

CHAPTER 60-04 INSOLVENT GRAIN WAREHOUSEMEN

60-04-01. Definitions.

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

1. "Commission" means the public service commission.
2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02-19.1. When a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
3. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown domestic grain or grass seed. "Grain" as defined in this chapter does not include grain or grass seeds owned by or in the possession of the warehouseman that have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.
4. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility in which grain is received for storing, buying, selling, or shipping for compensation. Provided, however, that nothing in this chapter requires any warehouseman doing manufacturing business only, to receive, store, or purchase any kind of grain at said mill.
5. "Public warehouseman" means the person owning or operating a public warehouse which is located or doing business within this state, whether such owner or operator resides within this state or not.
6. "Receipts" means grain warehouse receipts, scale tickets, checks, or other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain except when such memoranda was received as a result of a credit-sale contract.

60-04-02. Insolvency of warehouseman.

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

60-04-03. Appointment of commission.

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

Upon the filing of the commission's application, the court may issue ex parte such temporary order as may be necessary to preserve or protect the assets of the trust fund, or the value thereof, until the court issues its order granting or denying the application.

60-04-03.1. Trust fund established.

1. Upon the insolvency of any warehouseman, a trust fund shall be established:

- a. For the benefit of noncredit-sale receiptholders of the insolvent warehouseman, other than those who have waived their rights as beneficiaries of the trust fund in accordance with section 60-02-11; and
 - b. To pay the costs incurred by the commission in the administration of this chapter.
2. The trust fund consists of the following:
- a. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of such grain;
 - b. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the commission is appointed trustee;
 - c. The proceeds of insurance policies upon grain destroyed in the elevator;
 - d. The claims for relief, and proceeds therefrom, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman;
 - e. The claims for relief, and proceeds therefrom, for the conversion of any grain stored in the warehouse;
 - f. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency;
 - g. Unencumbered equity in grain hedging accounts; and
 - h. Unencumbered grain product assets.

60-04-03.2. Possession of grain.

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

60-04-03.3. Joinder of surety - Deposit of proceeds.

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

60-04-04. Notice to receiptholders and credit-sale contract claimants.

Upon its appointment by the district court, the commission may take possession of relevant books and records of the warehouseman. The commission shall cause a notice of its appointment to be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located and may notify by ordinary mail the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, as shown by the warehouseman's records. The notices must require outstanding receiptholders and credit-sale contract claimants to file their claims against the warehouseman with the commission along with the receipts, contracts, or any other evidence of the claims as required by the commission. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time as prescribed by the commission, the commission is relieved of further duty or action under this chapter on behalf of the receiptholder or credit-sale contract claimant and the receiptholder or credit-sale contract claimant may be barred from payment for any amount due. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

60-04-05. Remedy of receiptholders.

No receiptholder has a separate claim for relief upon the warehouseman's bond, nor for insurance, nor against any person converting grain, nor against any other receiptholder, except

through the trustee, unless, upon demand of five or more receipt holders, the commission fails or refuses to apply for its own appointment from the district court or unless the district court denies the application for appointment. This chapter does not prohibit or prevent any receipt holder, either individually or in conjunction with other receipt holders, from pursuing concurrently such other remedy against the person or property of such warehouseman, for the whole, or any deficiency occurring in the redemption, of the receipts.

60-04-06. Commission to marshal trust assets.

Upon its appointment by the district court, the commission may maintain suits at law or in equity, or any special proceeding, in the name of the state of North Dakota, upon its own relation, but for the benefit of all such receipt holders against:

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

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

60-04-07. Power of commission to prosecute or compromise claims.

The commission may:

1. Prosecute any action provided in this chapter in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action whenever it is in the best interests of the receipt holders.
4. Settle and compromise any action when it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of the compromise or of the full amount of any insurance policy, bond, or conversion claim, exonerate the person so compromising or paying in full from further liability growing out of the action.

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

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

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

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

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

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

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

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

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

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

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