and net weight of the grain.
- 4 2. The warehouseman shall retain possession of the record or copy for inspection by the
- 5 commissioner and others properly interested.

6 **4.1-58-18. Warehouse receipt - Contents and provisions.**

7 A warehouseman shall provide a warehouse receipt that must:

- 8 1. Be issued only upon the actual delivery of grain to the warehouse for storage.
- 9 2. Contain the following provisions:
 - 10 a. The place and date the grain was received;
 - 11 b. The name and address of the owner of the grain;
 - 12 c. The kind and grade of the grain according to the official standards established by
 - 13 the secretary of agriculture of the United States, except that receipts issued for
 - 14 dry edible beans must reference, in lieu of a grade designation, the number of the
 - 15 scale tickets containing a description of the beans, including the percentage of
 - 16 foreign material, splits, check seed coats, total pick, and moisture; and
 - 17 d. The gross weight, dockage, and net weight of the grain according to this state's
 - 18 standard weight.
- 19 3. Be numbered consecutively, and no two receipts bearing the same number and series
- 20 may be issued during the same year.
- 21 4. Not be altered by any warehouseman by the insertion in the receipt of any language
- 22 limiting or modifying its liability as imposed by the law.
- 23 5. Contain, either on its face or reverse side, the warehouse and storage contract
- 24 provided for in section 4.1-58-19.
- 25 6. Have printed upon the receipt the following words: "All storage contracts on grain in
- 26 store at public grain warehouses terminate on _____, as identified in the
- 27 publication required by section 4.1-58-19. If storage charges and warehouseman's
- 28 advances remain unpaid at the time of termination, the warehouseman may sell a
- 29 sufficient amount of grain to pay the charges and advances. The receipt holder shall
- 30 surrender the receipt to the issuing warehouseman for settlement."

1 **4.1-58-19. Warehouse and storage contract - Storage rates - Terminal delivery.**

2 1. A warehouse receipt must contain, either on its face or reverse side, the following
3 warehouse and storage contract:

4 a. This grain is received, insured, and stored subject to the laws and rules of the
5 state of North Dakota, the terms of this contract, and the charges and conditions
6 stated herein and as filed with the North Dakota agriculture commissioner. Upon
7 surrender of this receipt and payment or tender of all applicable charges, the
8 amount, kind, and grade of grain identified in this receipt will be delivered to the
9 person named above or the person's order as rapidly as due diligence, care, and
10 prudence will permit. At the option of the holder of this receipt, the amount, kind,
11 and grade of grain for which this receipt is issued, upon demand, must be
12 delivered back to the holder at any terminal point customarily shipped to, or at the
13 place where received, upon the payment of any charges for receiving, handling,
14 storage, and insurance and in case of terminal delivery, the payment in addition
15 to the above of the regular freight charges on the gross amount called for by this
16 ticket or in lieu thereof, a receipt issued by a bonded warehouse or elevator
17 company doing business at the terminal point. This receipt does not require the
18 delivery of the identical grain specified herein, but an equal amount of grain of the
19 same kind and grade must be delivered.

20 2. A warehouseman shall publish and post, in a conspicuous place in its warehouse, the
21 fees that will be assessed for receiving, storing, processing, or redelivering grain and
22 the termination date of its warehouse receipts. This publication must be filed with the
23 commissioner as a part of the warehouse license process or annual renewal. The fees
24 and termination date must be stated on the warehouse receipt issued for the grain.
25 The fees or termination date may be changed upon filing a revised publication with the
26 commissioner.

27 **4.1-58-20. Covenant against liens may be inserted in warehouse receipt.**

28 A public warehouseman also may insert in the warehouse receipt the following provision:

29 If any of the grain embraced in this receipt proves to be covered by a chattel mortgage or
30 other lien, or the partial or absolute title proves to be in someone other than the person to whom
31 this receipt was issued, the same, if discovered before the delivery of the grain, is sufficient

1 reason for the refusal to deliver to the holder of the receipt, or if discovered after the delivery of
2 the grain, the delivery is deemed an additional delivery for which the holder of this receipt, to
3 whom the delivery is made, is accountable.

4 **4.1-58-21. Credit-sale contracts.**

- 5 1. A warehouseman may not purchase grain by a credit-sale contract except as provided
6 in this section. All credit-sale contracts must be in writing and must be consecutively
7 numbered when printing the contract. The warehouseman shall maintain an accurate
8 record of all credit-sale contract numbers, including the disposition of each numbered
9 form, whether by execution, destruction, or otherwise. Each credit-sale contract must
10 contain or provide for:
- 11 a. The seller's name and address.
 - 12 b. The conditions of delivery.
 - 13 c. The amount and kind of grain delivered.
 - 14 d. The price per unit or basis of value.
 - 15 e. The date payment is to be made.
 - 16 f. The duration of the credit-sale contract.
 - 17 g. Notice in a clear and prominent manner that the sale is not protected by the bond
18 coverage provided for in section 4.1-58-11. However, if the warehouseman has
19 obtained bond coverage in addition to that required by section 4.1-58-11 and that
20 coverage extends to the benefit of credit-sale contracts, the warehouseman may
21 state that in the credit-sale contract along with the extent of the coverage.
- 22 2. The contract must be signed by both parties and executed in duplicate. An electronic
23 signature satisfies the requirement. An unsigned contract must be considered an
24 unconverted scale ticket in accordance with section 4.1-58-15. The warehouseman
25 shall retain one copy and deliver one copy to the seller. Upon revocation, termination,
26 or cancellation of a warehouseman's license, the payment date for all credit-sale
27 contracts, at the seller's option, must be advanced to a date not later than thirty days
28 after the effective date of the revocation, termination, or cancellation, and the
29 purchase price for all unpriced grain must be determined as of the effective date of
30 revocation, termination, or cancellation in accordance with all other provisions of the

1 contract. When a public warehouse is transferred under this chapter, credit-sale
2 contracts may be assigned to another licensed public warehouseman.

3 3. A warehouseman that uses deferred-payment contracts shall inform producers of bond
4 protection.

5 **4.1-58-22. Discrimination by public warehouseman prohibited - Posting prices.**

6 1. A public warehouseman may not discriminate:

7 a. In the buying, selling, receiving, and handling of grain or in the charges made or
8 the service rendered to owners of stored grain;

9 b. In the receiving of grain offered for sale or storage;

10 c. In regard to the persons offering grain for sale or storage; or

11 d. Between points or stations except as the marketing factors or transportation
12 costs or grain quality premiums may warrant.

13 2. A public warehouseman is not required to receive for storage any grain that is heating
14 or otherwise out of condition. Storing grain free of charge is prohibited except as
15 prescribed by law. A warehouseman shall post grain prices paid in a conspicuous
16 place in the office or driveway of the warehouseman's place of business.

17 **4.1-58-23. Issuance of informal memoranda forbidden - Penalty.**

18 A warehouseman that fails to issue a receipt, as is provided in sections 4.1-58-16 and
19 4.1-58-17, or issues slips, memoranda, or any other form of receipt embracing a different
20 warehouse or storage contract than is provided for specifically in this chapter, is guilty of a
21 class A misdemeanor.

22 **4.1-58-24. Liability of warehouseman.**

23 A public warehouseman is liable to the owner for the delivery of the kind, grade, quality, and
24 quantity of grain called for by the warehouse receipt. Unless otherwise agreed, the value of any
25 difference in kind, grade, quality, and quantity must be settled at the price on the local market on
26 the day the warehouseman receives written request for delivery. The warehouseman may
27 withhold from delivery a sufficient quantity of grain, based upon the local market price, to satisfy
28 the value of any difference in kind, grade, or quality.

29 **4.1-58-25. Records to be kept by public warehouseman.**

30 1. A public warehouseman shall keep a record of all grain received, stored, and shipped,
31 stating the:

- 1 a. Weight.
- 2 b. Grade.
- 3 c. Dockage for dirt or other causes.
- 4 d. Name of owner.
- 5 e. Price paid.
- 6 f. Storage charge collected.
- 7 2. A warehouseman with a principal office or headquarters located outside this state shall
- 8 make available, if requested, all books, documents, and records relevant to a
- 9 warehouse in this state for inspection during ordinary business hours at any of the
- 10 warehouseman's warehouses located in this state or other mutually acceptable place.

11 **4.1-58-26. Reports to be made by public warehouseman - Confidential information -**
12 **Penalty for failure.**

- 13 1. Each licensed and bonded public warehouseman shall:
- 14 a. Prepare for each month a report giving facts and information called for on the
- 15 form of report prepared by the commissioner. The report must contain or be
- 16 verified by a written declaration the report is made under the penalties of perjury.
- 17 The report may be called for more frequently if the commissioner deems
- 18 necessary. Information pertaining to the volume of grain handled is a confidential
- 19 trade secret and is not a public record. The commissioner may make the
- 20 information available for use by other governmental entities, but the
- 21 commissioner may not release the information in a manner that jeopardizes the
- 22 confidentiality of individual licensees.
- 23 b. File the report with the commissioner not later than the last day of the following
- 24 month, and failure to file this report promptly is cause for revoking the warehouse
- 25 license after due notice and hearing.
- 26 c. Keep a separate account of the grain business, if the warehouseman is engaged
- 27 in handling or selling any other commodity, and under no circumstances may the
- 28 grain account and other accounts be mixed.
- 29 d. Submit additional information requested by the commissioner pursuant to a
- 30 report or an inspection within five business days.

1 2. The commissioner may refuse to renew a license to any public warehouseman that
2 fails to make a required report.

3 **4.1-58-27. Bailment not a sale.**

4 When grain is delivered to any public warehouse and an unconverted scale ticket or a
5 warehouse receipt is issued, the delivery is a bailment and not a sale of the grain delivered. The
6 grain delivered may not be liable to seizure upon process of a court in an action against the
7 bailee, except in an action by an owner of the unconverted scale ticket or warehouse receipt to
8 enforce the terms of the delivery or obtain redelivery of the delivered grain. In the event of the
9 failure or insolvency of the warehouseman, all the grain in the warehouse, whether the grain is
10 stored or not, first must be applied at all times to the satisfaction of receipts issued by the
11 warehouseman.

12 **4.1-58-28. Receiptholder's lien.**

13 Grain contained in a warehouse, including grain owned by the warehouseman, is subject to
14 a first priority lien for outstanding receiptholders storing, selling, or depositing grain in the
15 warehouse. The lien created under this section is preferred to any lien or security interest for
16 any creditor of the warehouseman regardless of the time when the creditor's lien or security
17 interest attached to the grain. Notice of the lien created under this section need not be filed to
18 perfect the lien. The lien created by this section is discharged as to grain sold by the
19 warehouseman to a buyer in the ordinary course of business. The sale does not discharge the
20 lien for an individual receiptholder in the remaining grain in the warehouse.

21 **4.1-58-29. Standard weights to be used - Exception.**

22 A person purchasing, selling, or storing grain in a public warehouse in this state may not
23 use any measure for the grain other than the standard bushel, and no number of pounds may
24 be used or called a bushel other than the number of pounds provided by law as the standard
25 weight of the kind of grain in question, except during the months of October and November, not
26 exceeding eighty-two pounds [37.19 kilograms], and during the months of December and
27 January, not exceeding seventy-six pounds [34.47 kilograms], may be used as the standard
28 weight per bushel of new ear corn.

29 **4.1-58-30. Federal grades to control - Grades to be posted.**

30 All public warehousemen shall purchase and store grain except dry edible beans in
31 accordance with the official grades established by the secretary of agriculture of the United

1 States, except as otherwise provided in rules and regulations applicable thereto adopted by
2 federal officials pursuant to law.

3 1. Public warehousemen shall post in a conspicuous place in the public warehousemen's
4 warehouse the official grades established and also any change that may be made.

5 2. Warehousemen of dry edible beans shall purchase, store, and deliver beans in
6 accordance with the policy of the warehousemen which must be filed with the
7 commissioner and posted in a conspicuous place in the warehouse of the public
8 warehousemen.

9 3. Other grading standards may be used if mutually agreed to in writing by the
10 warehouseman and the owner of the grain. However, the owner may demand the use
11 of federal grading standards.

12 4. The commissioner, after a hearing, may prohibit the use of nonfederal grades.

13 **4.1-58-31. Grading of grain - Penalty.**

14 1. A public warehouseman before testing for grade any grain handled by the
15 warehouseman shall remove and make due allowance for any dockage of the grain
16 made by reason of the presence of straw, weed seeds, dirt, or any other foreign
17 matter.

18 2. A public warehouseman that violates this section is guilty of a class B misdemeanor.

19 **4.1-58-32. Termination of public grain warehouse storage contracts - Notice to**
20 **receptholder.**

21 1. A storage contract terminates on the date identified in the publication required by
22 section 4.1-58-19. If a different termination date is not identified in the publication, a
23 storage contract on grain in a public grain warehouse terminates on June thirtieth of
24 each year, except for a storage contract on dry edible beans which terminates on April
25 thirtieth of each year.

26 2. Storage of grain in a public grain warehouse may be terminated by the receptholder at
27 any time before the applicable date by the payment of all legal charges and the
28 surrender of the warehouse receipt, with a demand for delivery of the grain in storage,
29 or notice to the public warehouseman to sell the stored grain.

30 3. Upon the expiration of the storage contract, the warehouseman is not obligated to
31 renew the storage contract.

1 4. At least thirty days before the termination date of a storage contract, the public
2 warehouseman shall notify the receiptholder by mail of the warehouseman's intention
3 to terminate the storage contract on the date identified in the storage contract, unless
4 the receiptholder, before that time, demands redelivery, authorizes sale, extends the
5 storage contract, or enters a new contract with the public warehouseman for
6 restorage. Failure to notify the receiptholder, as required by this section, results in the
7 forfeiture of storage charges accrued for the grain during the previous twelve months.

8 5. In the absence of a demand for delivery, an order to sell, or an agreement between the
9 public warehouseman and the receiptholder for storage after the termination date of
10 the storage contract, the warehouseman, upon the expiration of the storage contract,
11 may sell at the local market price on the close of business on that day, all stored grain
12 of the receiptholder and tender to the receiptholder the proceeds of the sale, less
13 accrued storage charges and the public warehouseman's advances upon any
14 previous storage contract of the receiptholder.

15 **4.1-58-33. Reissue warehouse receipts - Provisions.**

16 Upon payment of all legal accrued charges and the surrender to the warehouseman of a
17 receipt, if the receiptholder and the warehouseman agree to continue the storage contract, the
18 warehouseman may extend the storage contract or issue a new warehouse receipt to the owner
19 and cancel the former receipt by endorsing on the receipt the words: "Canceled by the issuance
20 of warehouse receipt no. _____", inserting the number of the reissue warehouse receipt
21 thereafter, and the holder's name must be signed thereto by the holder or by the holder's
22 authorized agent. The reissue warehouse receipt must be designated by stamping on the
23 receipt: "Reissue of warehouse receipt no. _____".

24 **4.1-58-34. Delivery of grain - Demand terminates storage charge.**

25 On the return and surrender of any receipt and the payment of all lawful charges, the grain
26 represented on the receipt must be deliverable to the owner and is not subject to any further
27 charge for storage after demand for delivery is made and proper facilities for receiving or
28 shipping the grain have been provided. The owner of the receipt shall order the receptacle in
29 which the grain covered by the owner's receipt is to be transported, and the grain must be
30 delivered when the ordered receptacle is in proper condition for loading and is placed at the
31 warehouse. The licensee may not assess receiving or redelivery fees on the grain redelivered

1 during a suspension, following a revocation, or when the owner of the grain is taking redelivery
2 because the licensee is unable to pay for the grain.

3 **4.1-58-35. Grain to be kept insured for benefit of owner by warehouseman.**

4 A public warehouseman license is not effective unless all grain in storage or on deposit in
5 the warehouse is kept fully insured at the expense of the warehouseman for the benefit of the
6 owner at the current market value of the grain against loss by fire, lightning, internal explosion,
7 windstorm, cyclone, tornado, and other risks of direct physical loss as provided by the insurer in
8 a policy approved by the insurance commissioner. An insurance policy covering grain in a public
9 warehouse may not be transferred or assigned to any person for any purpose, except for grain
10 that is not on warehouse receipt or deposit. The insurance policy must be continuous and may
11 only be canceled in accordance with section 4.1-58-36.

12 **4.1-58-36. Insurance - Cancellation - Suspension of license.**

13 An insurance company shall give at least ten days' notice to the commissioner and the
14 insured by certified mail return receipt requested before cancellation of an insurance policy
15 required under section 4.1-58-35. The warehouseman shall notify each receiptholder having
16 grain stored in the warehouse the grain must be removed from the warehouse or the grain will
17 be priced and redeemed in cash in accordance with section 4.1-58-40.

18 **4.1-58-37. Destruction of grain in public warehouse - First lien by holder of**
19 **outstanding receipt.**

20 The holder of an unconverted scale ticket or warehouse receipt issued by any public
21 warehouseman has a first lien, to the extent of the value of the grain when lost at the place
22 where held, on all insurance of the warehouse for any loss sustained by the receiptholder, on
23 account of the loss of the grain by fire, tornado, or any other cause covered by the insurance
24 policy.

25 **4.1-58-38. Refund of license fee by commissioner.**

26 If requested in writing, the commissioner shall refund the license fee of a public warehouse,
27 or so much as in the commissioner's judgment is just and reasonable, if satisfactory proof is
28 furnished the warehouse has been transferred to some other person, and the new owner has
29 obtained a license for the same warehouse for the unexpired period for which the original
30 license was issued. If a warehouse is destroyed by fire or other cause, the license fee may be
31 prorated as the commissioner may determine.

1 **4.1-58-39. Transfer of warehouse - Redemption of receipts.**

2 1. If a public warehouseman desires to transfer a warehouse, either by sale or lease to
3 any other person, the warehouseman shall:

4 a. Notify the commissioner of the warehouseman's intention to transfer the
5 warehouse, giving the name and address of the proposed lessee or purchaser.

6 b. Furnish a statement of all proper claims that may be filed or pending against the
7 warehouseman pertaining to the storage, inspection, and marketing of grain, with
8 a statement of:

9 (1) The number of bushels of grain of each kind and grade in store in the
10 warehouse;

11 (2) The number and amount of receipts outstanding; and

12 (3) The names and addresses of the receiptholders.

13 c. Serve notice by registered mail, at least thirty days before the transfer, upon all
14 receiptholders having claims against the warehouse to call for delivery of the
15 grain covered by the receipts, and to pay all storage charges due, the
16 warehouseman to make no charge for redelivery. The commissioner may waive
17 the thirty-day notice period upon receipt of written consent of all receiptholders.

18 d. Transfer all stored grain undelivered at the expiration of the thirty-day period to
19 the warehouseman's successor, if licensed, or to the nearest licensed warehouse
20 for restorage, taking receipts for the restorage for the owner of the grain
21 transferred.

22 e. Surrender to the commissioner the warehouseman's license for cancellation, at
23 which time the proposed lessee or purchaser shall file in due form for a new
24 license and tender a new bond for review by the commissioner, at which time, the
25 commissioner, first being duly satisfied all the outstanding receipts have been
26 redeemed, or that the redemption of all outstanding receipts has been provided
27 for, the commissioner may permit a new license to become effective for the
28 lessee or purchaser.

29 2. A sale, lease, or transfer of any warehouse may not be recognized by the
30 commissioner except when made in accordance with this section.

1 **4.1-58-40. Going out of business - Redemption of receipts.**

- 2 1. If a public warehouseman ceases business through the destruction of a warehouse by
3 fire or other cause, or through insolvency, the warehouseman shall redeem all
4 outstanding unconverted scale tickets or warehouse receipts at the price prevailing on
5 the date the warehouse was destroyed or closed because of insolvency. The holder of
6 the receipts, upon due notice, shall accept this price and surrender the receipts.
- 7 2. A public warehouseman that voluntarily ceases business or fails to renew an existing
8 warehouse license or has the warehouse license revoked shall notify the
9 commissioner and all outstanding receiptholders of the closing and redeem all
10 outstanding unconverted scale tickets or warehouse receipts at the price prevailing on
11 the date the warehouse closed or at the option of the owner of the receipt redeliver the
12 kind, grade, and quantity of grain called for by the unconverted scale ticket or
13 warehouse receipt.
- 14 3. On commingled grain the value of over and under deliveries in quantity, grade, and
15 protein must be settled in cash and priced on the market on the day of closing.

16 **4.1-58-41. Cease and desist.**

17 If a warehouseman engages in an activity or practice contrary to this chapter or related
18 rules, the commissioner, upon the commissioner's own motion without complaint, with or without
19 hearing, may order the warehouseman to cease and desist from the activity until further order of
20 the commissioner. An order may include any corrective action up to and including license
21 suspensions. A cease and desist order must be accompanied by a notice of opportunity to be
22 heard on the order within fifteen days of the issuance of the order.

23 **4.1-58-42. Agricultural contracts - Mediation or arbitration.**

24 If a written contract for the sale of grain does not contain provisions to settle disagreements
25 concerning factors not governed by section 4.1-58-04, the parties shall attempt to resolve the
26 disagreements through mediation or arbitration.

27 **4.1-58-43. Licensed warehouse capacity and condominium storage.**

- 28 1. Unless an entire warehouse facility is used for nonpublic purposes, all physically
29 connected portions of the facility must be licensed in accordance with this chapter.
- 30 2. The warehouseman shall issue receipt memoranda for all grain received.

1 3. Facilities that are physically connected to the licensed warehouse may be sold under a
2 condominium arrangement or leased to other entities for nonpublic use and sales and
3 lease agreements must be based on the capacity of the bins involved and not on the
4 number of bushels held in the space.

5 4. The licensee shall provide contents insurance and bond coverage for the space.

6 5. If a licensee becomes insolvent, the contents of the space must be considered an
7 asset to the trust fund established under this chapter and owners and lessees are
8 entitled to trust fund protection in a manner equal to all other valid grain
9 receptholders.

10 **4.1-58-44. Insolvency of warehouseman.**

11 A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper written
12 demand, including electronic communication, to pay for grain purchased or marketed by the
13 licensee or to make redelivery or payment for grain stored.

14 **4.1-58-45. Trust fund established - Trustee.**

15 1. Upon the insolvency of a warehouseman, a trust fund must be established:

16 a. For the benefit of noncredit-sale receptholders of the insolvent warehouseman,
17 other than those that have waived their rights as beneficiaries of the trust fund in
18 accordance with section 4.1-58-15; and

19 b. To pay the costs incurred by the commissioner in the administration of this
20 chapter.

21 2. The trust fund consists of the following:

22 a. The grain in the warehouse of the insolvent warehouseman or the proceeds as
23 obtained through the sale of the grain;

24 b. The proceeds, including accounts receivable, from any grain sold from the time of
25 the filing of the claim that precipitated an insolvency until the commissioner is
26 appointed trustee;

27 c. The proceeds of insurance policies upon grain destroyed in the elevator;

28 d. The claims for relief, and proceeds from the claims for relief, for damages upon
29 any bond given by the warehouseman to ensure faithful performance of the
30 duties of a warehouseman;

- 1 e. The claims for relief, and proceeds from the claims for relief, for the conversion of
- 2 any grain stored in the warehouse;
- 3 f. Unencumbered accounts receivable for grain sold before the filing of the claim
- 4 that precipitated an insolvency;
- 5 g. Unencumbered equity in grain hedging accounts; and
- 6 h. Unencumbered grain product assets.
- 7 3. Upon the insolvency of a warehouseman, the commissioner shall act as trustee of the
- 8 trust fund.

9 **4.1-58-46. Possession of grain.**

10 Upon the commissioner's appointment, the commissioner shall seek possession of the
11 grain to be included in the trust fund. Upon the commissioner's possession of any grain in the
12 warehouse, the commissioner shall sell the grain and apply the proceeds to the trust fund.

13 **4.1-58-47. Joinder of surety - Deposit of proceeds.**

14 The surety on the warehouseman's bond must be joined as a party to the insolvency
15 proceeding upon a motion by the commissioner if the commissioner believes proceeds from the
16 warehouseman's bond may be needed to redeem outstanding receipts issued by the
17 warehouseman. If it appears in the best interests of the receiptholders, the commissioner may
18 order the surety to deposit the penal sum of the bond, or so much of the sum as may be
19 deemed necessary, into the trustee's trust account pending a final determination of the surety's
20 liability under the bond.

21 **4.1-58-48. Notice to receiptholders and credit-sale contract claimants.**

- 22 1. Upon the commissioner's appointment, the commissioner may take possession of
- 23 relevant books and records of the warehouseman.
- 24 2. The commissioner shall cause a notice of the commissioner's appointment to be
- 25 published once each week for two consecutive weeks in a newspaper in the county in
- 26 which the warehouse is located and may notify by ordinary mail the holders of record
- 27 of outstanding receipts and those that are potential credit-sale contract claimants, as
- 28 shown by the warehouseman's records.
- 29 3. The notices must require outstanding receiptholders and credit-sale contract claimants
- 30 to file claims against the warehouseman with the commissioner along with the

1 receipts, contracts, or any other evidence of the claims as required by the
2 commissioner.

3 4. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim
4 within forty-five days after the last publication of the notice or a longer time as
5 prescribed by the commissioner, the commissioner is relieved of further duty or action
6 under this chapter on behalf of the receiptholder or credit-sale contract claimant and
7 the receiptholder or credit-sale contract claimant may be barred from payment for any
8 amount due.

9 5. Outstanding receiptholders and credit-sale contract claimants are not parties to the
10 insolvency action unless admitted by the court upon a motion for intervention.

11 **4.1-58-49. Remedy of receiptholders.**

12 A receiptholder does not have a separate claim for relief upon the warehouseman's bond,
13 for insurance, against any person converting grain, nor against any other receiptholder, except
14 through the trustee, unless, upon demand of five or more receiptholders, the commissioner fails
15 or refuses to apply for the commissioner's own appointment. This chapter does not prohibit or
16 prevent a receiptholder, either individually or with other receiptholders, from pursuing
17 concurrently other remedies against the person or property of the warehouseman, for the
18 whole, or any deficiency occurring in the redemption, of the receipts.

19 **4.1-58-50. Commissioner to marshal trust assets.**

20 1. Upon the commissioner's appointment, the commissioner may maintain suits at law or
21 in equity, or any special proceeding, in the name of this state, upon the
22 commissioner's own relation, but for the benefit of all receiptholders against:
23 a. The insurers of grain;
24 b. The warehouseman's bond;
25 c. A person that may have converted any grain; or
26 d. A receiptholder that received more than the receiptholder's just and pro rata
27 share of grain, for the purpose of marshaling all trust fund assets and distributing
28 the same among the receiptholders. The commissioner shall seek possession of
29 any grain in the warehouse before recourse is had against the insurers of grain,
30 and the remedy against the insurers of grain must be exhausted before recourse
31 is had against the bond, and against the bond before recourse is had against the

1 person honestly converting grain, unless the commissioner deems it necessary to
2 the redemption of the receipts that all the above remedies be pursued at the
3 same time.

4 **4.1-58-51. Power of commissioner to prosecute or compromise claims.**

5 The commissioner may:

- 6 1. Prosecute an action provided in this chapter in any court in this state or in any other
7 state.
- 8 2. Appeal from an adverse judgment to the courts of last resort.
- 9 3. Settle and compromise an action if it is in the best interests of the receiptholders.
- 10 4. Settle and compromise an action if it is in the best interests of the credit-sale contract
11 claimants.
- 12 5. Upon payment of the amount of the compromise or of the full amount of an insurance
13 policy, bond, or conversion claim, exonerate the person so compromising or paying in
14 full from further liability growing out of the action.

15 **4.1-58-52. Commissioner's authority - Warehouseman - Trust assets.**

16 Upon the commissioner's determination continued operation of a warehouseman is likely to
17 result in probable loss of assets to receiptholders, the commissioner may immediately suspend,
18 close, or take control of the assets held in a trust fund described in section 4.1-58-45, or take
19 any combination of these actions as the commissioner deems necessary to begin an orderly
20 liquidation of those trust fund assets as provided in this chapter.

21 **4.1-58-53. Money received by trustee - Deposited in Bank of North Dakota.**

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

24 **4.1-58-54. Report of trustee - Approval - Distribution.**

- 25 1. Upon the receipt and evaluation of claims, the commissioner shall file a report showing
26 the amount and validity of each claim after recognizing relevant:
 - 27 a. Liens or pledges;
 - 28 b. Assignments;
 - 29 c. Deductions due to advances or offsets accrued for the licensee;
 - 30 d. Cash claims or checks;
 - 31 e. Credit-sale contracts or noncredit-sale contract; and

- 1 f. The amount remaining to be paid based on the terms of the contract.
- 2 2. The report also must contain the proposed reimbursement to the commissioner for the
3 expenses of administering the insolvency, the proposed distribution of the trust fund
4 assets to receiptholders, less expenses incurred by the commissioner in the
5 administration of the insolvency, and the proposed credit-sale contract indemnity fund
6 payments to credit-sale contract claimants. If the trust fund is insufficient to redeem all
7 receiptholder claims in full, the report should list the funds as prorated.
- 8 3. The commissioner shall set a hearing and the appropriate notice for interested
9 persons to show cause why the commissioner's report should not be approved and
10 distribution of the trust fund be made as proposed. Copies of the report and notice of
11 hearing must be served by the commissioner by certified mail upon the licensee and
12 the surety and by ordinary mail upon all persons having claims filed with the
13 commissioner.
- 14 4. An aggrieved person having an objection to the commissioner's report shall file the
15 objection with the commissioner and serve copies on the commissioner, the licensee,
16 and the surety at least twenty days before the hearing. Failure to file and serve
17 objections in the time set is a waiver of the objection.
- 18 5. Following the hearing, the commissioner shall approve or modify the report and issue
19 an order directing payment of the necessary bond proceeds, distribution of the trust
20 fund, payments from the credit-sale contract indemnity fund, and discharge of the
21 commissioner from the commissioner's trust.
- 22 6. If an aggrieved person still has objection with the commissioner's report after hearing
23 the person may appeal to district court.
- 24 **4.1-58-55. Filing fees and court costs - Expenses.**
- 25 1. In any action in a state court in this state, the commissioner may not be required to
26 pay any filing fee or other court costs or disbursements if the fees accrue to the county
27 or to the state.
- 28 2. The attorney general may employ outside legal services to assist the commissioner in
29 the prosecution of such action as in the attorney general's judgment may be
30 necessary and the commissioner shall deduct the expenses of the legal services from
31 the trust fund and the credit-sale contract indemnity fund as appropriate.

1 3. All other necessary expenses incurred by the commissioner in carrying out this
2 chapter, including adequate insurance to protect the commissioner, the
3 commissioner's employees, and others engaged in carrying out this chapter, must be
4 reimbursed to the commissioner from the trust fund and credit-sale indemnity funds as
5 appropriate.

6 **4.1-58-56. Violations of chapter - Criminal penalty - Civil penalty.**

7 1. A person violating a provision of this chapter or a rule adopted pursuant to this
8 chapter, if punishment is not specifically provided for, is:

9 a. Guilty of an infraction; and

10 b. Subject to a civil penalty in an amount not to exceed five thousand dollars for
11 each violation.

12 2. The civil penalty may be adjudicated by the agriculture commissioner through an
13 administrative hearing or by a court in an appeal of an administrative hearing.

14 **SECTION 2.** Chapter 4.1-59 of the North Dakota Century Code is created and enacted as
15 follows:

16 **4.1-59-01. Definitions.**

17 In this chapter, unless the context or subject matter otherwise requires:

18 1. "Credit-sale contract" means a written contract for the sale of grain pursuant to which
19 the sale price is to be paid or may be paid more than thirty days after the delivery or
20 release of the grain for sale and which contains the notice provided in section
21 4.1-59-13. If a part of the sale price of a contract for the sale of grain is to be paid or
22 may be paid more than thirty days after the delivery or release of the grain for sale,
23 only that part of the contract is a credit-sale contract.

24 2. "Deferred-payment contract" means a credit-sale contract for which the amount owed
25 for the sale of grain has been established, but the payment is postponed until a later
26 date.

27 3. "Facility" means a structure in which grain purchased by a grain buyer is received or
28 held.

29 4. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower,
30 sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa,
31 and any other commercially grown grain or grass seed. "Grain" does not include grain

- 1 or grass seeds owned by or in the possession of the grain buyer which have been
2 cleaned, processed, and specifically identified for an intended use of planting for
3 reproduction and for which a warehouse receipt has not been issued.
- 4 5. "Grain broker" means a person that:
- 5 a. Is involved in the negotiation of grain transactions in the state;
6 b. Receives compensation from at least one party to the transaction; and
7 c. Does not take title to the grain and is not under any financial or contractual
8 obligation related to the transaction.
- 9 6. "Grain buyer" means a person, other than a public warehouseman as defined in
10 chapter 4.1-58, which purchases or otherwise merchandises grain for compensation.
11 The term includes a roving grain buyer, grain broker, and grain processor. The term
12 does not include:
- 13 a. A producer of grain that purchases grain from other grain producers to complete
14 a carload or truckload in which the greater portion of the load is grain grown by
15 the purchasing producer or used by the purchasing producer for on-farm feedlot
16 operations in which at least fifty percent of the livestock is owned by the owner of
17 the farm.
- 18 b. A person permitted to sell seed under chapter 4.1-53, if that person buys grain
19 only for processing and subsequent resale as seed.
- 20 c. A person that is an authorized dealer or agent of a seed company holding a
21 permit in accordance with section 4.1-53-38.
- 22 7. "Grain processor" means an entity that purchases grain to process into end products
23 of a substantially different makeup or nature than the original grain.
- 24 8. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale
25 contract.
- 26 9. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer
27 for, or as evidence of, the receipt or sale of grain except when the memoranda was
28 received as a result of a credit-sale contract.
- 29 10. "Roving grain buyer" means a grain buyer that does not operate a facility where grain
30 is received.

1 **4.1-59-02. Duties of the commissioner.**

2 The commissioner shall:

- 3 1. Exercise general supervision of grain buyers of this state.
4 2. Investigate all complaints of fraud and injustice, unfair practices, and unfair
5 discrimination.
6 3. Examine and inspect, during ordinary business hours, any books, documents, and
7 records.
8 4. Make all proper rules for carrying out and enforcing any law in this state regarding
9 grain buyers.

10 **4.1-59-03. Commissioner's authority - Grain buyer - Trust assets.**

11 Upon the commissioner's determination continued operation of a grain buyer is likely to
12 result in probable loss of assets to receipt holders, the commissioner may immediately suspend,
13 close, or take control of the assets held in a trust fund described in section 4.1-59-22, or take
14 any combination of these actions as the commissioner deems necessary to begin an orderly
15 liquidation of those trust fund assets as provided in this chapter.

16 **4.1-59-04. Federal licensed inspector and employees.**

17 The commissioner may employ a federal licensed inspector and other employees as
18 necessary to carry out this chapter.

19 **4.1-59-05. Grain marketing - Procedure for resolving disputes.**

- 20 1. If a dispute or disagreement arises between the person receiving and the person
21 delivering grain as to the proper grade, dockage, vomitoxin level, moisture content, or
22 protein content of any grain, an average sample of at least three pints [1.65 liters] of
23 the grain in dispute may be taken together by both interested parties.
24 a. The sample must be certified by each party as a true and representative sample
25 of the grain in dispute on the day the grain was transferred.
26 b. The sample must be forwarded in a suitable container by parcel post or express,
27 prepaid with the name and address of both parties for inspection by a federal
28 licensed inspector, or a mutually agreed-upon third party, that may examine the
29 grain and adjudge what grade, dockage, vomitoxin level, moisture content, or
30 protein content the sample of grain is entitled to under the inspection rules and
31 grades adopted by the secretary of agriculture of the United States.

- 1 c. The person requesting the inspection service shall pay for the inspection.
- 2 d. If the grain in question is damp, otherwise out of condition, or if moisture content
3 is in dispute, the sample must be placed in an airtight container.
- 4 e. Payment for the grain involved in the dispute must be made and accepted on the
5 basis of the determination made by the federal licensed inspector or third party.
6 All quality factors also may be considered in determining the price of the grain.
- 7 f. An appeal of the determination made by a third party other than a federal
8 licensed inspector may be made to a federal licensed inspector.
- 9 g. An appeal of the determination made by a federal licensed inspector may be
10 made as provided under the United States Grain Standards Act [Pub. L. 103-354;
11 108 Stat. 3237; 7 U.S.C. 79(c) and (d)] and under 7 CFR 800.125-800.140.
- 12 h. A person not abiding by a final determination is liable for damage resulting from
13 not abiding by the determination.
- 14 2. If a dispute or disagreement arises between the person delivering grain and the
15 person receiving grain as to the determination of quality factors of grain purchased or
16 delivered in the state for which inspection rules and grades have not been adopted by
17 the secretary of agriculture of the United States, an average sample of at least three
18 pints [1.65 liters] of the grain in dispute may be taken together by the interested
19 parties.
- 20 a. The sample must be certified by each party as a true and representative sample
21 of the grain in dispute on the day the grain was transferred.
- 22 b. If the grain is damp or otherwise out of condition, the sample must be placed in
23 an airtight container.
- 24 c. The sample must be forwarded in a suitable container by parcel post or express,
25 prepaid with the name and address of both parties, for inspection by a federal
26 licensed inspector, or a mutually agreed-upon third party, that may examine the
27 grain and determine the quality factors in dispute.
- 28 d. The person requesting the inspection service shall pay for the inspection.
- 29 e. The determination made by the inspector, or the third party, must be used in the
30 settlement of the dispute.

1 **4.1-59-06. Release of records - Confidentiality.**

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

18 **4.1-59-07. Grain buyer license - Financial criteria to be met.**

- 19 1. To be eligible to receive an annual license, an applicant shall submit financial
20 documentation to the commissioner verifying the applicant has satisfactory net worth
21 and working capital, as determined by the commissioner.
22 2. A licensed grain buyer or an applicant for initial licensure shall report balance sheets
23 and income statements to the commissioner annually on written application for initial
24 licensure or license renewal if the applicant purchased up to ten million dollars worth
25 of grain during the previous licensing period, or intends to purchase up to ten million
26 dollars worth of grain during the first year of operation.
27 3. As a condition of licensure, an applicant shall provide to the commissioner, upon
28 request, any financial record or bank verification release the commissioner deems
29 relevant for the purpose of verifying the financial information of an applicant under this
30 section.
31 4. As a condition of licensure, a new applicant must:

- 1 a. Pass a background check;
- 2 b. Have a satisfactory credit score, as determined by the commissioner; and
- 3 c. Be a responsible person with a good business reputation, as determined by the
- 4 commissioner, that:
- 5 (1) Is in the grain buying business;
- 6 (2) Has knowledge of, and experience with, generally accepted grain buying
- 7 and handling practices;
- 8 (3) Is competent and willing to operate as a grain buyer in accordance with
- 9 state and federal regulations; and
- 10 (4) Has not committed fraud or a criminal offense indicating a lack of business
- 11 integrity or honesty that undermines the person's responsibility as a grain
- 12 buyer.

13 **4.1-59-08. Grain buyer license - How obtained - Fee - Penalty.**

- 14 1. Grain buyers that purchase, solicit, merchandise, or take possession of grain in this
- 15 state shall obtain an annual license from the commissioner. Except as provided in this
- 16 section, each license expires on July thirty-first of each year. If a licensee's initial
- 17 license is issued effective after May thirty-first, that license expires on July thirty-first of
- 18 the following year. The annual license fee for a grain buyer is:
- 19 a. Four hundred dollars for a grain buyer that purchased up to one million dollars
- 20 worth of grain during the previous licensing period, or intends to purchase up to
- 21 one million dollars worth of grain during the first year of operation;
- 22 b. Eight hundred dollars for a grain buyer that purchased more than one million
- 23 dollars worth of grain but not more than ten million dollars worth of grain during
- 24 the previous licensing period, or intends to purchase more than one million
- 25 dollars worth of grain but not more than ten million dollars worth of grain during
- 26 the first year of operation; and
- 27 c. One thousand two hundred dollars for a grain buyer that purchased more than
- 28 ten million dollars worth of grain during the previous licensing period, or intends
- 29 to purchase more than ten million dollars worth of grain during the first year of
- 30 operation.

- 1 2. A license renewal application received after July fifteenth must be assessed an
2 additional one hundred dollar fee per receiving location.
- 3 3. A license issued under this section is not transferable.
- 4 4. The commissioner may refuse to issue or renew or may revoke a license:
 - 5 a. If the licensee or applicant has been convicted of a criminal offense;
 - 6 b. If the licensee or applicant has failed to comply with the requirements of this
7 section;
 - 8 c. If the commissioner has evidence the licensee negotiated in bad faith; or
 - 9 d. For any other reason as determined by the commissioner.
- 10 5. A licensed grain buyer shall submit a monthly report to the commissioner by the
11 tenth day of each month. The report must include the total value of each commodity
12 brokered in the preceding month.
- 13 6. A licensed grain buyer shall notify each potential commodity seller of the identity of the
14 potential commodity buyer before the final confirmation of the transaction.
- 15 7. Before a license is effective for a grain buyer, the licensee or applicant shall file a bond
16 with the commissioner for not less than one hundred thousand dollars.
- 17 8. A grain buyer must have the buyer's license in possession at all times.
- 18 9. A grain buyer that transacts business without first procuring a license and giving a
19 bond is guilty of a class B misdemeanor.

20 **4.1-59-09. Bond filed by grain buyer.**

- 21 1. Before a license is effective for a grain buyer under this chapter, the applicant for the
22 license shall file a bond with the commissioner which must:
 - 23 a. Be in a sum not less than one hundred thousand dollars.
 - 24 b. Be continuous, unless the corporate surety by certified mail notifies the licensee
25 and the commissioner the surety bond will be canceled ninety days after receipt
26 of the notice of cancellation.
 - 27 c. Run to this state for the benefit of all persons selling grain to or through the grain
28 buyer.
 - 29 d. Be conditioned:
 - 30 (1) For the faithful performance of the licensee's duties as a grain buyer.

1 (2) For compliance with the provisions of law and the rules of the commissioner
2 relating to the purchase of grain by the commissioner monthly.

3 6. The surety on the bond must be a corporate surety company, approved by the
4 commissioner and authorized to do business within the state. The commissioner may
5 accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu
6 of a surety bond when, in the commissioner's judgment, cash, a negotiable instrument,
7 or a personal surety bond properly will protect the holders of outstanding receipts.

8 **4.1-58-10. Bond discount.**

9 1. The licensee may request a bond reduction based upon the licensee's payment policy.

10 a. The required bond is reduced by thirty percent for a licensee that establishes and
11 follows a payment policy approved by the commissioner of ten days or fewer.

12 b. The required bond is reduced by fifteen percent for a licensee that establishes
13 and follows a payment policy approved by the commissioner of eleven to
14 twenty-one days.

15 2. A reduction under this section may not be used to reduce required bond below the
16 minimum bond set by law.

17 **4.1-59-11. Bond cancellation - Release of surety.**

18 The surety on a bond is released from all future liability accruing on the bond after the
19 expiration of ninety days from the date of receipt by the commissioner of notice of cancellation
20 by the surety or on a later date specified by the surety. This provision does not operate to
21 relieve, release, or discharge the surety from any liability already accrued or which accrues
22 before the expiration of the ninety-day period. Unless the grain buyer files a new bond at least
23 thirty days before liability ceases, the commissioner, without hearing, immediately shall suspend
24 the grain buyer's license and the suspension may not be removed until a new bond has been
25 filed and approved by the commissioner.

26 **4.1-59-12. Revocation and suspension.**

27 The commissioner may suspend or revoke the license of a grain buyer for cause upon
28 notice and hearing. Notwithstanding any other provision of this chapter, the commissioner shall
29 suspend the license of a grain buyer for failure at any time to maintain a bond.

1 **4.1-59-13. Scale ticket - Contents.**

2 Every grain buyer, upon receiving grain, shall issue a uniform scale ticket or comparable
3 receipt for each load of grain received. Receipts must be numbered consecutively and one copy
4 of each receipt must be retained and remain as a permanent record. The original receipt must
5 be delivered to the person from which the grain is received, upon each load of grain.

6 **4.1-59-14. Credit-sale contracts.**

- 7 1. A grain buyer may not purchase grain by a credit-sale contract except as provided in
8 this section. All credit-sale contracts must be in writing and must be consecutively
9 numbered when printing the contract. The grain buyer shall maintain an accurate
10 record of all credit-sale contract numbers, including the disposition of each numbered
11 form, whether by execution, destruction, or otherwise. Each credit-sale contract must
12 include:
- 13 a. The seller's name and address.
 - 14 b. The conditions of delivery.
 - 15 c. The amount and kind of grain delivered.
 - 16 d. The price per unit or basis of value.
 - 17 e. The date payment is to be made.
 - 18 f. The duration of the credit-sale contract.
 - 19 g. Notice in a clear and prominent manner that the sale is not protected by the bond
20 coverage provided for in section 4.1-59-09. However, if the grain buyer has
21 obtained bond coverage in addition to that required by section 4.1-59-09 and the
22 coverage extends to the benefit of credit-sale contracts, the grain buyer may
23 state that fact in the credit-sale contract along with the extent of the coverage.
- 24 2. The contract must be signed by both parties and executed in duplicate. An electronic
25 signature satisfies this requirement. A holder of an unsigned contract is not eligible for
26 any protection provided by chapter 4.1-62. The grain buyer shall retain one copy and
27 deliver one copy to the seller. Upon revocation, termination, or cancellation of a grain
28 buyer's license, the payment date for all credit-sale contracts, at the seller's option,
29 must be advanced to a date not later than thirty days after the effective date of the
30 revocation, termination, or cancellation, and the purchase price for all unpriced grain

1 must be determined as of the effective date of revocation, termination, or cancellation
2 in accordance with all other provisions of the contract.

3 3. A buyer that offers deferred-payment contracts shall inform producers of bond
4 protection.

5 **4.1-59-15. Discrimination by grain buyer prohibited.**

6 1. A grain buyer may not discriminate:

7 a. In the buying, selling, receiving, and handling of grain or in the charges made or
8 the service rendered to owners of purchased grain;

9 b. In the receiving of grain offered for sale, but this chapter does not require a
10 processor to receive or purchase any lot or kinds of grain;

11 c. In regard to the persons offering grain for sale; or

12 d. Between points or stations except as the marketing factors or transportation
13 costs or grain quality premiums may warrant.

14 2. A grain buyer is not required to receive any grain that is heating or otherwise out of
15 condition.

16 **4.1-59-16. Records required to be kept by grain buyers.**

17 A grain buyer shall keep such accounts, records, and memoranda concerning the buyer's
18 dealing as the grain buyer as may be required by the commissioner and shall make any reports
19 of purchases of grain as may be required by the rules adopted by the commissioner. The
20 commissioner at all times must have access to the accounts, records, and memoranda.

21 **4.1-59-17. Reports to be made by grain buyers - Penalty for failure - Confidential**
22 **records.**

23 1. Each licensed and bonded grain buyer shall:

24 a. Prepare for each month a report giving facts and information called for on the
25 form of report prepared by the commissioner.

26 (1) The report must contain or be verified by a written declaration the report is
27 made under the penalties of perjury.

28 (2) The report may be called for more frequently if the commissioner deems
29 necessary.

30 (3) Information pertaining to the value of grain handled is a confidential trade
31 secret and is not a public record. The commissioner may make this

1 information available for use by other governmental entities, but the
2 information may not be released by those entities in a manner that
3 jeopardizes the confidentiality of individual licensees.

4 b. File the report with the commissioner not later than the last day of the following
5 month. Failure to file this report promptly is cause for revoking the grain buyer
6 license after due notice and hearing.

7 c. Keep a separate account of the grain business. If the grain buyer is engaged in
8 handling or selling any other commodity, the grain account and other accounts
9 may not be mixed.

10 d. Submit additional information requested by the commissioner pursuant to a
11 report or an inspection within five business days.

12 2. The commissioner may refuse to renew a license to any grain buyer that fails to make
13 a required report.

14 **4.1-59-18. Standard weights to be used - Exception.**

15 A person purchasing grain may not use any measure for the grain other than the standard
16 bushel, and a number of pounds may not be used or called a bushel other than the number of
17 pounds provided by law as the standard weight of the kind of grain in question, except that
18 during the months of October and November, not exceeding eighty-two pounds [37.19
19 kilograms], and during the months of December and January, not exceeding seventy-six pounds
20 [34.47 kilograms], may be used as the standard weight per bushel of new ear corn.

21 **4.1-59-19. Federal grades to control - Grades to be posted.**

22 1. A grain buyer shall purchase grain, except dry edible beans, in accordance with the
23 official grades established by the secretary of agriculture of the United States, except
24 as otherwise provided in applicable rules and regulations adopted by federal officials
25 pursuant to law.

26 2. A grain buyer of dry edible beans shall purchase and deliver beans in accordance with
27 the buyer's policy, which must be filed with the commissioner and, if applicable, posted
28 in a conspicuous place in the buyer's facility.

29 3. Other grading standards may be used if mutually agreed to in writing by the grain
30 buyer and the owner of the grain. However, the owner may demand the use of federal
31 grading standards.

1 4. After hearing, the commissioner may prohibit the use of nonfederal grades.

2 **4.1-59-20. Grading of grain - Penalty.**

3 A grain buyer, before testing for grade any grain handled by the grain buyer, shall remove
4 and make due allowance for any dockage of the grain made by reason of the presence of straw,
5 weed seeds, dirt, or any other foreign matter. A grain buyer that violates this provision is guilty of
6 a class B misdemeanor.

7 **4.1-59-21. Insolvency of grain buyer.**

8 A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper written
9 demand, including electronic communication, to pay for grain purchased or marketed by the
10 licensee or is unable to make redelivery upon proper written demand, including electronic
11 communication. The licensee may not assess receiving or redelivery fees on grain.

12 **4.1-59-22. Trust fund established - Trustee.**

- 13 1. Upon the insolvency of a licensee, a trust fund must be established for the benefit of
14 noncredit-sale receipt holders and to pay the costs incurred by the commissioner in the
15 administration of the insolvency. The trust fund consists of the following:
- 16 a. Nonwarehouse receipt grain of the insolvent licensee held in storage or the
17 proceeds obtained from the conversion of the grain.
 - 18 b. The proceeds, including accounts receivable, from any grain sold from the time of
19 the filing of the claim that precipitated an insolvency until the commissioner is
20 appointed trustee must be remitted to the commissioner and included in the trust
21 fund.
 - 22 c. The proceeds of insurance policies on destroyed grain.
 - 23 d. The claims for relief, and proceeds from the claims for relief, for damages upon
24 bond given by the licensee to ensure faithful performance of the duties of a
25 licensee.
 - 26 e. The claim for relief, and proceeds from the claim for relief, for the conversion of
27 any grain stored in the warehouse.
 - 28 f. Unencumbered accounts receivable for grain sold before the filing of the claim
29 that precipitated an insolvency.
 - 30 g. Unencumbered equity in grain hedging accounts.
 - 31 h. Unencumbered grain product assets.

1 2. Upon the insolvency of a grain buyer, the commissioner shall act as trustee of the trust
2 fund.

3 3. All funds received by the commissioner as trustee must be deposited in the Bank of
4 North Dakota.

5 **4.1-59-23. Joinder of surety - Deposit of proceeds.**

6 Each surety on the insolvent licensee's bonds must be joined as a party to the insolvency
7 proceeding. If it is in the best interests of the receiptholders, the court may order a surety to
8 deposit some or all of the penal sum of the bond into the trustee's trust account pending
9 determination of the surety's liability under the bond.

10 **4.1-59-24. Joinder - Grain broker.**

11 A licensed grain broker may be joined as a party to an insolvency proceeding if the
12 commissioner determines the grain broker negotiated a grain transaction with an insolvent grain
13 buyer or which was discriminatory, predatory, or in bad faith.

14 **4.1-59-25. Notice to receiptholders and credit-sale contract claimants.**

15 1. Upon the commissioner's appointment, the commissioner may take possession of
16 relevant books and records of the licensee.

17 2. If the insolvency involves a roving grain buyer, the commissioner shall publish a notice
18 of the commissioner's appointment once each week for two consecutive weeks in all
19 daily newspapers in the state and may notify, by ordinary mail, the holders of record of
20 outstanding receipts and those that are potential credit-sale contract claimants,
21 disclosed by the licensee's records.

22 3. If the insolvency involves a grain processor, the notice must be published once each
23 week for two consecutive weeks in a newspaper in the county in which the facility is
24 located.

25 4. The notice must require outstanding receiptholders and credit-sale contract claimants
26 to file claims with the commissioner along with the receipts, contracts, or other
27 evidence of the claims required by the commissioner.

28 5. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim
29 within forty-five days after the last publication of the notice or a longer time set by the
30 commissioner, the commissioner is relieved of further duty in the administration of the
31 insolvency on behalf of the receiptholder or credit-sale contract claimant and the

1 receiptholder may be barred from participation in the trust fund, and the credit-sale
2 contract claimant may be barred from payment for any amount due.

3 6. Outstanding receiptholders and credit-sale contract claimants are not parties to the
4 insolvency action unless admitted by the court upon a motion for intervention.

5 **4.1-59-26. Remedy of receiptholders.**

6 A receiptholder does not have a separate claim for relief upon any insolvent licensee's
7 bond, for insurance, against any person converting grain, nor against any other receiptholder,
8 except through the trustee, unless, upon demand of five or more receiptholders, the
9 commissioner fails or refuses to apply for the commissioner's own appointment or unless the
10 district court denies the application. This chapter does not prohibit a receiptholder, either
11 individually or with other receiptholders, from pursuing concurrently any other remedy against
12 the person or property of the licensee.

13 **4.1-59-27. Commissioner to marshal trust assets.**

14 Upon the commissioner's appointment, the commissioner shall marshal all trust fund
15 assets. The commissioner may maintain suits in the name of the state of North Dakota for the
16 benefit of all receiptholders against the licensee's bonds, insurers of grain, any person that may
17 have converted any grain, and any person that may have received preferential treatment by
18 being paid by the insolvent licensee after the first default.

19 **4.1-59-28. Power of commissioner to prosecute or compromise claims.**

20 The commissioner may:

- 21 1. Prosecute an action provided in sections 4.1-59-21 through 4.1-59-31 in any court in
22 this state or in any other state.
- 23 2. Appeal from an adverse judgment to the courts of last resort.
- 24 3. Settle and compromise an action if it will be in the best interests of the receiptholders.
- 25 4. Settle and compromise an action if it is in the best interests of the credit-sale contract
26 claimants.
- 27 5. Upon payment of the amount of any settlement or of the full amount of any bond,
28 exonerate the person so paying from further liability growing out of the action.

29 **4.1-59-29. Report of trustee - Approval - Distribution.**

- 30 1. Upon the receipt and evaluation of claims, the commissioner shall file a report showing
31 the amount and validity of each claim after recognizing:

- 1 a. Relevant liens or pledges.
- 2 b. Relevant assignments.
- 3 c. Relevant deductions due to advances or offsets accrued in favor of the licensee.
- 4 d. Relevant cash claims or checks, the amount of the claim.
- 5 e. Relevant credit-sale contract or noncredit-sale contract, the amount remaining to
- 6 be paid based on the terms of the contract.
- 7 2. The report also must contain the proposed reimbursement to the commissioner for the
- 8 expenses of administering the insolvency, the proposed distribution of the trust fund
- 9 assets to receiptholders, less expenses incurred by the commissioner in the
- 10 administration of the insolvency, and the proposed credit-sale contract indemnity fund
- 11 payments to credit-sale contract claimants. If the trust fund is insufficient to redeem all
- 12 receiptholder claims in full, the report must list the funds as prorated.
- 13 3. The commissioner shall set a hearing and the appropriate notice for interested
- 14 persons to show cause why the commissioner's report should not be approved and
- 15 distribution of the trust fund be made as proposed. The commissioner shall serve
- 16 copies of the report and notice of hearing by certified mail upon the licensee and the
- 17 surety and by ordinary mail upon all persons having claims filed with the
- 18 commissioner.
- 19 4. An aggrieved person having an objection to the commissioner's report shall file the
- 20 objection with the commissioner and serve copies on the commissioner, the licensee,
- 21 and the surety at least twenty days before the hearing. Failure to file and serve
- 22 objections in the time set is a waiver of the objection.
- 23 5. Following the hearing, the commissioner shall approve or modify the report and issue
- 24 an order directing payment of the necessary bond proceeds, distribution of the trust
- 25 fund, payments from the credit-sale contract indemnity fund, and discharge of the
- 26 commissioner from the commissioner's trust.
- 27 6. If an aggrieved person still has objection with commissioner's report after hearing the
- 28 person may appeal to district court.
- 29 **4.1-59-30. Filing fees and court costs - Expenses.**
- 30 1. The commissioner may not be required to pay any filing fee or other court costs or
- 31 disbursements.

1 2. The attorney general may appoint outside legal counsel to assist the commissioner in
2 the prosecution of the action and the cost of employing outside counsel must be paid
3 from the trust fund and the credit-sale contract indemnity fund as appropriate.

4 3. All other necessary expenses incurred by the commissioner in carrying out this
5 chapter, including adequate insurance to protect the commissioner, the
6 commissioner's employees, and others engaged in carrying out sections 4.1-59-21
7 through 4.1-59-31, must be reimbursed to the commissioner from the trust fund and
8 credit-sale contract indemnity funds as appropriate.

9 **4.1-59-31. Cease and desist.**

10 If a person engages in an activity or practice contrary to the provisions of this chapter or
11 related rules, the commissioner, upon the commissioner's own motion without complaint, with or
12 without hearing, may order the person to cease and desist from the activity until further order of
13 the commissioner. An order may include any corrective action up to and including license
14 suspensions. A cease and desist order must be accompanied by a notice of opportunity to be
15 heard on the order within fifteen days of the issuance of the order.

16 **4.1-59-32. Agricultural contracts - Mediation and arbitration.**

17 If a written contract for the sale of grain does not contain provisions to settle disagreements
18 concerning factors not governed by section 4.1-59-04, the parties shall attempt to resolve the
19 disagreements through mediation or arbitration.

20 **4.1-59-33. Roving grain buyers - Exception - Applicability of provisions.**

21 Notwithstanding any other law, this chapter does not apply to any person that purchases,
22 solicits, or merchandises grain, that has been cleaned, processed, and made ready for
23 consumption, from a public warehouseman licensed and bonded under chapter 4.1-58. If the
24 person engages in any activity other than those described in this section, the person is subject
25 to the law governing those other activities.

26 **4.1-59-34. Violations of chapter - Criminal penalty - Civil penalty.**

27 1. A person violating a provision of this chapter or a rule adopted pursuant to this
28 chapter, if punishment is not specifically provided for, is:

29 a. Guilty of an infraction; and

30 b. Subject to a civil penalty in an amount not to exceed five thousand dollars for
31 each violation.

1 2. The civil penalty may be adjudicated by a court or by the agriculture commissioner
2 through an administrative hearing.

3 **SECTION 3.** Chapter 4.1-61 of the North Dakota Century Code is created and enacted as
4 follows:

5 **4.1-61-01. Public elevators and warehouses - Commissioner may require uniform**
6 **accounting system.**

7 The commissioner may require every association, copartnership, corporation, or limited
8 liability company conducting a public elevator or warehouse in this state to adopt a uniform
9 accounting system established by the commissioner.

10 **4.1-61-02. Examination of financial accounts of elevator or warehouse by competent**
11 **examiner - Request by percentage of stockholders.**

12 The commissioner may install, and if requested by not less than fifteen percent of the
13 partners, stockholders, or members of any association, copartnership, corporation, or limited
14 liability company conducting the public elevator or warehouse, shall install, the uniform system
15 of accounting provided for in section 4.1-61-01. The commissioner on the commissioner's own
16 motion may, or on request of the required percentage of partners, stockholders, or members,
17 the commissioner shall, send a competent examiner to examine the books and financial
18 accounts of the elevator or warehouse. If a request for the examination of the accounts of any
19 association, copartnership, corporation, or limited liability company has been made to the
20 commissioner, as provided for in this section, subsequent examinations must be made at least
21 once every year until the commissioner is requested to discontinue the examination by
22 resolution adopted by the partners, stockholders, or members at any annual meeting. If the
23 examination has been made, the examiner shall report immediately the results of the
24 examination to the president and the secretary of the association, copartnership, corporation, or
25 limited liability company and to the commissioner.

26 **4.1-61-03. Certificate issued by commissioner after examination of accounts.**

27 1. If the commissioner is satisfied from the commissioner's examination that the
28 association, copartnership, corporation, or limited liability company examined is
29 solvent and the method of doing business is likely to be beneficial to all its members or
30 persons interested therein, the commissioner shall issue a certificate, countersigned
31 by the examiner, to the agent or manager. The certificate must be kept posted

1 conspicuously in the warehouse or elevator of the association, copartnership,
2 corporation, or limited liability company and must state:
3 a. That the methods of doing business are sound.
4 b. That the association, copartnership, corporation, or limited liability company is
5 solvent.
6 c. That its books and accounts are kept properly.
7 2. If the affairs and methods of doing business of the association, copartnership,
8 corporation, or limited liability company do not seem sound or satisfactory to the
9 commissioner, the commissioner shall issue a certificate or statement, countersigned
10 by the person that made the examination, stating in what particular and in what
11 respect the business methods practiced or methods of keeping books and accounts of
12 the association, copartnership, corporation, or limited liability company are not
13 deemed safe. The commissioner shall mail a copy of the statement or certificate to
14 each of the shareholders or stockholders as may have requested the commissioner to
15 make the examination. The commissioner also shall send a copy to the president and
16 the secretary of the association, copartnership, corporation, or limited liability
17 company.

18 **4.1-61-04. Fees of examiner for installing and examining accounting system.**

19 For installing a uniform accounting system and examining the financial accounts of an
20 elevator or public warehouse, an association, copartnership, corporation, or limited liability
21 company shall pay the examiner a reasonable fee, as determined by the commissioner. If an
22 association, copartnership, corporation, or limited liability company wrongfully refuses or
23 neglects to pay the fees, the commissioner may cancel the license to do business. All fees must
24 be paid into the state treasury. The expenses incurred by the examiner under this chapter must
25 be paid out of the appropriations made by the legislative assembly for this purpose and the
26 expenses must be audited and paid in the same manner as other expenses are audited and
27 paid.

28 **SECTION 4.** Chapter 4.1-62 of the North Dakota Century Code is created and enacted as
29 follows:

1 **4.1-62-01. Credit-sale contracts - Assessment on grain - Submission of assessment.**

2 An assessment at the rate of two-tenths of one percent is placed on the value of all grain
3 sold in this state under a credit-sale contract, as provided for in sections 4.1-58-17 and
4 4.1-59-13. The licensee purchasing the grain shall note the assessment on the contract
5 required under sections 4.1-58-21 and 4.1-59-14 and shall deduct the assessment from the
6 purchase price payable to the seller. The licensee shall submit any assessment collected under
7 this section to the commissioner no later than thirty days after each calendar quarter. The
8 commissioner shall deposit the assessments received under this section in the credit-sale
9 contract indemnity fund.

10 **4.1-62-02. Credit-sale contract indemnity fund - Creation - Continuing appropriation.**

11 There is created in the state treasury the credit-sale contract indemnity fund. The state
12 treasurer shall invest available moneys in the fund in accordance with section 21-10-07 and in
13 cooperation with the commissioner shall deposit any income earned through the investments
14 into the fund. The fund and earnings of the fund are appropriated to the commissioner on a
15 continuing basis to be used exclusively to carry out the intent and purpose of this chapter.

16 **4.1-62-03. Credit-sale contract indemnity fund - Suspension of assessment.**

17 At the end of the calendar quarter in which the credit-sale contract indemnity fund reaches a
18 level of six million dollars, the commissioner shall suspend collection of the assessment
19 required by this chapter. If after suspension of collection the balance in the fund is less than
20 three million dollars, the commissioner shall require collection of the assessment.

21 **4.1-62-04. Credit-sale contract indemnity fund - Eligibility for reimbursement.**

22 A person is eligible to receive indemnity payments from the credit-sale contract indemnity
23 fund if:

- 24 1. After August 1, 2003, the person sold grain to a licensed warehouse or a grain buyer
25 in this state under a credit-sale contract;
- 26 2. The licensed warehouse to which the person sold grain or the grain buyer to which the
27 person sold grain becomes insolvent; and
- 28 3. The licensed warehouse or the grain buyer, as a result of the insolvency, does not fully
29 compensate the person in accordance with the credit-sale contract.

1 **4.1-62-05. Credit-sale contract indemnity fund - Availability of money.**

2 Upon the insolvency of a licensed warehouse or a grain buyer and a declaration the
3 commissioner serve as the trustee, the commissioner shall make the proceeds of the credit-sale
4 contract indemnity fund available for use in meeting the licensee's obligations with respect to
5 the reimbursement of a person that sold grain to the licensee under a credit-sale contract and
6 who was not fully compensated in accordance with the contract.

7 **4.1-62-06. Credit-sale contract indemnity fund - Reimbursement limit.**

8 The amount payable to an eligible person from the credit-sale contract indemnity fund for
9 each insolvency may not exceed the lesser of eighty percent of the amount owed to that eligible
10 person in accordance with all of that person's unsatisfied credit-sale contracts or two hundred
11 eighty thousand dollars.

12 **4.1-62-07. Credit-sale contract indemnity fund - Prorated claims.**

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

18 **4.1-62-08. Reimbursement for later insolvencies.**

19 The commissioner shall ensure all persons eligible for payment from the indemnity fund as
20 a result of an insolvency are fully compensated to the extent permitted by this chapter before
21 any payments from the indemnity fund are initiated as a result of a later insolvency. The
22 chronological order of insolvencies is determined by the date the commissioner is appointed
23 trustee under section 4.1-58-40 or 4.1-59-21.

24 **4.1-62-09. Credit-sale contract indemnity fund - Reimbursement for administrative**
25 **expenses.**

26 Any expense incurred by the commissioner in administering the credit-sale contract
27 indemnity must be reimbursed from the fund before any other claim for indemnity is paid.

28 **4.1-62-10. Credit-sale contract indemnity fund assessment - Failure to collect**
29 **assessment - Penalty.**

30 A person that knowingly or intentionally refuses or fails to collect the assessment required
31 under this chapter from producers or to submit any assessment collected from producers to the

1 commissioner for deposit in the credit-sale contract indemnity fund is guilty of a class A
2 misdemeanor.

3 **4.1-62-11. Revocation and suspension.**

4 The commissioner may suspend or revoke the license of a licensee for cause upon notice
5 and hearing for violation of this chapter.

6 **4.1-62-12. Cease and desist.**

7 If a person engages in an activity or practice contrary to this chapter or rules adopted by the
8 commissioner, the commissioner, upon the commissioner's own motion without complaint and
9 with or without a hearing, may order the person to cease and desist from the activity until further
10 order of the commissioner. The order may include any corrective action up to and including
11 license suspension. A cease and desist order must be accompanied by a notice of opportunity
12 to be heard on the order within fifteen days of the issuance of the order.

13 **4.1-62-13. Claims.**

14 A claim concerning a grain buyer must be administered in a manner consistent with chapter
15 4.1-59. A claim concerning a state licensed grain warehouse must be administered in a manner
16 consistent with chapter 4.1-58. A payment may not be made from the credit-sale contract
17 indemnity fund for a claim based on losses resulting from the sale of grain to a person not
18 licensed under chapter 4.1-58, chapter 4.1-59, or the United States Warehouse Act [Pub. L.
19 106-472; 114 Stat. 2061; 7 U.S.C. 241 et seq.].

20 **4.1-62-14. Subrogation.**

21 Money paid from the credit-sale contract indemnity fund in satisfaction of a valid claim
22 constitutes a debt obligation of the person against which the claim was made. The
23 commissioner may take action on behalf of the fund against a person to recover the amount of
24 payment made, plus costs and attorney's fees. Recovery for reimbursement to the fund must
25 include interest computed at the weight average prime rate charged by the Bank of North
26 Dakota. Upon payment of a claim from the credit-sale contract indemnity fund, the claimant
27 shall subrogate the interest of the claimant, if any, to the commissioner in a cause of action
28 against all parties, to the amount of the loss that the claimant was reimbursed by the fund.

29 **4.1-62-15. Roving grain buyers - Exception - Applicability of provisions.**

30 Notwithstanding any other law, this chapter does not apply to a person that purchases,
31 solicits, or merchandises grain, that has been cleaned, processed, and made ready for

1 consumption, from a public warehouseman licensed and bonded under chapter 4.1-58. If the
2 person engages in any activity other than those described in this section, the person is subject
3 to the law governing those other activities.

4 **SECTION 5. AMENDMENT.** Subsection 4 of section 41-07-10 of the North Dakota Century
5 Code is amended and reenacted as follows:

6 4. This section does not modify or repeal chapter ~~60-024.1-58~~.

7 **SECTION 6. AMENDMENT.** Section 51-23-04 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **51-23-04. Exempt person transactions.**

10 1. The prohibitions in section 51-23-03 do not apply to any transaction offered by and in
11 which any of the following persons or any employee, officer, or director thereof acting
12 solely in that capacity is the purchaser or seller:

13 ~~1.~~ a. A person registered with the commodity futures trading commission as a futures
14 commission merchant or as a leverage transaction merchant whose activities
15 require such registration.

16 ~~2.~~ b. A person registered with the securities and exchange commission as a
17 broker-dealer whose activities require such registration.

18 ~~3.~~ c. A person affiliated with, and whose obligations and liabilities under the
19 transaction are guaranteed by, a person referred to in ~~subsection 1~~subdivision a
20 or 2b.

21 ~~4.~~ d. A person who is a member of a contract market designated by the commodity
22 futures trading commission or any clearinghouse thereof.

23 ~~5.~~ e. A financial institution.

24 ~~6.~~ f. A person registered under the laws of this state as a securities dealer whose
25 activities require such registration.

26 ~~7.~~ g. A public warehouseman as defined in section ~~60-02-014.1-58-01~~.

27 2. The exemption provided by this section does not apply to any transaction or activity
28 which is prohibited by the Commodity Exchange Act or CFTC rule.

29 **SECTION 7. REPEAL.** Chapters 60-02, 60-02.1, 60-04, 60-05, and 60-10 of the North
30 Dakota Century Code are repealed.