

## **CHAPTER 60-02 GRAIN AND SEED WAREHOUSES**

### **60-02-01. Definitions.**

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

1. "Commission" means the public service commission.
2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02-19.1. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
3. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" as defined in this chapter shall not include grain or grass seeds owned by or in the possession of the warehouseman that have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.
4. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
5. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility not licensed under the United States Warehouse Act [7 U.S.C. 241-273] in which grain is received for storing, buying, selling, shipping, or processing for compensation. Provided, however, that nothing in this chapter shall be construed to require a processor to receive, store, or purchase any lot or kind of grain at said facility.
6. "Public warehouseman" means the person operating a public warehouse that is located or doing business within this state, whether or not such owner or operator resides within this state. The term does not include a person who is permitted to sell seed under chapter 4.1-53, if that person does not store grain for the public and buys grain only for processing and subsequent resale as seed, or an authorized dealer or agent of a seed company holding a permit in accordance with section 4.1-53-38.
7. "Receipts" means grain warehouse receipts, scale tickets, checks, or other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain except when such memoranda was received as a result of a credit-sale contract.
8. "Receiving station" means any facility other than an individually licensed warehouse that is used by a licensed public warehouseman to receive and temporarily store grain prior to transferring the grain to the warehouseman's primary licensed warehouse location or delivering it directly to market.

### **60-02-02. Commission - Powers and duties.**

The duties imposed by the provisions of this chapter and the powers conferred herein devolve upon the commission.

### **60-02-03. Duties and powers of the commission.**

The commission shall have the duty and power to:

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

5. Make all proper rules for carrying out and enforcing any law in this state regarding public warehouses.

**60-02-04. Federal licensed inspector - Appointed by commission.**

The commission may employ a federal licensed inspector whose duties are hereinafter prescribed and such other employees as may be necessary to carry out the provisions of this chapter.

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

1. If any dispute or disagreement arises between the person receiving and the person delivering grain at any public warehouse in this state as to the proper grade, dockage, vomitoxin level, moisture content, or protein content of any grain, an average sample of at least three pints of the grain in dispute may be taken together by both parties interested. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was delivered. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties for inspection by a federal licensed inspector, or a mutually agreed-upon third party, who will examine the grain and adjudge what grade, dockage, vomitoxin level, moisture content, or protein content the sample of grain is entitled to under the inspection rules and grades adopted by the secretary of agriculture of the United States. The person requesting the inspection service shall pay for the inspection. If the grain in question is damp, otherwise out of condition, or if moisture content is in dispute, the sample must be placed in an airtight container. Payment for the grain involved in the dispute must be made and accepted on the basis of the determination made by the federal licensed inspector or third party. However, all other quality factors may also be considered in determining the price of the grain. An appeal of the determination made by a third party other than a federal licensed inspector may be made to a federal licensed inspector. An appeal of the determination made by a federal licensed inspector may be made as provided under the United States Grain Standards Act [Pub. L. 103-354; 108 Stat. 3237; 7 U.S.C. 79(c) and (d)] and under 7 CFR 800.125-800.140. A person not abiding by a final determination is liable for damage resulting from not abiding by the determination.
2. If any dispute or disagreement arises between the person delivering grain and the person receiving grain as to the determination of quality factors of grain purchased or delivered in the state for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States, an average sample of at least three pints of the grain in dispute may be taken together by the parties interested. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was delivered. If the grain is damp or otherwise out of condition, the sample must be placed in an airtight container. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties, for inspection by a federal licensed inspector, or a mutually agreed-upon third party, who may examine the grain and determine the quality factors in dispute. The person requesting the inspection service shall pay for the inspection. The determination made by the inspector, or the third party, must be used in the settlement of the dispute.

**60-02-05.1. Notice of procedures for resolving disputes over grain.**

A public warehouse shall post a notice containing the procedures specified in section 60-02-05 for resolving disputes. The commission shall prescribe the form of the notice and shall provide a copy of the notice to each public warehouse. The public warehouseman shall post the notice in the grain inspection room of the warehouse. The notice must specifically mention that the procedure for resolving disputes applies to the grade, dockage, moisture content, and protein content of grain and to the quality factors of grain for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States.

**60-02-06. Printing and publishing rules.**

Repealed by S.L. 1983, ch. 672, § 25.

**60-02-07. Public warehouse license - Fee - Financial statement.**

A license must be obtained from the commission for each public warehouse in operation in this state.

1. a. The commission shall stagger by lot the expiration date of all licenses issued for the period beginning August 1, 2015, so that one-half of all the licenses issued expire on July 31, 2016, and one-half of all the licenses issued expire on July 31, 2017. Thereafter, all licenses issued under this section must be for a period of two years and terminate on the thirty-first day of July in the year of expiration.
- b. (1) Notwithstanding the provisions of subdivision a, the commission shall license a warehouse annually, for the first six years of the warehouse's operation.
- (2) An initial annual license application that becomes effective on or after June first does not expire until July thirty-first of the following calendar year.
2. No license may describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described.
3. a. The annual license fee for a public warehouse is:
  - (1) Three hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
  - (2) Four hundred fifty dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and
  - (3) Five hundred fifty dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].
- b. The biennial license fee for a public warehouse is:
  - (1) Six hundred dollars for a warehouse having a maximum capacity of two hundred thousand bushels [7047.8 cubic meters];
  - (2) Nine hundred dollars for a warehouse having a capacity of more than two hundred thousand bushels [7047.8 cubic meters] but not more than five hundred thousand bushels [17619.54 cubic meters]; and
  - (3) One thousand one hundred dollars for a warehouse having a capacity of more than five hundred thousand bushels [17619.54 cubic meters].
- c. An application for an annual license renewal that is received after July fifteenth must include an additional one hundred dollar fee per warehouse. An application for a biennial license renewal that is received after July fifteenth must include an additional two hundred dollar fee per warehouse.
4. If a public warehouseman operates two or more warehouses in the same city or siding, in conjunction with each other and with the same working force, and keeps one set of books and records for all such warehouses, and issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts for the grain stored and purchased therein, only one license is required for the operation of all such warehouses. When two or more warehouses are operated under one license, the license fee is based upon the combined bushel capacity of the warehouses.
5. If required to obtain United States department of agriculture approval of the commission's warehouse inspection program, the commission may require that the applicant submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this subsection is a confidential trade secret and is not a public record.

**60-02-07.1. Warehouseman to operate warehouse owned by another.**

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

#### **60-02-07.2. Receiving stations.**

A licensed public warehouseman may establish a receiving station without a separate warehouse license for that facility if all of the following conditions are met:

1. The station is colocated with another licensed public warehouse, the operator of which will take delivery of the grain on behalf of the warehouseman who established the receiving station.
2. The storage space used by the receiving station is used solely by the receiving station and is not licensed as part of the warehouse that is located at that site.
3. The grain taken in by the receiving station is not commingled with other grain at that site.
4. The warehouseman establishing the station requests and receives commission permission to increase licensed capacity to include the space to be used at the receiving station.
5. Grain received at the receiving station is recorded on scale tickets issued by the warehouseman who established the station and is covered by that warehouseman's bond.
6. Warehouse-receipted grain received at the receiving station is available for redelivery to the receipt holder at that location even if the station has been closed. A charge for redelivery must be stated in the warehouseman's redelivery policy.

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

#### **60-02-08. Licensing track buyer - Fee - Regulations.**

Repealed by S.L. 1983, ch. 672, § 25.

#### **60-02-09. Bond filed by public warehouseman.**

Before any license is effective for any public warehouseman under this chapter, the applicant for the license shall file a bond with the commission which must:

1. Be in a sum not less than five thousand dollars for any one warehouse.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commission that the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons storing or selling grain in that warehouse.
4. Be conditioned:
  - a. For the faithful performance of the licensee's duties as a public warehouseman.
  - b. For compliance with the provisions of law and the rules of the commission relating to the storage and purchase of grain by such warehouseman.
5. Specify the location of each public warehouse intended to be covered by such bond.
6. Be for the specific purpose of:
  - a. Protecting the holders of outstanding receipts.
  - b. Covering the costs incurred by the commission in the administration of chapter 60-04 in the event of the licensee's insolvency.
7. Not accrue to the benefit of any person entering into a credit-sale contract with a public warehouseman.
8. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during any annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The commission shall set the amount of the bond and may require an increase in the amount of any bond, from time to time, as the commission deems necessary to accomplish the purposes of this section. The surety on the bond must be a corporate surety company, approved by the commission, and authorized to do business within the state. The commission may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in its judgment, the cash, negotiable instrument, or personal surety bond properly will protect the holders of outstanding receipts. One bond only may be given for any line of elevators, mills, or

warehouses, owned, controlled, or operated by one individual, firm, corporation, or limited liability company, and the bond must be construed to cover such elevators, mills, or warehouses, as a whole and not a specific amount for each.

**60-02-09.1. Bond cancellation - Release of surety.**

The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the commission of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period. Unless the warehouseman files a new bond at least thirty days before liability ceases, the commission, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new bond has been filed and approved by the commission. When a license is so suspended, the warehouseman shall give notice of such suspension to each receipt holder having grain stored in the warehouse. The warehouseman shall further notify each receipt holder having grain stored in the warehouse that the grain must be removed from the warehouse or it will be priced and redeemed in cash in accordance with section 60-02-41.

**60-02-10. Warehouse license to be posted.**

The license obtained by a public warehouseman shall be posted in a conspicuous place in the public warehouse.

**60-02-10.1. Revocation and suspension.**

The commission may suspend or revoke the license of any warehouseman for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a warehouseman must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license the warehouseman may, upon the commission's approval, operate the warehouse and purchase or redeliver grain previously received, but may not receive additional grain for purchase, storage, shipping, or processing. Grain may be sold only with the prior approval of the commission.

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

1. a. Every public warehouseman, upon receiving grain into the warehouse, shall issue a uniform scale ticket for each load of grain received. The scale tickets must be numbered consecutively, and one copy of each ticket must be retained and remain as a permanent record. The original ticket must be delivered to the person from whom the grain is received, upon receipt of each load of grain.
- b. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts, within forty-five days after the grain is delivered to the warehouse, unless:
  - (1) The person to whom the scale ticket is issued signs a form waiving all rights to trust benefits under section 60-04-03.1;
  - (2) The form identifies by number each scale ticket to which the waiver applies; and
  - (3) The form is signed by the warehouseman.
- c. The commission shall prepare the waiver form required by subdivision b and make the form available to each warehouse.
- d. The warehouseman shall keep one copy of the signed waiver form with the records of the warehouse, provide one copy to the person who was issued the scale ticket and signed the form, and file one copy with the commission.
2. Nothing in this chapter requires a warehouseman to receive grain for storage. A warehouseman shall publish and post, in a conspicuous place in the warehouse, a publication identifying whether storage will be available to patrons or whether grain will be accepted via cash or a credit-sale contract arrangement.

**60-02-12. Penalty.**

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

**60-02-13. Purchase by warehouseman - Form of receipt.**

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

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

Dated \_\_\_\_\_, \_\_\_\_\_. Signed \_\_\_\_\_ Owner.

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

**60-02-14. Warehouse receipts - Copy.**

Provision shall be made for a stub record or copy of each warehouse receipt issued by a warehouseman, showing:

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

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

**60-02-15. Warehouse receipts issued by public terminal elevators.**

Repealed by S.L. 1983, ch. 672, § 25.

**60-02-16. Warehouse receipt - Contents and provisions.**

A warehouse receipt shall:

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

amount of grain to pay the charges and advances. The receipt holder shall surrender the receipt to the issuing warehouseman for settlement."

**60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery.**

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

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

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

**60-02-17.1. Warehouse charges for grain owned by the United States.**

Repealed by S.L. 1999, ch. 533, § 9.

**60-02-18. Covenant against liens may be inserted in warehouse receipt.**

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

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

**60-02-19. Warehouse receipts issued for grain in special bin.**

Repealed by S.L. 1983, ch. 672, § 25.

**60-02-19.1. Credit-sale contracts.**

A warehouseman shall not purchase grain by a credit-sale contract except as provided in this section. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing the contract. The warehouseman shall maintain an accurate record of all credit-sale contract numbers, including the disposition of each numbered form, whether by execution, destruction, or otherwise. Each credit-sale contract must contain or provide for all of the following:

1. The seller's name and address.
2. The conditions of delivery.
3. The amount and kind of grain delivered.
4. The price per unit or basis of value.
5. The date payment is to be made.
6. The duration of the credit-sale contract.

7. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02-09. However, if the warehouseman has obtained bond coverage in addition to that required by section 60-02-09 and such coverage extends to the benefit of credit-sale contracts, the warehouseman may state the same in the credit-sale contract along with the extent of such coverage.

The contract must be signed by both parties and executed in duplicate. One copy shall be retained by the warehouseman and one copy shall be delivered to the seller. Upon revocation, termination, or cancellation of a warehouseman's license, the payment date for all credit-sale contracts shall, at the seller's option, be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain shall be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. When a public warehouse is transferred under this chapter, credit-sale contracts may be assigned to another licensed public warehouseman or facility-based grain buyer.

**60-02-20. Discrimination by public warehouseman prohibited - Posting prices.**

No public warehouseman shall discriminate:

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

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

**60-02-21. Issuance of informal memoranda forbidden - Penalty.**

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

**60-02-22. Liability of warehouseman.**

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

**60-02-23. Records to be kept by public warehouseman.**

Every public warehouseman shall keep a record of all grain received, stored, and shipped, stating the:

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

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



**60-02-24. Reports to be made by public warehouseman - Penalty for failure.**

Each licensed and bonded public warehouseman shall:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the commission. The report must contain or be verified by a written declaration that it is made under the penalties of perjury. The report may be called for more frequently if the commission deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The commission may make the information available for use by other governmental entities, but the commission may not release the information in a manner that jeopardizes the confidentiality of individual licensees.
2. File the report with the commission not later than the last day of the following month, and failure to file this report promptly will be considered cause for revoking the warehouse license after due notice and hearing.
3. Keep a separate account of the grain business, if the warehouseman is engaged in handling or selling any other commodity, and under no circumstances shall the grain account and other accounts be mixed.

The commission may refuse to renew a license to any public warehouseman who fails to make a required report.

**60-02-25. Bailment not a sale.**

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

**60-02-25.1. Receiptholder's lien.**

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

**60-02-26. Standard weights to be used - Exception.**

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

**60-02-27. Federal grades to control - Grades to be posted.**

All public warehousemen shall purchase and store grain except dry edible beans in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in rules and regulations applicable thereto adopted by federal officials pursuant to law. They shall post in a conspicuous place in their warehouse the official grades so established and also any change that may be made from time to time. Warehousemen of dry edible beans shall purchase, store, and deliver beans in

accordance with their policy which must be filed with the commission and posted in a conspicuous place in their warehouse. Other grading standards may be used if mutually agreed to in writing by the warehouseman and the owner of the grain. However, the owner may demand the use of federal grading standards. The commission, after hearing, may prohibit the use of nonfederal grades.

**60-02-28. Grading of grain.**

All public warehousemen before testing for grade any grain handled by them shall remove therefrom and make due allowance for any dockage of such grain made by reason of the presence of straw, weed seeds, dirt, or any other foreign matter.

**60-02-29. Allowance for dockage - Penalty for violation.**

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

**60-02-30. Termination of public grain warehouse storage contracts - Notice to receipt holder.**

1. All storage contracts terminate on the date identified in the publication required by section 60-02-17. If a different termination date is not identified in the publication, then all storage contracts on grain in a public grain warehouse terminate on June thirtieth of each year, except for storage contracts on dry edible beans which terminate on April thirtieth of each year.
2. Storage on grain in a public grain warehouse may be terminated by the receipt holder at any time before the applicable date by the payment of all legal charges and the surrender of the warehouse receipt, together with a demand for delivery of the grain in storage, or notice to the public warehouseman to sell the stored grain.
3. Upon the expiration of the storage contract, the warehouseman is not obligated to renew the storage contract.
4. At least thirty days before the termination date of a storage contract, the public warehouseman shall notify the receipt holder by mail of the warehouseman's intention to terminate the storage contract on the date identified in the storage contract, unless the receipt holder, before that time, demands redelivery, authorizes sale, extends the storage contract, or enters a new contract with the public warehouseman for restorage. Failure to notify the receipt holder, as required by this section, results in the forfeiture of storage charges accrued for the grain during the previous twelve months.
5. In the absence of a demand for delivery, an order to sell, or an agreement between the public warehouseman and the receipt holder for storage after the termination date of the storage contract, the warehouseman, upon the expiration of the storage contract, may sell at the local market price on the close of business on that day, all stored grain of the receipt holder and tender to the receipt holder the proceeds of the sale, less accrued storage charges and the public warehouseman's advances upon any previous storage contract of the receipt holder.

**60-02-31. Notice to owner of termination of storage contract.**

Repealed by S.L. 2007, ch. 550, § 2.

**60-02-31.1. Delivery of dry edible beans to warehouse receipt holder.**

Repealed by S.L. 1991, ch. 696, § 6.

**60-02-32. Reissue warehouse receipts - Provisions.**

Upon payment of all legal accrued charges and the surrender to the warehouseman of a receipt, if the receipt holder and the warehouseman agree to continue the storage contract, the warehouseman then may extend the storage contract or issue a new warehouse receipt to the owner and cancel the former receipt by endorsing thereon the words: "Canceled by the issuance of warehouse receipt no. \_\_\_\_\_", inserting the number of the reissue warehouse

receipt thereafter, and the holder's name shall be signed thereto by the holder or by the holder's authorized agent. The reissue warehouse receipt shall be so designated by stamping thereon: "Reissue of warehouse receipt no. \_\_\_\_\_".

**60-02-33. Delivery of grain - Demand terminates storage charge.**

On the return and surrender of any receipt and the payment of all lawful charges, the grain represented therein shall be deliverable to the owner and shall not be subject to any further charge for storage after demand for delivery shall have been made and proper facilities for receiving or shipping the same have been provided. The owner of the receipt shall order the receptacle in which the grain covered by the owner's receipt is to be transported, and the grain shall be delivered when the receptacle so ordered is in proper condition for loading and is placed at the warehouse. The licensee may not assess receiving or redelivery fees on the grain that is redelivered during a suspension, following a revocation, or when the owner of the grain is taking redelivery because the licensee is unable to pay for the grain.

**60-02-34. Refusal to deliver grain - Larceny.**

Repealed by S.L. 1975, ch. 106, § 673.

**60-02-35. Grain to be kept insured for benefit of owner by warehouseman.**

A public warehouseman license is not effective unless all grain in storage or on deposit in the warehouse is kept fully insured at the expense of the warehouseman for the benefit of the owner at the current market value of the grain against loss by fire, lightning, internal explosion, windstorm, cyclone, tornado, and such other risks of direct physical loss as provided by the insurer in a policy approved by the insurance commissioner. An insurance policy covering grain in a public warehouse may not be transferred or assigned to any person for any purpose, except for grain that is not on warehouse receipt or deposit. The insurance policy must be continuous and may only be canceled in accordance with section 60-02-35.1.

**60-02-35.1. Insurance - Cancellation - Suspension of license.**

An insurance company shall give at least sixty days' notice to the commission and the insured by certified mail return receipt requested before cancellation of an insurance policy required in section 60-02-35. Unless the warehouseman files proof of new or renewed insurance at least thirty days before the existing policy ceases, the commission, without hearing, shall immediately suspend the warehouseman's license and the suspension may not be removed until a new policy has been filed and approved by the commission. When a license is so suspended, the warehouseman shall give notice of such suspension to each receipt holder having grain stored in the warehouse. The warehouseman shall further notify each receipt holder having grain stored in the warehouse that the grain must be removed from the warehouse or it will be priced and redeemed in cash in accordance with section 60-02-41.

**60-02-36. Destruction of grain in public warehouse - First lien by holder of outstanding receipt.**

The holder of an unconverted scale ticket or warehouse receipt issued by any public warehouseman shall have a first lien, to the extent of the value of the grain at the time of loss at the place where held, on all insurance of the warehouse for any loss sustained by the receipt holder, on account of the loss of such grain by fire, tornado, or any other cause covered by such insurance policy.

**60-02-37. Destruction of warehouse - Duty to notify commission.**

Repealed by S.L. 2005, ch. 587, § 9.

**60-02-38. Refund of license fee by commission.**

When requested in writing, the commission shall refund the license fee of a public warehouse, or so much as in its judgment is just and reasonable, when satisfactory proof is furnished that the warehouse has been transferred to some other person, and the new owner

has obtained a license for the same warehouse for the unexpired period for which the original license was issued. When a warehouse is destroyed by fire or other cause, the license fee may be prorated as the commission may determine.

**60-02-39. Warehouse not to be closed without permission from commission - Penalty.**

Repealed by S.L. 2017, ch. 417, § 19.

**60-02-40. Transfer of warehouse - Redemption of receipts.**

Whenever a public warehouseman desires to transfer a warehouse, either by sale or lease to any other individual, firm, or corporation, the warehouseman shall:

1. Notify the commission first of its intention to transfer the warehouse, giving the name and address of the proposed lessee or purchaser.
2. Furnish a statement of all proper claims that may be filed or pending against the warehouseman pertaining to the storage, inspection, and marketing of grain, together with a statement of:
  - a. The number of bushels [cubic meters] of grain of each kind and grade in store in the warehouse;
  - b. The number and amount of receipts outstanding; and
  - c. The names and addresses of the receiptholders.
3. Serve notice by registered or certified mail, at least thirty days before the transfer, upon all receiptholders having claims against the warehouse to call for delivery of the grain covered by the receipts, and to pay all storage charges due, the warehouseman in such case to make no charge for redelivery. The commission may waive the thirty-day notice period upon receipt of written consent of all receiptholders.
4. Transfer all stored grain undelivered at the expiration of such thirty-day period to its successor, if licensed, or to the nearest licensed warehouse for restorage, taking receipts for the same in favor of the owner of the grain so transferred.
5. Surrender to the commission its license for cancellation and at such time the proposed lessee or purchaser shall file in due form for a new license and tender a new bond for review by the commission, whereupon, it first being duly satisfied that all the outstanding receipts have been redeemed, or that the redemption thereof has been provided for, the commission may permit a new license to become effective for the lessee or purchaser.

No sale, lease, or transfer of any warehouse will be recognized by the commission except when made in accordance with the provisions of this section.

**60-02-41. Going out of business - Redemption of receipts.**

When a public warehouseman ceases business through the destruction of a warehouse by fire or other cause, or through insolvency, such warehouseman shall redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse was destroyed or closed because of insolvency. The holder of such receipts, upon due notice, must accept this price and surrender the receipts. Any public warehouseman who voluntarily ceases business or fails to renew an existing warehouse license or whose warehouse license is revoked shall notify the commission and all outstanding receiptholders of such closing and redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the unconverted scale ticket or warehouse receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein shall be settled in cash and priced on the market on the day of closing.

**60-02-42. Cease and desist.**

Whenever an entity engages in an activity or practice that is contrary to the provisions of this chapter or related rules, the commission, upon its own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the commission. Such orders may include any corrective action up to and including license

suspensions. Cease and desist orders must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

**60-02-43. Agricultural contracts - Mediation or arbitration.**

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

**60-02-44. Licensed warehouse capacity and condominium storage.**

Unless an entire warehouse facility is used for nonpublic purposes, all physically connected portions of the facility must be licensed in accordance with this chapter. The warehouseman shall issue receipt memoranda for all grain received. Facilities that are physically connected to the licensed warehouse may be sold under a condominium arrangement or leased to other entities for nonpublic use and sales and lease agreements must be based on the capacity of the bins involved and not on the number of bushels held in the space. The licensee shall provide contents insurance and bond coverage for the space. In case of licensee insolvency, the contents of the space must be considered an asset to the trust fund established under chapter 60-04 and owners and lessees are entitled to trust fund protection in a manner equal to all other valid grain receipt holders.