

Grain Licensing Law Changes Effective August 1st

This article outlines the grain licensing law changes that took effect on August 1st. These changes will affect all commercial grain licensees in one way or another. These changes were made by HB 1026 which passed in most recent legislative session which ended in late April.

LICENSING STRUCTURE

The new licensing structure takes the old structure of the federal warehouse and Facility Based Grain buyers and combines them into one license that is covered by Chapter 60-02 Grain and Seed Warehouses. The old version of Chapter 60-02.1 (Grain Buyers) used to cover Facility Based Grain Buyers and Roving Grain Buyers. The new version eliminates the Facility Based Grain Buyer and creates two new licenses-Grain Processors and Grain Brokers-as well as Roving Grain Buyers.

Grain Processors are defined as: *an entity that purchases grain to process into end products of a substantially different makeup or nature than the original grain. i.e., wheat to flour, blended grain with non-grain product*

Grain Brokers are defined as: *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.*

LICENSING FEES

The new licensing fee structure returns the licensing period to annual and simplifies the fees so that they are consistent with all license types.

The fees are based on value of grain handled rather than volume of grain handled. The fees are:

- \$400 – purchases below 1 million
- \$800 – purchases over 1 million but less than 10 million
- \$1,200 – purchases over 10 million

ADDITIONAL LICENSING CRITERIA

The law changes give the Agricultural Commissioner the authority to run background checks on license applicants. The Ag. Department has stated that these checks will be done by the ND Bureau of Criminal Investigation (BCI) rather than the FBI.

The Ag. Commissioner also now has the authority to fine those that are in violation of grain licensing law with a max. penalty of \$5000 per violation.

Licensees must also provide requested records or information to the Ag. Department within 5 business days.

BONDING LEVELS

The basis for determining the bond for a licensee is changed from capacity/volume to purchase value. The minimum bond was increased to \$100,000 and the maximum bond was increased to \$2.5 million.

The grain warehouse license bond is based on:

- Percentage of annual purchases
- Use three-year rolling average calculated at renewal
- Bond calculation percentage will be determined in Ag. Department administrative rule making

The grain processor license bond is based on:

- Percentage of annual purchases
- Report purchases monthly and bond adjusted as needed
- Bond calculation percentage will be determined in Ag. Department administrative rule making

The roving grain buyer or grain broker license bond is based on:

- Percentage of annual solicitation, merchandise, or purchase
- Report monthly purchases and bond adjusted as needed
- Bond calculation percentage will be determined in Ag. Department administrative rule making

The licensing year begins August 1st so the changes to the bonding basis will be in effect for the licensing renewals in 2022.

SCALE TICKET CONVERSION

The law change reduces the amount of time a producer has to convert a scale ticket from 45 days to 30 days. Conversion is when the amount of grain shown on a scale ticket is converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts. If a producer fails to convert a scale ticket within 30 days, they forfeit any trust fund or credit-sale contract indemnity fund protection provided under sections 60-02-09, 60-02-19.1, and 60-04-03.1, and chapter 60-10.

The forfeiture of protections due to a failure to convert a scale ticket is a shift in philosophy that puts the responsibility on the producer to make sure he is making timely decisions about his grain. In previous versions of law, the burden of making sure scale tickets were converted fell on the elevator operator. This change in obligation should be communicated to the producer as soon as possible to ensure they are aware of the repercussions of not making a timely conversion decision. NDGDA and the Ag. Department will be putting together some informational campaigns to get that message out.

DEFERRED PAYMENTS

One topic that generated a lot of discussion when the bill was being written is deferred payments and ways to protect producers who enter into these types of contracts. It didn't take very long into the discussion to determine that not everyone had the same idea of what a deferred payment contract was and so the first step was to add a definition. That definition is as follows:

“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.

To help producers mitigate some risk when entering into deferred payment contracts the new law requires elevators that offer deferred payment contracts to offer bonding of those contracts to the producers. The elevator must just offer a bond, they are not required to pay for it nor is the producer required to purchase the bond. The bond fee is usually based on the warehouse financials. A simple way to comply with this portion of the law would be to add an opt in/out statement to your deferred payment contract. Contact NDGDA if you need more information regarding these types of bonds.

ELECTRONIC SIGNATURES

The new law recognizes electronic signatures as being acceptable on all grain documents.

CHANGES TO INSOLVENCY PROCEEDINGS

Changes to insolvency proceedings under the new law include removing the need for the Commissioner to go to the district court in the county where the insolvency is taking place to be appointed the trustee. The Commissioner may act on behalf of receiptholders immediately upon notice of an insolvency which can include taking control of assets and begin a liquidation of those assets.

The law also allows for a broker to be joined to an insolvency proceeding. 60-02.1-31.1 states: *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.*

The changes made by HB 1026 is the culmination of two years of work by many interested parties including the ND Department of Agriculture and NDGDA. We feel this bill will make improvements to current grain licensing law that will simplify the licensing process while strengthening protection for sellers and buyers alike. If you have suggestions to improve upon these changes, please contact NDGDA or the ND Dept. of Ag.