

## **CHAPTER 60-02.1 GRAIN BUYERS**

### **60-02.1-01. Definitions.**

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

1. "Commissioner" means the agriculture commissioner.
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 section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
3. "Deferred-payment contract" means a credit-sale contract for which the amount owed for the sale of grain has been established, but the payment is postponed until a later date.
4. "Facility" means a structure in which grain purchased by a grain buyer is received or held.
5. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" does not include grain or grass seeds owned by or in the possession of the grain buyer which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.
6. "Grain broker" means a person that:
  - a. Is involved in the negotiation of grain transactions in the state;
  - b. Receives compensation from at least one party to the transaction; and
  - c. Does not take title to the grain and is not under any financial or contractual obligation related to the transaction.
7. "Grain buyer" means any person, other than a public warehouseman as defined in chapter 60-02, that purchases or otherwise merchandises grain for compensation. The term includes roving grain buyers, grain brokers, and grain processors. The term does not include:
  - a. A producer of grain that purchases grain from other producers to complete a carload or truckload in which the greater portion of the load is grain grown by the producer or on-farm feedlot operations in which at least fifty percent of the livestock is owned by the owner of the farm.
  - b. A person that is permitted to sell seed under chapter 4.1-53, if that person buys grain only for processing and subsequent resale as seed.
  - c. A person that is an authorized dealer or agent of a seed company holding a permit in accordance with section 4.1-53-38.
8. "Grain processor" means an entity that purchases grain to process into end products of a substantially different makeup or nature than the original grain.
9. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
10. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract.
11. "Roving grain buyer" means a grain buyer that does not operate a facility where grain is received.

### **60-02.1-02. Commissioner - Powers and duties.**

The powers and duties of the commissioner are enumerated in this chapter.

### **60-02.1-03. Duties and powers of the commissioner.**

The commissioner has the duty and power to:

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

**60-02.1-03.1. Commissioner's authority - Grain buyer - Trust assets.**

Upon the commissioner's determination that continued operation of a grain buyer is likely to result in probable loss of assets to receipt holders, the commissioner immediately may suspend, close, or take control of the assets held in a trust fund described in section 60-02.1-30, or take any combination of these actions as the commissioner deems necessary to begin an orderly liquidation of those trust fund assets as provided in this chapter.

**60-02.1-04. Federal licensed inspector.**

The commissioner may employ a federal licensed inspector whose duties are enumerated in this chapter and may employ other employees as necessary to carry out the provisions of this chapter.

**60-02.1-05. Grain marketing - Procedure for resolving disputes.**

1. If any dispute or disagreement arises between the person receiving and the person delivering grain as to the proper grade, dockage, vomitoxin level, moisture content, or protein content of any grain, an average sample of at least three pints [1.65 liters] of the grain in dispute may be taken together by both interested parties. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was transferred. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties for inspection by a federal licensed inspector, or a mutually agreed-upon third party, who will examine the grain and adjudge what grade, dockage, vomitoxin level, moisture content, or protein content the sample of grain is entitled to under the inspection rules and grades adopted by the secretary of agriculture of the United States. The person requesting the inspection service shall pay for the inspection. If the grain in question is damp, otherwise out of condition, or if moisture content is in dispute, the sample must be placed in an airtight container. Payment for the grain involved in the dispute must be made and accepted on the basis of the determination made by the federal licensed inspector or third party. However, all other quality factors may also be considered in determining the price of the grain. An appeal of the determination made by a third party other than a federal licensed inspector may be made to a federal licensed inspector. An appeal of the determination made by a federal licensed inspector may be made as provided under the United States Grain Standards Act [Pub. L. 103-354; 108 Stat. 3237; 7 U.S.C. 79(c) and (d)] and under 7 CFR 800.125-800.140. A person not abiding by a final determination is liable for damage resulting from not abiding by the determination.
2. If any dispute or disagreement arises between the person delivering grain and the person receiving grain as to the determination of quality factors of grain purchased or delivered in the state for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States, an average sample of at least three pints [1.65 liters] of the grain in dispute may be taken together by the interested parties. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was transferred. If the grain is damp or otherwise out of condition, the sample must be placed in an airtight container. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties, for inspection by a federal licensed inspector, or a mutually agreed-upon third party, who may examine the grain and

determine the quality factors in dispute. The person requesting the inspection service shall pay for the inspection. The determination made by the inspector, or the third party, must be used in the settlement of the dispute.

**60-02.1-06. Notice of procedures for resolving disputes over grain.**

Repealed by S.L. 2021, ch. 487, § 31.

**60-02.1-06.1. Release of records - Confidentiality.**

1. As a condition of licensure under section 60-02.1-07, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
  - a. The issuance or renewal of a grain buyer license; or
  - b. An investigation after issuance or renewal of a grain buyer license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
  - a. The issuance or renewal of a grain buyer license; or
  - b. An investigation after issuance or renewal of a grain buyer license.
3. Any information obtained by the commissioner under this section is confidential and may be provided only:
  - a. To federal authorities in accordance with federal law;
  - b. To the attorney general, state agencies, and law enforcement agencies for use in the pursuit of official duties; and
  - c. As directed by an order of a court pursuant to a showing of good cause.

**60-02.1-06.2. Grain buyer license - Financial criteria to be met.**

1. To be eligible to receive an annual license under section 60-02.1-07, an applicant shall submit current financial documentation to the commissioner verifying the applicant has satisfactory net worth and working capital, as determined by the commissioner.
2. A licensed grain buyer or an applicant for initial licensure shall report balance sheets and income statements to the commissioner annually at the time of application for initial licensure or license renewal if the applicant purchased up to ten million dollars worth of grain during the previous licensing period, or intends to purchase up to ten million dollars worth of grain during the first year of operation.
3. As a condition of licensure under section 60-02.1-07, an applicant shall provide to the commissioner, upon request, any financial record or bank verification release the commissioner deems relevant for the purpose of verifying the financial information of an applicant pursuant to the requirements of this section.
4. As a condition of licensure under section 60-02.1-07, a new applicant must:
  - a. Pass a criminal background check;
  - b. Have a satisfactory credit score, as determined by the commissioner; and
  - c. Be a responsible individual with a good business reputation, as determined by the commissioner, who:
    - (1) Is in the grain buying business;
    - (2) Has knowledge of, and experience with, generally accepted grain buying and handling practices;
    - (3) Is competent and willing to operate as a grain buyer in accordance with state and federal regulations; and
    - (4) Has not committed fraud or a criminal offense indicating a lack of business integrity or honesty that undermines the person's responsibility as a grain buyer.

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

1. Grain buyers that purchase, solicit, merchandise, or take possession of grain in this state shall obtain an annual license from the commissioner. Except as provided in this

section, each license expires on July thirty-first of each year. If a licensee's initial license is issued effective after May thirty-first, that license expires on July thirty-first of the following year. The annual license fee for a grain buyer is:

- a. Four hundred dollars for a grain buyer that purchased up to one million dollars worth of grain during the previous licensing period, or intends to purchase up to one million dollars worth of grain during the first year of operation;
  - b. Eight hundred dollars for a grain buyer that purchased more than one million dollars worth of grain but not more than ten million dollars worth of grain during the previous licensing period, or intends to purchase more than one million dollars worth of grain but not more than ten million dollars worth of grain during the first year of operation; and
  - c. One thousand two hundred dollars for a grain buyer that purchased more than ten million dollars worth of grain during the previous licensing period, or intends to purchase more than ten million dollars worth of grain during the first year of operation.
2. A license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee per receiving location.
  3. A license issued under this section is not transferable.
  4. The commissioner may refuse to issue, renew, or may revoke a license:
    - a. If the licensee or applicant has been convicted of a criminal offense;
    - b. If the licensee or applicant has failed to comply with the requirements of this section;
    - c. If the commissioner has evidence the licensee negotiated in bad faith; or
    - d. For any other reason determined by the commissioner.
  5. A licensed grain buyer shall submit a monthly report to the commissioner by the tenth day of each month. The report must include the total volume of each commodity brokered in the preceding month.
  6. A licensed grain buyer shall notify each potential commodity seller of the identity of the potential commodity buyer before the final confirmation of the transaction.
  7. Before a license is effective for a grain buyer under this section, the licensee or applicant shall file a bond with the commissioner for not less than one hundred thousand dollars.

**60-02.1-07.1. Roving grain buyer license - How obtained - Fee.**

Repealed by S.L. 2021, ch. 487, § 31.

**60-02.1-08. Bond filed by grain buyer.**

1. Before any license is effective for any grain buyer under this chapter, the applicant for the license shall file a bond with the commissioner which must:
  - a. Be in a sum not less than one hundred thousand dollars.
  - b. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
  - c. Run to the state of North Dakota for the benefit of all persons selling grain to or through the grain buyer.
  - d. Be conditioned:
    - (1) For the faithful performance of the licensee's duties as a grain buyer.
    - (2) For compliance with the provisions of law and the rules of the commissioner relating to the purchase of grain by such grain buyer.
  - e. Be for the specific purpose of:
    - (1) Protecting the sellers of grain.
    - (2) Covering the costs incurred by the commissioner in the administration of the licensee's insolvency.
  - f. Not accrue to the benefit of any person entering a credit-sale contract with a grain buyer.

2. 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.
3. The commissioner shall set the amount of the bond and may require an increase in the amount of any bond as the commissioner deems necessary to accomplish the purposes of this section.
4. The amount of the bond for a grain buyer must be based on the dollar value of the grain purchased, solicited, or merchandised.
5. A grain buyer shall report purchases, solicitations, and merchandising agreements to the commissioner monthly.
6. The surety on the bond must be a corporate surety company, approved by the commissioner, and authorized to do business within the state. The commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in the commissioner's judgment, cash, a negotiable instrument, or a personal surety bond properly will protect the holders of outstanding receipts.

**60-02.1-09. Bond cancellation - Release of surety.**

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

**60-02.1-10. Grain buyer license to be posted or carried - Penalty.**

A grain buyer shall have the buyer's license in possession at all times. A grain buyer that transacts business without first procuring a license and giving a bond is guilty of a class B misdemeanor.

**60-02.1-11. Revocation and suspension.**

The commissioner may suspend or revoke the license of any grain buyer for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a grain buyer must automatically be suspended for failure at any time to maintain a bond.

**60-02.1-12. Scale ticket - Contents.**

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

**60-02.1-13. Violations of chapter - Criminal penalty - Civil penalty.**

1. Any person violating any provision of this chapter or any rule adopted pursuant to this chapter, if punishment is not specifically provided for, is:
  - a. Guilty of an infraction; and
  - b. Subject to a civil penalty in an amount not to exceed five thousand dollars for each violation.
2. The civil penalty may be adjudicated by a court or by the agriculture commissioner through an administrative hearing.

**60-02.1-14. Credit-sale contracts.**

1. A grain buyer may not purchase grain by a credit-sale contract except as provided in this section. All credit-sale contracts must be in writing and must be consecutively

numbered at the time of printing the contract. The grain buyer shall maintain an accurate record of all credit-sale contract numbers, including the disposition of each numbered form, whether by execution, destruction, or otherwise. Each credit-sale contract must contain or provide for all of the following:

- a. The seller's name and address.
  - b. The conditions of delivery.
  - c. The amount and kind of grain delivered.
  - d. The price per unit or basis of value.
  - e. The date payment is to be made.
  - f. The duration of the credit-sale contract.
  - g. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02.1-08. However, if the grain buyer has obtained bond coverage in addition to that required by section 60-02.1-08 and the coverage extends to the benefit of credit-sale contracts, the grain buyer may state that fact in the credit-sale contract along with the extent of such coverage.
2. The contract must be signed by both parties and executed in duplicate. An electronic signature satisfies the requirement. A holder of an unsigned contract is not eligible for any protection provided by chapter 60-10. One copy must be retained by the grain buyer and one copy must be delivered to the seller. Upon revocation, termination, or cancellation of a grain buyer's license, the payment date for all credit-sale contracts, at the seller's option, must be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain must be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract.
  3. A buyer that offers deferred-payment contracts shall offer bond protection to producers.

**60-02.1-15. Discrimination by grain buyer prohibited.**

1. A grain buyer may not discriminate:
  - a. In the buying, selling, receiving, and handling of grain or in the charges made or the service rendered to owners of purchased grain;
  - b. In the receiving of grain offered for sale, but this chapter may not be construed to require a processor to receive or purchase any lot or kinds of grain;
  - c. In regard to the persons offering such grain for sale; or
  - d. Between points or stations except as the marketing factors or transportation costs or grain quality premiums may warrant.
2. A grain buyer is not required to receive any grain that is heating or otherwise out of condition.

**60-02.1-16. Records required to be kept by grain buyers.**

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

**60-02.1-17. Reports to be made by grain buyers - Penalty for failure.**

1. Each licensed and bonded grain buyer shall:
  - a. Prepare for each month a report giving facts and information called for on the form of report prepared by the commissioner. The report must contain or be verified by a written declaration the report is made under the penalties of perjury. The report may be called for more frequently if the commissioner deems necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The commissioner may make this information available for use by other governmental entities, but the information

- may not be released by those entities in a manner that jeopardizes the confidentiality of individual licensees.
- b. File the report with the commissioner not later than the last day of the following month. Failure to file this report promptly will be considered cause for revoking the grain buyer license after due notice and hearing.
  - c. Keep a separate account of the grain business, if the grain buyer is engaged in handling or selling any other commodity, and under no circumstances may the grain account and other accounts be mixed.
  - d. Submit additional information requested by the commissioner pursuant to a report or an inspection within five business days.
2. The commissioner may refuse to renew a license to any grain buyer that fails to make a required report.

**60-02.1-18. Standard weights to be used - Exception.**

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

**60-02.1-19. Federal grades to control - Grades to be posted.**

All grain buyers shall purchase grain, except dry edible beans, in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in applicable rules and regulations adopted by federal officials pursuant to law. A grain buyer of dry edible beans shall purchase and deliver beans in accordance with the buyer's policy, which must be filed with the commissioner and, if applicable, posted in a conspicuous place in the buyer's facility. Other grading standards may be used if mutually agreed to in writing by the grain buyer and the owner of the grain. However, the owner may demand the use of federal grading standards. After hearing, the commissioner may prohibit the use of nonfederal grades.

**60-02.1-20. Grading of grain - Penalty.**

All grain buyers before testing for grade any grain handled by them shall remove therefrom and make due allowance for any dockage of such grain made by reason of the presence of straw, weed seeds, dirt, or any other foreign matter. Any grain buyer within this state who violates this provision is guilty of a class B misdemeanor.

**60-02.1-21. Grain to be kept insured for benefit of owner by grain buyer.**

A license may not be issued to a grain processor unless all company-owned and unconverted scale ticket grain is kept fully insured at the expense of the grain buyer for the benefit of the owner at the current market value of the grain against loss by fire, lightning, internal explosion, windstorm, cyclone, tornado, and such other risks of direct physical loss as provided by the insurer in a policy approved by the insurance commissioner. An insurance policy may not be transferred or assigned to any person for any purpose.

**60-02.1-22. Insurance - Cancellation - Suspension of license.**

An insurance company shall give at least sixty days' notice to the commissioner and the insured by registered mail return receipt requested before cancellation of an insurance policy required in section 60-02.1-21. Unless the grain buyer files proof of new or renewed insurance at least thirty days before the existing policy ceases, the commissioner, without hearing, shall immediately suspend the grain buyer's license and the suspension may not be removed until a new policy has been filed and approved by the commissioner.

**60-02.1-23. Destruction of grain - First lien by holder of outstanding receipt.**

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

**60-02.1-24. Destruction of facility - Duty to notify commission.**

Repealed by S.L. 2005, ch. 588, § 4.

**60-02.1-25. Facility not to be closed without permission from commission - Penalty.**

Repealed by S.L. 2017, ch. 417, § 19.

**60-02.1-26. Transfer of facility - Redemption of receipts.**

Repealed by S.L. 2021, ch. 487, § 31.

**60-02.1-27. Going out of business - Redemption of receipts.**

Repealed by S.L. 2021, ch. 487, § 31.

**60-02.1-28. Insolvency of grain buyer.**

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 is unable to make redelivery upon proper written demand, including electronic communication. The licensee may not assess receiving or redelivery fees on 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.

**60-02.1-29. Appointment of commissioner.**

Upon the insolvency of any grain buyer, the commissioner shall act as trustee of the trust fund described in section 60-02.1-30.

**60-02.1-30. Trust fund established.**

Upon the insolvency of any licensee, a trust fund must be established for the benefit of noncredit-sale receipt holders and to pay the costs incurred by the commissioner in the administration of the insolvency. The trust fund must consist of the following:

1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds obtained from the conversion of such grain.
2. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the commissioner is appointed trustee must be remitted to the commissioner and included in the trust fund.
3. The proceeds of insurance policies on destroyed grain.
4. The claims for relief, and proceeds from the claims for relief, for damages upon bond given by the licensee to ensure faithful performance of the duties of a licensee.
5. The claim for relief, and proceeds from the claim for relief, for the conversion of any grain stored in the warehouse.
6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency.
7. Unencumbered equity in grain hedging accounts.
8. Unencumbered grain product assets.

**60-02.1-31. Joinder of surety - Deposit of proceeds.**

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



#### **60-02.1-31.1. Joinder - Grain broker.**

A licensed grain broker may be joined as a party to an insolvency proceeding if the commissioner determines the grain broker negotiated a grain transaction:

1. With an insolvent grain buyer; or
2. That was discriminatory, predatory, or in bad faith.

#### **60-02.1-32. Notice to receiptholders and credit-sale contract claimants.**

Upon the commissioner's appointment, the commissioner may take possession of relevant books and records of the licensee. If the insolvency involves a roving grain buyer, the commissioner shall publish a notice of the commissioner's appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, the holders of record of outstanding receipts and those who are potential credit-sale contract claimants, disclosed by the licensee's records. If the insolvency involves a grain processor, the notice must be published once each week for two consecutive weeks in a newspaper in the county in which the facility is located. The notice must require outstanding receiptholders and credit-sale contract claimants to file their claims with the commissioner along with the receipts, contracts, or other evidence of the claims required by the commissioner. 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 set by the commissioner, the commissioner is relieved of further duty in the administration of the insolvency on behalf of the receiptholder or credit-sale contract claimant and the receiptholder may be barred from participation in the trust fund, and the 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.

#### **60-02.1-33. Remedy of receiptholders.**

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

#### **60-02.1-34. Commissioner to marshal trust assets.**

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

#### **60-02.1-35. Power of commissioner to prosecute or compromise claims.**

The commissioner may:

1. Prosecute any action provided in sections 60-02.1-28 through 60-02.1-38 in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action if it will be in the best interests of the receiptholders.
4. Settle and compromise any action if it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of any settlement or of the full amount of any bond, exonerate the person so paying from further liability growing out of the action.

#### **60-02.1-36. Money received by trustee - Deposited in Bank of North Dakota.**

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

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

1. Upon the receipt and evaluation of claims, the commissioner shall file with the court a report showing the amount and validity of each claim after recognizing:
  - a. Relevant liens or pledges.
  - b. Relevant assignments.
  - c. Relevant deductions due to advances or offsets accrued in favor of the licensee.
  - d. In case of relevant cash claims or checks, the amount of the claim.
  - e. In case of a relevant credit-sale contract or noncredit-sale contract, the amount remaining to be paid based on the terms of the contract.
2. The report must also contain the proposed reimbursement to the commissioner for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receiptholders, less expenses incurred by the commissioner in the administration of the insolvency, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants. If the trust fund is insufficient to redeem all receiptholder claims in full, the report should list the funds as prorated.
3. The court shall set a hearing and the appropriate notice for interested persons to show cause why the commissioner's report should not be approved and distribution of the trust fund be made as proposed. Copies of the report and notice of hearing must be served by the commissioner by certified mail upon the licensee and the surety and by ordinary mail upon all persons having claims filed with the commissioner.
4. Any aggrieved person having an objection to the commissioner's report shall file the objection with the court and serve copies on the commissioner, the licensee, 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.
5. Following the hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, payments from the credit-sale contract indemnity fund, and discharge of the commissioner from the commissioner's trust.

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

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

**60-02.1-39. Cease and desist.**

If an entity engages in an activity or practice that is contrary to the provisions of this chapter or related rules, the commissioner, upon the commissioner's own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the commissioner. Such orders may include any corrective action up to and including license suspensions. Cease and desist orders must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

**60-02.1-40. Agricultural contracts - Mediation and arbitration.**

If a written contract for the sale of grain does not contain provisions to settle disagreements concerning factors not governed by section 60-02.1-05, the parties shall attempt to resolve the disagreements through mediation or arbitration.

**60-02.1-41. Roving grain buyers - Exception - Applicability of provisions.**

Notwithstanding any other law, this chapter does not apply to any person that purchases, solicits, or merchandises grain, which has been cleaned, processed, and made ready for consumption, from a public warehouseman licensed and bonded under chapter 60-02. If the person engages in any activity other than those described in this section, the person is subject to the law governing those other activities.