

## **CHAPTER 60-03 HAY BUYERS**

**60-03-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Claimant" means any person claiming to be injured by the default of the licensee in the payment for any hay purchased or marketed by the licensee.
2. "Commission" means the public service commission.
3. "Credit-sale contract" means a written contract for the sale of hay under which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the hay for sale and which contains the notice required in subdivision g of subsection 5 of section 60-03-04.1. When a part of the sale price of a contract for the sale of hay is to be paid or may be paid more than thirty days after the delivery or release of the hay for sale, only that part of the contract is a credit-sale contract.
4. "Hay" means alfalfa, clover, and any other grain or grass that has been cut and stacked or baled for use as feed for livestock.
5. "Hay buyer" means any person who is in the business of buying hay from the owner for resale or processing, or markets hay on behalf of the owner. The term does not include a producer of hay who purchases hay from other producers to complete a carload or truckload in which the greater portion of the load is hay 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.
6. "Licensee" means a hay buyer licensed under this chapter.

**60-03-01.1. Duties and powers of the commission.** The commission shall have the power to:

1. Exercise general supervision of the hay 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 of any hay buyer.
4. Make all proper rules for carrying out and enforcing any law in this state regarding hay buyers.

**60-03-02. License - How obtained - Fee.** Each hay buyer operating within this state must obtain a license through the commission to expire on July thirty-first of each year. Each license must designate the business address of the licensee, and each licensee shall have and maintain an agent for process within this state. The license fee which must accompany the application for license is one hundred dollars.

**60-03-03. Subject to public warehouse laws.** Repealed by S.L. 1999, ch. 534, § 16.

**60-03-04. Bond filing by hay buyer.** Before a license is issued to any hay buyer, the applicant shall file with the commission a bond in an amount set by the commission. The bond shall:

1. Cover the period of the license.

2. Run to the state of North Dakota for the use and benefit of all persons selling hay to or through the licensee.
3. Be conditioned for the faithful performance of the duties of the licensee as a hay buyer, and be for the specific purpose of protecting persons dealing with the licensee or its agent or agents within the state of North Dakota from loss or damage by reason of any violation of this chapter.
4. Not accrue to the benefit of any person entering into a credit-sale contract with the licensee.
5. Be governed by all of the provisions of law and rules applicable to the business of a hay buyer.

The commission shall set the amount of the bond at a level it deems necessary to accomplish the purposes of this section. The surety on each bond must be a corporate surety company, approved by the commission, and authorized to do business in 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 will properly protect persons dealing with the licensee or its agent within the state.

**60-03-04.1. Credit-sale contract.** A hay buyer may not purchase or market hay by a credit-sale contract unless all of the following are complied with:

1. The hay buyer shall file with the commission a bond in addition to that required by section 60-03-04 and in an amount set by the commission, but not less than one hundred thousand dollars. The bond must cover the period of the license and run to the state of North Dakota for the use and benefit of all persons selling hay to or through the licensee by credit-sale contract. The commission shall set the amount of the bond at a level it deems necessary to accomplish the purposes of this section. The surety on such a 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 will properly protect persons selling hay to or through the licensee by credit-sale contracts.
2. The licensee shall file with the commission a current financial statement setting forth the licensee's financial position and results in operations for the licensee's most recent fiscal period. The financial statement must conform to generally accepted accounting principles.
3. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing. A copy of the printed form used for the credit-sale contract must be filed with and approved by the commission at the beginning of each license period. A series of consecutively numbered approved contracts shall not be used in any other state.
4. The licensee shall maintain an accurate record of the disposition of each credit-sale contract form.
5. Each credit-sale contract must contain or provide for all of the following:
  - a. The seller's name and address.
  - b. The terms and conditions of delivery.
  - c. The amount and kind of hay delivered.

- d. The price per unit or basis of value.
  - e. The date payment is to be made which must not exceed one hundred twenty days from the date the hay is delivered.
  - f. The duration of the credit-sale contract, which must not exceed twelve months from the date the contract is executed.
  - g. Notice in a clear and prominent manner that the sale is by credit-sale contract which is not protected by the bond coverage provided for in section 60-03-04 and that an additional bond covering credit-sale contracts is required by this section.
6. The contract must be executed in duplicate by both parties. One copy must be retained by the licensee and one copy must be delivered to the seller.
  7. Upon revocation, termination, or cancellation of a license, the payment date for all credit-sale contracts must, 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 must be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract.

**60-03-05. Hay buyer must carry license - Penalty for transacting business without license and giving a bond.** The licensee shall have the license in the licensee's possession at all times while the licensee is engaged in the business of a hay buyer and must exhibit the license to each person from whom the licensee purchases hay under the license. Any hay buyer who shall transact business without first procuring a license and giving a bond as herein provided shall be guilty of a class B misdemeanor.

**60-03-06. Penalty.** Any person who violates any provisions of this chapter or any rule adopted pursuant to this chapter is guilty of a class B misdemeanor.

**60-03-07. Commission makes rules and regulations governing roving grain or hay buyers.** Repealed by S.L. 1983, ch. 673, § 10.

**60-03-08. Revocation and suspension.** The commission may revoke or suspend the license of any hay buyer for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a hay buyer shall automatically be suspended for failure at any time to have or to maintain a bond in the amount and type required.

**60-03-09. Procedure for revocation of license.** Repealed by S.L. 1983, ch. 673, § 10.

**60-03-09.1. Complaint procedure.** Repealed by S.L. 1989, ch. 743, § 17.

**60-03-10. Records required to be kept by hay buyer - Reports.** Each hay buyer shall keep such accounts, records, and memoranda concerning the person's dealings as such buyer as from time to time may be required by the commission and shall make such reports of purchases of hay as may be required by the rules made by the commission. The commission at all times shall have access to such accounts, records, and memoranda.

**60-03-11. Hay buyer's fee - Paid into state treasury.** All fees collected by the commission under the provisions of this chapter shall be paid into the state treasury monthly.

**60-03-12. Insolvency of hay buyer.** A licensee is insolvent when the licensee defaults in payment for hay purchased or marketed by the licensee.

**60-03-13. Appointment of commission.** Upon the insolvency of any licensee, the commission shall apply to the district court of Burleigh County for authority to take all action

necessary to act as trustee of the trust fund described in section 60-03-14. Upon notice to the licensee as the court shall prescribe, but not exceeding twenty days, or upon waiver of notice in writing by the licensee, the court shall hear and determine the application in a summary manner. If the court determines that the licensee is insolvent within the meaning of this chapter and that it would be in the best interests of the claimants that the commission secure and execute the trust, the court shall issue an order granting the application, without bond, and 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 a temporary order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the application.

**60-03-14. Trust fund established.** Upon the insolvency of any licensee, a trust fund must be established for the benefit of claimants and to pay the costs incurred by the commission in the administration of the insolvency. The trust fund must consist of the following:

1. Hay of the insolvent licensee held in storage or the proceeds obtained from the conversion of stored hay.
2. The proceeds of insurance policies on hay destroyed in storage.
3. The claims for relief, and proceeds therefrom, for damages upon bond given by the licensee to ensure faithful performance of the duties of a licensee.
4. Unencumbered accounts receivable for hay sold at the time or following the filing of a claim that precipitates an insolvency.

**60-03-15. 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 claimants, 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.

**60-03-16. Notice to claimants.** Upon its appointment the commission may take possession of relevant books and records of the licensee. The commission shall publish a notice of its appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, potential claimants disclosed by the licensee's records. The notice must require claimants to file their claims with the commission along with the receipts or other evidence of the claims required by the commission. If a claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time set by the commission, the commission is relieved of further duty in the administration of the insolvency on behalf of the claimant and the claimant may be barred from participation in the trust fund. Claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

**60-03-17. Remedy of claimants.** No claimant has a separate claim for relief upon any insolvent licensee's bond, nor for insurance, nor against any person converting hay, nor against any other claimant, except through the trustee, unless, upon demand of five or more claimants, the commission fails or refuses to apply for its own appointment or unless the district court denies the application. Sections 60-03-12 through 60-03-22 do not prohibit any claimant, either individually or in conjunction with other claimants, from pursuing concurrently any other remedy against the person or property of the licensee.

**60-03-18. Commission to marshal trust assets.** Upon its appointment, the commission shall marshal all of the trust fund assets. The commission may maintain suits in the name of the state of North Dakota for the benefit of all claimants against the licensee's bonds, insurers of hay, any person who may have converted any hay, and any who may have received preferential treatment by being paid by the insolvent licensee after the first default.

**60-03-19. Power of commission to prosecute or compromise claims.** The commission may:

1. Prosecute any action provided in sections 60-03-12 through 60-03-22 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 when it will be in the best interests of the claimants.
4. 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.

**60-03-20. Money received by trustee - Deposited in Bank of North Dakota.** All funds received by the commission as trustee must be deposited in the Bank of North Dakota.

**60-03-21. Report of trustee to court - Approval - Distribution.** Upon the receipt and evaluation of claims, the commission shall file with the court a report showing the amount and validity of each claim after recognizing relevant:

1. Liens or pledges.
2. Assignments.
3. Deductions due to advances or offsets accrued in favor of the licensee.
4. In case of cash claims or checks, the amount of the claim, with interest from the date of default at the weighted average prime rate charged by the Bank of North Dakota.

The report must also contain the proposed distribution of the trust fund assets, less expenses incurred by the commission in the administration of the insolvency. If the trust fund is insufficient to redeem all claims in full, the report should list the funds as prorated.

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 distribution of the fund be made as proposed. Copies of the report and notice of hearing must be served by the commission by certified mail upon the licensee and the surety and by ordinary mail upon all claimants.

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 licensee, and the surety at least ten days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.

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, and discharge of the commission from its trust.

**60-03-22. Filing fees and court costs - Expenses.** The commission 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 commission in the prosecution of the action and the cost of employing outside counsel may be paid from the trust fund. 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 sections 60-03-12 through 60-03-22, may be paid from the trust fund.