

AGRICULTURE

CHAPTER 53

SENATE BILL NO. 2124

(Agriculture Committee)

(At the request of the Seed Commissioner)

NOXIOUS WEED SEED TOLERANCES

AN ACT to amend and reenact section 4-09-13 of the North Dakota Century Code, relating to noxious weed seed tolerances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-13 of the North Dakota Century Code is amended and reenacted as follows:

4-09-13. (Effective through July 31, 2003) Tolerances. The tolerances used in determining correctness and accuracy in labeling seed as described in this chapter must be those tolerances used under the Federal Seed Act of August 9, 1939, and subsequent amendments as of July 1, 2001, except that the tolerance for yellow starthistle must be zero and the commissioner may, by rule, establish tolerances that are more strict than the Federal Seed Act tolerances.

(Effective after July 31, 2003) Tolerances. The tolerances used in determining correctness and accuracy in labeling seed as described in this chapter must be those tolerances used under the Federal Seed Act of August 9, 1939 [53 Stat. 1275; 7 U.S.C. 1551 et seq.], and subsequent amendments ~~thereto~~ as of December 31, 2002, except that the tolerance for yellow starthistle must be zero and the commissioner may, by rule, establish tolerances that are more strict than the Federal Seed Act tolerances.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 54

SENATE BILL NO. 2206

(Senators Nichols, Erbele, Urlacher)
(Representatives Onstad, Pollert, Skarphol)

SEED SALE REQUIREMENTS

AN ACT to amend and reenact section 4-09-14 of the North Dakota Century Code, relating to requirements for the sale of seed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-14 of the North Dakota Century Code is amended and reenacted as follows:

4-09-14. (Effective through July 31, 2003) Prohibitions.

1. It is unlawful for any person to sell, offer for sale, expose for sale, transport for sale, or hold or store with the intent to sell, any agricultural, vegetable, flower, or tree and shrub seed within this state if:
 - a. The test to determine the percentage of germination required under sections 4-09-10, 4-09-11, 4-09-11.1, and 4-09-11.2 has not been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to the sale, offering for sale, or transportation, provided that seeds contained in a hermetically sealed container, as defined by regulation issued by the seed commissioner, may be sold, transported for sale, or held for sale unless the test provided in this subdivision has not been completed within a thirty-six-month period, exclusive of the calendar month in which the test was completed, immediately prior to the sale, offering for sale, or transportation for sale;
 - b. The seed is not labeled in accordance with the provisions of this chapter or bears false or misleading labeling;
 - c. There has been false or misleading advertising in connection with the seed;
 - d. The seed contains prohibited noxious weed seeds;
 - e. With regard to agricultural or vegetable seed, the seed is not labeled to show the rate of occurrence of restricted noxious weed seeds, as required under sections 4-09-10 and 4-09-11;
 - f. The seed is designated, offered, represented, or advertised under any name or identification other than that by which it was known originally;
 - g. The seed contains restricted noxious weed seeds in excess of twenty-five seeds per pound [453.59 grams]; or

- h. The percentage by weight of all weed seeds in the seed exceeds one percent.

Any person, under rules adopted by the commissioner, may submit to the commissioner a sample of any seed which the person claims to be a new variety, distinct from any commonly known variety of the seed, together with a proposed, distinctive name. The commissioner, within one year, shall make any tests the commissioner considers necessary, and if the commissioner finds as a result of the tests that the seed or plant is of a new variety, distinct from any known variety of the seed and that the proposed name will properly distinguish the seed from any and all other varieties, the commissioner shall issue to the applicant a permit to designate the seed by the proposed name. The purchaser, vendor, or any person receiving any seed shipped into this state from without the state, shall have the same labeled in accordance with this chapter. Certain standardized grades and labeling of seed in use elsewhere may be permitted by the commissioner in connection with shipments of seed into this state from points outside this state in lieu of the labeling provided for in this chapter.

- 2. It is unlawful for any person in this state to:
 - a. Detach, alter, deface, or destroy any label provided for in this chapter or to alter or substitute seed in any manner with the intent to defeat the purpose of this chapter;
 - b. Disseminate any false or misleading advertisement concerning agriculture or vegetable seed in any manner or by any means;
 - c. Hinder or obstruct in any way any authorized person in the performance of the person's duties under this chapter;
 - d. Fail to comply with a "stop-sale" order;
 - e. Use on seed labels or tags, or to use or attach to literature, or to state in any manner or form of wording designed as a "disclaimer" or "nonwarranty" clause with the intent to disclaim responsibility of the vendor of the seed for the data on the label required by law;
 - f. Use the words "type" or "trace" on any labeling in connection with the name and description of any agricultural and vegetable seed;
 - g. Move or otherwise handle or dispose of any lot of seed held under a "stop-sale" order, except with the written permission of the commissioner or the commissioner's agent, and only for the purpose specified in such written permission;
 - h. Use the name of the state seed department or the name of the official laboratory for advertising purposes in connection with seed analyzed or tested by the department or official laboratory, except in the case of registered or certified seed; or
 - i. Plant any seed labeled "for vegetative cover only" with the intent to harvest for seed or grain.

(Effective after July 31, 2003) Prohibitions.

1. It is unlawful for any person to sell, offer for sale, expose for sale, transport for sale, or hold or store with the intent to sell, any agricultural, vegetable, flower, or tree and shrub seed within this state if:
 - a. The test to determine the percentage of germination required under sections ~~4-09-10~~, ~~4-09-11~~, ~~4-09-11.1~~, and ~~4-09-11.2~~ has not been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to the sale, offering for sale, or transportation, provided that seeds contained in a hermetically sealed container, as defined by regulation issued by the seed commissioner, may be sold, transported for sale, or held for sale unless the test provided in this subdivision has not been completed within a thirty-six-month period, exclusive of the calendar month in which the test was completed, immediately prior to the sale, offering for sale, or transportation for sale;
 - b. Such seed is not labeled in accordance with the provisions of this chapter or bears false or misleading labeling;
 - c. There has been false or misleading advertising in connection with such seed;
 - d. Such seed contains prohibited noxious weed seeds;
 - e. With regard to agricultural or vegetable seed, such seed is not labeled to show the rate of occurrence of restricted noxious weed seeds, as required under sections ~~4-09-10~~ and ~~4-09-11~~;
 - f. Such seed is designated, offered, represented, or advertised under any name or identification other than that by which it was known originally;
 - g. Such seed contains restricted noxious weed seeds in excess of ninety seeds per pound [453.59 grams]; or
 - h. The percentage by weight of all weed seeds in the seed exceeds one percent.

Any person, under rules and regulations to be made therefor by the commissioner, may submit to the commissioner a sample of any seed which the person claims to be a new variety, distinct from any commonly known variety of such seed, together with a proposed, distinctive name therefor. The commissioner, within one year, shall make such tests as the commissioner considers necessary, and if the commissioner finds as a result of such tests that such seed or plant is of a new variety, distinct from any variety of such seed known theretofore and that the name proposed therefor will properly distinguish said seed from any and all other varieties thereof, the commissioner shall issue to the person applying therefor a permit to designate such seed by said name. The purchaser, vendor, or any person receiving any seed shipped into this state from without the state, shall have the same labeled in accordance with and in conformity to the requirements of this chapter. Certain

standardized grades and labeling of seed in use elsewhere may be permitted by the commissioner in connection with shipments of seed into this state from points outside thereof in lieu of the labeling provided for in this chapter.

2. It is unlawful for any person in this state to:
 - a. Detach, alter, deface, or destroy any label provided for in this chapter or to alter or substitute seed in any manner with the intent to defeat the purpose of this chapter;
 - b. Disseminate any false or misleading advertisement concerning agriculture or vegetable seed in any manner or by any means;
 - c. Hinder or obstruct in any way any authorized person in the performance of the person's duties under this chapter;
 - d. Fail to comply with a "stop-sale" order;
 - e. Use on seed labels or tags, or to use or attach to literature, or to state in any manner or form of wording designed as a "disclaimer" or "nonwarranty" clause with the intent to disclaim responsibility of the vendor of the seed for the data on the label required by law;
 - f. Use the words "type" or "trace" on any labeling in connection with the name and description of any agricultural and vegetable seed;
 - g. Move or otherwise handle or dispose of any lot of seed held under a "stop-sale" order, except with the written permission of the commissioner or the commissioner's agent, and only for the purpose specified in such written permission;
 - h. Use the name of the state seed department or the name of the official laboratory for advertising purposes in connection with seed analyzed or tested by the department or official laboratory, except in the case of registered or certified seed; or
 - i. Plant any seed labeled "for vegetative cover only" with the intent to harvest for seed or grain.

Approved March 17, 2003

Filed March 17, 2003

CHAPTER 55**SENATE BILL NO. 2256**
(Senators Klein, Grindberg, Nichols)
(Representatives Belter, Nicholas, Pollert)**PLANT AND SEED RECORD CONFIDENTIALITY**

AN ACT to create and enact a new section to chapter 4-09 of the North Dakota Century Code, relating to plant and seed records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-09 of the North Dakota Century Code is created and enacted as follows:

Plant and seed records - Exempt. The following records of the state seed commission are exempt from section 44-04-18:

1. Records of any plant or seed analysis or testing and variety or disease determination conducted by the state seed department on a fee-for-service basis for nonpublic entities or persons.
2. Information received by the seed commission under chapter 4-09, 4-10, or 4-42 from a nonpublic entity or person that the nonpublic entity or person determines is propriety information or a trade secret.

Approved March 13, 2003
Filed March 13, 2003

CHAPTER 56**SENATE BILL NO. 2326**

(Senators Klein, Tallackson)

(Representative DeKrey)

WHOLESALE POTATO DEALER LICENSES AND FEES

AN ACT to create and enact three new sections to chapter 4-11 of the North Dakota Century Code, relating to wholesale potato dealers; to amend and reenact sections 4-11-01, 4-11-02, 4-11-03, 4-11-04, 4-11-06, 4-11-07, 4-11-08, 4-11-09, 4-11-10, 4-11-12, 4-11-13, 4-11-14, 4-11-15, 4-11-16, 4-11-17, 4-11-18, 4-11-19, 4-11-20, 4-11-21, 4-11-22, 4-11-23, and 4-11-24 of the North Dakota Century Code, relating to wholesale potato dealers; to repeal sections 4-11-05 and 4-11-11 of the North Dakota Century Code, relating to wholesale potato dealers' licenses and fee schedules; to provide a penalty; to provide for a continuing appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-11-01 of the North Dakota Century Code is amended and reenacted as follows:

4-11-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the state seed commissioner.
2. ~~"Person" means an individual, firm, copartnership, corporation, limited liability company, company, society, or association, and implies both the singular and the plural as the case requires.~~
3. ~~"Potatoes"~~ "Insolvency" means an unableness or unwillingness to provide payment for potatoes purchased by the dealer.
3. "Potato" means what a tuber commonly are classed as white or Irish potatoes.
4. "Wholesale potato dealer" means any person who buys or sells, ~~contracts to buy or sell,~~ potatoes in wholesale lots directly from a grower or grower cooperative, who sells or handles potatoes in wholesale lots for the purpose of processing or resale, or who handles potatoes on account of or as an agent for another, any potatoes as defined herein.

SECTION 2. AMENDMENT. Section 4-11-02 of the North Dakota Century Code is amended and reenacted as follows:

4-11-02. Wholesale potato dealer license required. ~~No~~ Before a person may engage in, or purport to be engaged in, the business of a wholesale potato dealer, ~~or advertise as such, unless he is~~ the person must be licensed to carry on such business by the commissioner.

SECTION 3. AMENDMENT. Section 4-11-03 of the North Dakota Century Code is amended and reenacted as follows:

4-11-03. Application for license - Contents. ~~The application for license must be made to~~ To obtain a license as a wholesale potato dealer, a person must complete an application and submit it to the commissioner in writing and under oath, and must set forth. The application must be signed by the applicant under oath and must include:

1. The ~~place or places where~~ location in which the applicant intends to ~~carry on the business for which the license is desired~~ operate as a wholesale potato dealer.
2. The estimated amount of business to be done monthly.
3. The amount of business done the preceding year, if any.
4. The greatest volume of potatoes, by hundredweight, purchased during any one month in the preceding calendar year.
5. The greatest value of potatoes purchased during any one month in the preceding calendar year.
6. The full name of the persons constituting the firm ~~each partner~~ if the applicant is a ~~copartnership~~ partnership.
- 5- 7. The name of the ~~officers of the~~ each corporate officer and the state of incorporation if the applicant is a corporation ~~and where it is incorporated~~ if the applicant is a corporation.
- 6- 8. The name of the ~~managers of the~~ each manager and the state of organization if the applicant is a limited liability company ~~and where it is organized~~ if the applicant is a limited liability company.
9. The name of every agent employed by the applicant on the date of the application.
- 7- 10. A financial statement prepared in accordance with generally accepted accounting principles and showing in a general way the value and character of the assets and the amount of liabilities of the applicant.
- 8- 11. ~~Statements showing the applicant's eligibility for a similar license~~ A list of similar licenses issued to the applicant in other states ~~in which he may have operated or is operating at the time of the application.~~

The fee for the license must accompany the application.

12. The name of every state that has:
 - a. Denied the applicant's request for similar licensure;
 - b. Denied a request for similar licensure submitted by an agent employed by the applicant;
 - c. Issued to the applicant a similar license and thereafter suspended or revoked the license; or
 - d. Issued to an agent of the applicant a similar license and thereafter suspended or revoked the agent's license.

SECTION 4. AMENDMENT. Section 4-11-04 of the North Dakota Century Code is amended and reenacted as follows:

4-11-04. Bond Form of security to accompany application for license - Terms - Liability under. The commissioner may require the applicant shall execute and file a bond issued in favor of the commissioner, with the sureties, amount, and form of the bond to be fixed by the commissioner, or the applicant may give a letter of credit from a bank in lieu of a bond if approved by the state seed commissioner, conditioned:

1. ~~For the faithful performance of his duties as a wholesale potato dealer.~~
2. ~~For the observance of all laws relating to the carrying on of the business of a wholesale potato dealer.~~
3. ~~For the payment when due of the purchase price of potatoes purchased by him.~~
4. ~~For the prompt settlement and payment of all claims and charges due to this state for services rendered or otherwise.~~
5. ~~For the prompt reporting of sales to all persons consigning potatoes to the licensee for sale on commission.~~
6. ~~For the prompt payment to the persons entitled thereto of the proceeds of all sales, less lawful charges, disbursements, and commissions.~~

The bond must cover all wholesale potato business transacted in whole or in part within the state, and the liability for acts thereunder must be only for the period the license is in force. The surety may terminate its liability under such bond at any time by giving the commissioner notice of termination. Such notice must specify that the surety desires to terminate its liability under the bond, and such liability must be terminated thirty days after the receipt of such notice by the commissioner. The commissioner immediately shall notify the licensee to furnish a new bond, and if the licensee fails to furnish a bond satisfactory to the commissioner, he shall suspend or cancel the license of such licensee. No surety is liable for any acts performed by the licensee after the expiration of the aforesaid thirty-day period, but the surety is liable, as provided by the terms of the said bond, for any acts performed by the licensee prior to the effective date of such cancellation to file a current financial statement prepared in accordance with generally accepted accounting principles, a cash bond or a surety bond in an amount and form determined by the commissioner, or an irrevocable letter of credit. The form of security required by the commissioner must be conditioned for the faithful performance of the applicant's duties as a wholesale potato dealer, for compliance with all laws and rules relating to the purchase of potatoes by the dealer, for prompt payment in the case of insolvency, and for the protection and benefit of any potato producer in this state during the period the license is in effect.

SECTION 5. A new section to chapter 4-11 of the North Dakota Century Code is created and enacted as follows:

Termination of bond - Notice to commissioner. The surety may terminate its liability under a bond by giving the commissioner at least ninety days notice of intent to terminate. The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date the commissioner received the notice or on a later date specified by the surety. This section does not

relieve, release, or discharge the surety from any liability incurred before the expiration of the ninety-day period. Unless the wholesale potato dealer files a new bond at least thirty days before the surety's liability ceases, the commissioner, without hearing, shall suspend the wholesale potato dealer's license. The commissioner may not remove the suspension until a new bond or other form of surety has been filed and approved by the commissioner.

SECTION 6. AMENDMENT. Section 4-11-06 of the North Dakota Century Code is amended and reenacted as follows:

4-11-06. License - Fee - Expiration. ~~The fee for each license must be set by the state seed commissioner. All licenses expire~~ shall establish the fee for a wholesale potato dealer's license. The license expires on June thirtieth of each year.

SECTION 7. AMENDMENT. Section 4-11-07 of the North Dakota Century Code is amended and reenacted as follows:

4-11-07. License - Posting. ~~The wholesale potato dealer shall post the license, or a certified copy thereof, must be kept posted of the license in the office of the licensee at each place within the state where he~~ at each location where the dealer transacts business.

SECTION 8. AMENDMENT. Section 4-11-08 of the North Dakota Century Code is amended and reenacted as follows:

4-11-08. Refusal, cancellation, or suspension of license - Grounds.

1. The refusal, cancellation, or suspension of commissioner may refuse to issue a license to operate as a wholesale potato dealer if:
 - a. The applicant was refused a wholesale potato dealer's license in another state;
 - b. The applicant had a wholesale potato dealer's license suspended or revoked in another state may constitute grounds for the same action in this state at the discretion of the commissioner. If any licensee or applicant for a license has in his employ in a position of responsibility any person who has held a license to operate as a wholesale potato dealer in this or any other state, and such license has been canceled or suspended, such condition may constitute a ground, at the discretion of the commissioner, for the refusal, suspension, or cancellation of a license in this state while the aforesaid cancellation or suspension is effective.; or
 - c. The applicant employs in a position of responsibility an individual who had a wholesale potato dealer's license suspended or revoked in another state.
2. The commissioner may suspend or revoke a license to operate as a wholesale potato dealer if:
 - a. The dealer was the subject of a license suspension or revocation in another state;
 - b. The dealer had a wholesale potato dealer's license suspended or revoked in another state; or

- c. The dealer employs in a position of responsibility an individual who had a wholesale potato dealer's license suspended or revoked in another state.

SECTION 9. AMENDMENT. Section 4-11-09 of the North Dakota Century Code is amended and reenacted as follows:

4-11-09. Agent of licensee - Ineligibility. ~~The commissioner may make the provisions which are specified in section 4-11-08 as grounds for disqualification of a licensee or applicant for a license, or the fact that an individual is ineligible to act as an agent for a potato dealer in another state, operate as grounds for the disqualification of an individual to determine that an individual may not act as an authorized agent for a licensee if the individual was refused a wholesale potato dealer's license in another state or if the individual had a wholesale potato dealer's license suspended or revoked in another state.~~

SECTION 10. AMENDMENT. Section 4-11-10 of the North Dakota Century Code is amended and reenacted as follows:

4-11-10. Identification cards required. ~~The principal~~ A licensed wholesale potato dealer shall secure obtain from the commissioner an identification card for each of his agents agent and for an each individual licensee operating as his an agent to place the public on notice that the persons soliciting potatoes from place to place are working as agents of a licensed dealer. The agents. Each agent shall carry the identification card with them at all times while whenever the agent is soliciting or transacting potato business for the licensee. The commissioner shall charge a fee for each identification card is one dollar.

SECTION 11. AMENDMENT. Section 4-11-12 of the North Dakota Century Code is amended and reenacted as follows:

4-11-12. Licensee to keep accounts Accounts and records. ~~The licensee~~ A wholesale potato dealer shall keep accurate accounts and records of all transactions as a wholesale potato dealer and shall retain them, subject to the examination of the commissioner, the records for a period of eighteen months after their respective events. The commissioner is entitled access to the records at all times.

SECTION 12. AMENDMENT. Section 4-11-13 of the North Dakota Century Code is amended and reenacted as follows:

4-11-13. Licensee's duty when discontinuing Discontinuation of business - Duty of dealer. ~~Whenever a licensee~~ If a wholesale potato dealer sells, disposes of, or discontinues his business the business for which the dealer obtained a license, during the period covered by his the license, he immediately the dealer shall notify the commissioner in writing and, upon demand at the request of the commissioner, shall produce before the commissioner a full statement of all of his assets and liabilities as of the date of the transfer or discontinuance of said the business was sold, disposed of, or discontinued.

SECTION 13. AMENDMENT. Section 4-11-14 of the North Dakota Century Code is amended and reenacted as follows:

4-11-14. Bonds - Additional required. ~~The commissioner, whenever he is of the opinion that any bond given by a licensee is inadequate for the proper protection of the public, may at any time require the licensee to give additional bonds~~

in such amounts as from time to time the commissioner may determine, with sureties to be approved by him and conditioned as set forth in section 4-11-04. For the purpose of fixing or changing the amount of such bonds, the an increase in the amount of the wholesale potato dealer's bond. The commissioner may at any time require verified financial statements of his business from any licensee, and if the licensee from a dealer. If a dealer fails to furnish such the information or fails to furnish a new or higher bond when directed by the commissioner ~~so to do~~, the commissioner ~~forthwith may~~ shall suspend such the dealer's license, and ~~after.~~ After providing the dealer with at least ten days' notice and ~~an opportunity to be heard,~~ a hearing, the commissioner may revoke ~~his~~ the dealer's license.

SECTION 14. AMENDMENT. Section 4-11-15 of the North Dakota Century Code is amended and reenacted as follows:

4-11-15. Damage claims against bonds - Hearing - Procedure. Any

1. If a person claiming to be damaged by any breach of the conditions of a bond given by a licensee may file with notifies the commissioner a verified statement of the fact or facts constituting his complaint. Upon the filing of such complaint, the commissioner shall investigate the charges made, and may order a hearing before himself or his duly authorized agent, and shall give the person complained of notice of the filing of such complaint and of the time and place of such hearing. At the conclusion of the hearing, the commissioner, or his agent conducting it, shall report his findings and render his conclusion upon the matter complained of to the complainant and respondent in each case. The respondent has fifteen days in which to make effective and satisfy such conclusions. If such settlement is not effected within the time aforesaid, any party aggrieved by the breach of any condition of the bond, after first obtaining the approval of the commissioner, may commence and maintain an action against the principal and sureties on the bond of the party complained of. The written approval of the commissioner to the bringing of the action must be attached to and made a part of the original complaint in such action. Upon commencing such action, the plaintiff shall file a copy of his complaint in the office of the commissioner. The record of the hearing before the commissioner or his agent, when properly certified to, is competent evidence in any court having jurisdiction of such action. If a licensee has become liable to more than one person by reason of breaches of the conditions of the bond and the amount of the bond is insufficient to pay the entire liability to all persons entitled to the protection of the bond, the penalty of the bond, as against the sureties, must be apportioned among the several claimants. In all cases where the liability of the licensee exceeds the amount of his bond, the commissioner shall commence an action for the recovery of the full amount of the bond, and in any action wherein a recovery is had, the commissioner, subject to the approval of the court, shall pass upon and allow or disallow all claims which may be presented to him within sixty days after the recovery on the bond, for full or apportioned payment from the amount recovered. To effect the purposes herein, the commissioner may employ counsel and pay the fee and expenses thereof out of the amount recovered on such bond that a wholesale potato dealer has breached any of the conditions for which security was given under this chapter, the commissioner shall investigate the allegation.

2. The commissioner may hold a hearing to obtain additional testimony and documentary evidence. If the commissioner determines that the allegation is supportable, the commissioner shall apply to the district court of the county in which the claim is alleged to have occurred for appointment as trustee.
3. Upon notice to the wholesale potato dealer as the court may prescribe or upon waiver of notice by the dealer, the court shall hear the matter in a summary manner. If the court determines that the dealer has breached any condition for which security was given under section 4-11-04, and if the court determines that it would be in the best interest of all persons holding claims against the dealer that the commissioner execute the trust, the court shall issue an order appointing the commissioner as a trustee, without bond. The commissioner shall proceed in the manner provided for in this chapter.
4. The commissioner, as trustee, shall notify all persons having claims against the dealer by certified mail that the claims must be filed with the commissioner by a date certain. Any person who fails to file a claim within the time allotted is barred from participation in any fund marshalled by the commissioner under this chapter.
5. All moneys collected and received by the commissioner as trustee must be deposited in the Bank of North Dakota pending the marshalling of the fund.

SECTION 15. A new section to chapter 4-11 of the North Dakota Century Code is created and enacted as follows:

Recovery of trust fund - Report - Notice to claimants. Upon recovery of the trust fund, or so much of the fund as is possible to recover or as is necessary to pay all outstanding claims, the commissioner shall file the report in court showing the amount payable on each claim. If the fund is insufficient to pay all claims in full, the commissioner shall prorate the fund among the claimants. The court shall notify the claimants by mail regarding the proposed distribution and direct that the claimants show cause why the report should not be approved and distribution made in accordance with the report. After holding a hearing on the matter, the court shall approve or modify the report, issue an order directing the distribution of the fund, and discharge the commissioner from all duties as trustee.

SECTION 16. A new section to chapter 4-11 of the North Dakota Century Code is created and enacted as follows:

Representation of commissioner by attorney general. The attorney general shall represent the commissioner in any action or proceeding brought under this chapter and may employ legal assistance when necessary. Any expenses incurred by the attorney general in providing representation to the commissioner may be deducted from the trust fund.

SECTION 17. AMENDMENT. Section 4-11-16 of the North Dakota Century Code is amended and reenacted as follows:

4-11-16. Inspection of potatoes - Right to demand - Certificate of inspection.

1. Whenever potatoes are ready for sale or are on their way to market, the owner, conveyor, prospective buyer, or any other interested party may demand and is entitled to inspection of ~~said~~ the potatoes and to an inspection certificate as ~~otherwise~~ provided for by law.
2. Whenever potatoes are shipped to or received by a wholesale potato dealer for handling, purchase, or sale in this state and ~~said~~ the dealer at wholesale finds the ~~same~~ potatoes to be ~~in~~ a spoiled, damaged, unmarketable, ~~or~~ in unsatisfactory condition, ~~or~~ mislabeled, or misrepresented in any way, unless both parties waive inspection before sale or other disposition ~~thereof~~, the wholesale potato dealer shall cause the ~~same~~ potatoes to be examined by an inspector assigned by the commissioner for that purpose. The inspector shall execute and deliver a certificate to the dealer, stating the day, the time, and the place of ~~such~~ inspection and the condition of ~~such~~ the potatoes. The dealer shall mail or deliver a copy of ~~such~~ the certificate to the shipper of the inspected potatoes ~~inspected~~.

SECTION 18. AMENDMENT. Section 4-11-17 of the North Dakota Century Code is amended and reenacted as follows:

4-11-17. Consignee of potatoes to make report. A wholesale potato dealer ~~of potatoes~~ to whom potatoes have been shipped or consigned for sale ~~on a commission basis or on consignment or under any circumstances wherein the~~ and to whom title to said potatoes remains with the shipper has not yet passed shall provide the shipper, within a reasonable time after receiving ~~the same,~~ shall make the potatoes, a written report ~~to the shipper showing~~ detailing the exact potatoes' time of arrival, the quantity, the quality, and the price per unit ~~of the potatoes,~~ and at the same time, he shall. At the time of providing the report, the wholesale potato dealer shall pay the shipper the net amount due ~~him~~ the shipper for the potatoes.

SECTION 19. AMENDMENT. Section 4-11-18 of the North Dakota Century Code is amended and reenacted as follows:

4-11-18. Sales reports unsatisfactory - Remedy of shipper. Whenever a shipper, after demand, receives no remittance or report of sale of potatoes, or is dissatisfied with the remittance, sale, or report ~~thereof,~~ he may complain in writing to, the shipper may file a complaint with the commissioner ~~who shall investigate the matter complained of.~~ Upon receipt of a complaint, the commissioner shall initiate an investigation.

SECTION 20. AMENDMENT. Section 4-11-19 of the North Dakota Century Code is amended and reenacted as follows:

4-11-19. Rules and regulations. The commissioner may adopt rules ~~and regulations,~~ consistent with this chapter, to enforce to implement this chapter, to govern the rates charged by wholesale potato dealers, and the buying, selling, advertising, and trading practices of wholesale potato dealers, and to provide necessary definitions of terms and conditions relative to this chapter. Any rules and

regulations adopted by the commissioner must be adopted pursuant to chapter 28-32.

SECTION 21. AMENDMENT. Section 4-11-20 of the North Dakota Century Code is amended and reenacted as follows:

4-11-20. Conducting hearings and canceling licenses - Application of chapter 28-32 Investigation - Hearing - Action on license. ~~The~~ If the commissioner ~~may receive complaints~~ receives a complaint against any person dealing in, shipping, transporting, storing, or selling potatoes, ~~and may make any and all necessary investigations relative to the handling of, storing, shipping, or dealing in potatoes at wholesale, and he~~ the commissioner may initiate an investigation. ~~The commissioner and his~~ the commissioner's agents, at all times, shall have access, at all times, to all buildings, yards, warehouses, storage, and transportation facilities, and railway cars in which any potatoes are kept, stored, handled, or transported, and may take any necessary samples. ~~The~~ After an investigation, the commissioner, ~~upon complaint being filed with him for any alleged violation of the provisions of this chapter or the regulations issued thereunder, or upon information furnished by any of his agents or by any other person, forthwith may suspend and, upon ten days' notice and an opportunity to be heard, may~~ suspend the license of any wholesale potato dealer. The commissioner shall schedule, provide notice of, and hold a hearing on the suspension within ten days of the action. After receiving both testimony and documentary evidence, the commissioner may reverse the suspension, continue the suspension, or revoke and cancel any the wholesale potato dealer's license or any. ~~If appropriate, the commissioner may demand the return of any agent's identification card issued by him~~ the commissioner. Any hearing held ~~on any complaint or information received by the commissioner under this section~~ must be conducted pursuant to in accordance with chapter 28-32. Any aggrieved party may appeal a decision of the commissioner under this section to the district court in ~~the manner provided by in accordance with chapter 28-32.~~

SECTION 22. AMENDMENT. Section 4-11-21 of the North Dakota Century Code is amended and reenacted as follows:

4-11-21. Fees and collections - Disposition Revolving fund - Continuing appropriation. ~~All~~ The commissioner shall deposit all moneys arising from the collection of fees and other charges under the provisions of this chapter must be deposited by the commissioner with the state treasurer to be credited for credit to the seed department revolving fund, and. Moneys in this fund must be disbursed, within the limits of legislative appropriations therefrom, upon order of the commissioner, with the approval of the office of management and budget, and funds so approved by the office of management and budget are appropriated on a continuing basis.

SECTION 23. AMENDMENT. Section 4-11-22 of the North Dakota Century Code is amended and reenacted as follows:

4-11-22. Enforcement of chapter. The commissioner is charged with the enforcement of ~~the provisions of this chapter and of the all rules and regulations made and published thereunder. Upon complaint made by the commissioner or any other person, the~~ adopted to implement this chapter. The attorney general and or the state's attorney in the county where the a case arises shall prosecute all violations of this chapter and of the rules and regulations made and published thereunder.

SECTION 24. AMENDMENT. Section 4-11-23 of the North Dakota Century Code is amended and reenacted as follows:

4-11-23. Violations of chapter defined - Penalty.

1. Any A person subject to the provisions of this chapter, who is guilty of a class A misdemeanor if the person:
 4. a. Makes any false statement or report as to the grade, condition, markings, quality, or quantity of potatoes received or delivered, or ~~act acts~~ in ~~any~~ a manner ~~so as~~ designed to deceive the consignor or purchaser ~~thereof~~ of the potatoes;
 2. b. Refuses to accept, on agreed terms, any shipment for which the person has contracted for by him, unless ~~such~~ the refusal is based ~~upon~~ on a state inspection certificate, secured with reasonable promptness after ~~the~~ receipt of ~~such~~ the shipment, and showing that the kind or quality of potatoes is ~~other than~~ not that which was purchased or ordered by him;
 3. c. Fails to account for potatoes or to ~~make settlement therefor~~ pay for potatoes within the time ~~limited in~~ required by this chapter, ~~or who violates or fails to comply with the terms or conditions of any contract entered into by him for the purchase or sale of potatoes;~~
 4. d. Breaches any contract entered by the person for the purchase or sale of potatoes;
 - e. Purchases for ~~his~~ the person's own account any potatoes received on consignment, either directly or indirectly, without the consent of the consignor;
 5. f. Issues ~~any~~ false or misleading market quotations, ~~or cancels;~~
 - g. Cancels any quotations during the period advertised by him the person;
 6. h. Makes or collects any commission or charge in excess of that shown in his schedule filed with the commissioner any false or misleading statement on an application for licensure as a wholesale potato dealer;
 7. i. Increases the sales charges on shipped potatoes ~~shipped to him~~ by means of "~~dummy~~" or fictitious sales;
 8. j. Fails to keep accurate records and financial accounts of all transactions as a wholesale potato dealer;
 9. k. Receives potatoes from foreign states or countries for sale or resale, ~~either~~ within or ~~without~~ outside this state, and ~~give~~ gives the purchaser the impression through any method of advertising or description that the ~~said~~ potatoes are ~~of~~ from a source other than their true origin; or
 10. l. Violates ~~any of the provisions of this chapter, or any rule or regulation made or published thereunder by the commissioner,~~

is guilty of a class A misdemeanor, and his license forthwith may be suspended, revoked, or canceled by the commissioner upon ten days' notice and an opportunity

~~to be heard. Upon conviction of such offense, or upon conviction in any federal court for violation of the federal statutes relative to the~~ adopted to implement this chapter.

2. If the commissioner is notified that a wholesale potato dealer has been convicted of an offense listed in this section, of an offense involving fraudulent use of the mails, or of any other criminal acts act pertaining to the conduct of his business the person as a wholesale potato dealer, the commissioner forthwith shall revoke and cancel the license of the person so convicted provide at least ten days' notice and hold a hearing to determine whether the wholesale potato dealer's license should be suspended or revoked.

SECTION 25. AMENDMENT. Section 4-11-24 of the North Dakota Century Code is amended and reenacted as follows:

4-11-24. Cooperation with federal and state governmental agencies.

The commissioner may cooperate with ~~the United States department of agriculture and with other federal authorities~~ entities, and with the state and municipal authorities local entities, of this and other states, and may do ~~and perform such acts and all things as may be necessary and proper in carrying~~ to carry out the purposes of this chapter.

SECTION 26. REPEAL. Sections 4-11-05 and 4-11-11 of the North Dakota Century Code are repealed.

SECTION 27. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 4, 2003
Filed April 7, 2003

CHAPTER 57

SENATE BILL NO. 2222

(Senators Klein, Grindberg, Nichols)
(Representatives Kempenich, Mueller, Pollert)

ETHANOL PRODUCTION INCENTIVES

AN ACT to create and enact four new sections to chapter 4-14.1 of the North Dakota Century Code, relating to ethanol production subsidies; to amend and reenact sections 4-14.1-07, 39-04-39, and 57-43.1-03.1 of the North Dakota Century Code, relating to the distribution of motor vehicle registration fees and the taxation of motor vehicle fuel for agricultural purposes; to repeal section 4-14.1-07 of the North Dakota Century Code, relating to the duration and limitation of ethanol plant production incentives; to provide for a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-14.1 of the North Dakota Century Code is created and enacted as follows:

Definition. In this chapter, unless the context otherwise requires, "eligible facility" means an ethanol production plant constructed in this state after July 31, 2003.

SECTION 2. A new section to chapter 4-14.1 of the North Dakota Century Code is created and enacted as follows:

Ethanol production incentive - Calculation - Payment. The agricultural products utilization commission shall provide quarterly to each eligible facility a production incentive based on the average North Dakota price per bushel of corn received by farmers during the quarter, as established by the North Dakota agricultural statistics service and the average North Dakota rack price per gallon [3.79 liters] of ethanol during the quarter, as compiled by the American coalition for ethanol. The amount payable as a production incentive must be calculated by including the sum arrived at under subsection 1 with the sum arrived at under subsection 2.

1.
 - a. If the average quarterly price per bushel of corn is above one dollar and eighty cents, for each one cent by which the quarterly price is above one dollar and eighty cents, the agricultural products utilization commission shall add to the amount payable under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
 - b. If the average quarterly price per bushel of corn is one dollar and eighty cents, the agricultural products utilization commission shall add zero to any amount payable under this section.
 - c. If the average quarterly price per bushel of corn is below one dollar and eighty cents, for each one cent by which the quarterly price is below one dollar and eighty cents, the agricultural products utilization commission shall subtract from the amount payable

under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.

2. a. If the average quarterly rack price per gallon of ethanol is above one dollar and thirty cents, for each one cent by which the average quarterly rack price is above one dollar and thirty cents, the agricultural products utilization commission shall subtract from the amount payable under this section, two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
- b. If the average quarterly rack price per gallon of ethanol is one dollar and thirty cents, the agricultural products utilization commission shall subtract zero from any amount payable under this section.
- c. If the average quarterly rack price per gallon of ethanol is below one dollar and thirty cents, for each one cent by which the average quarterly rack price is below one dollar and thirty cents, the agricultural products utilization commission shall add to the amount payable under this section two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.

SECTION 3. A new section to chapter 4-14.1 of the North Dakota Century Code is created and enacted as follows:

Subsidy limitations. The agricultural products utilization commission may not distribute more than one million six hundred thousand dollars annually in payments under section 2 of this Act. No eligible facility may receive state ethanol payments that exceed a cumulative total of ten million dollars. Change in ownership of an eligible facility does not affect the ten million dollar cumulative total allowed to be paid to that eligible facility under this section.

SECTION 4. A new section to chapter 4-14.1 of the North Dakota Century Code is created and enacted as follows:

Ethanol production incentive fund - Continuing appropriation. There is created in the state treasury a special fund known as the ethanol production incentive fund. The fund consists of transfers made in accordance with section 39-04-39 and deposits made in accordance with section 57-43.1-03.1. All moneys in the fund are appropriated on a continuing basis to the agricultural products utilization commission for use in paying ethanol production incentives under sections 2 and 3 of this Act and section 4-14.1-07.

SECTION 5. AMENDMENT. Section 4-14.1-07 of the North Dakota Century Code is amended and reenacted as follows:

4-14.1-07. Duration and limitation of ethanol plant production incentives - Report to budget section. ~~Notwithstanding any other provision of law, an ethanol plant may not receive production incentives except as permitted under this section.~~

1. ~~An ethanol plant that was in operation before July 1, 1995, may not receive production incentives in the form of direct payments from the state for more than fourteen fiscal years of operation after June 30,~~

1995. An ethanol plant that begins operation after June 30, 1995, may not receive production incentives in the form of direct payments from the state for more than fourteen fiscal years of operation. After December 31, 2009, the state may not provide production incentives in the form of direct payments to any ethanol plant.

2. An ethanol plant that was in operation before July 1, 1995, and which has a production capacity of fewer than fifteen million gallons [56781000 liters] of ethanol may receive up to ~~seven~~ six hundred ~~thirty~~ thousand dollars in production incentives from the state for production in a fiscal year. An ethanol plant that was in operation before July 1, 1995, and which produced fifteen million [56781000 liters] or more gallons in the previous fiscal year ~~and an ethanol plant that begins operations after June 30, 1995, are each~~ is eligible to receive ~~an equal share in~~ up to ~~five~~ three hundred thousand dollars in production incentives from the state in a fiscal year.
2. The agricultural products utilization commission shall determine the amount of production incentives to which a plant is entitled under this section by multiplying the number of gallons of ethanol produced by the plant and marketed to a distributor or wholesaler by forty cents. The commission shall forward the production incentives to the plant upon receipt of an affidavit by the plant indicating that the ethanol is to be sold at retail to consumers. The affidavit must be accompanied by an affidavit from a wholesaler or retailer indicating that the ethanol is to be sold at retail to consumers. Within ninety days after the conclusion of the plant's fiscal year, the plant shall submit to the budget section of the legislative council a statement by a certified public accountant indicating whether the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received under this section.

SECTION 6. AMENDMENT. Section 39-04-39 of the North Dakota Century Code is amended and reenacted as follows:

39-04-39. Distribution of registration fees collected. Any moneys in the registration fund accruing from license fees or from other like sources, in excess of the amount required to pay salaries and other necessary expenses, in accordance with the legislative assembly's appropriation for such purposes, must be promptly deposited in the highway tax distribution fund which must be distributed in the manner as prescribed by law. The state treasurer shall transfer annually from the highway tax distribution fund to the ethanol production incentive fund an amount equal to forty percent of all sums collected for the registration of farm vehicles under subsection 5 of section 39-04-19 except that no transfer may be made in an amount that would result in the balance of the ethanol production incentive fund exceeding five million dollars.

SECTION 7. AMENDMENT. Section 57-43.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-03.1. (Effective through December 31, 2003) Refund of tax for fuel used for agricultural purposes - Reductions. Any consumer who buys or uses any motor vehicle fuel for an agricultural purpose on which the motor vehicle fuel tax has been paid may file a claim with the commissioner for a refund under this chapter. The amount of the tax refund under this section must be reduced by seven cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users. Two cents per gallon [3.79 liters] withheld

from the refund must be deposited in the agricultural fuel tax fund, one cent per gallon [3.79 liters] withheld from the refund must be ~~retained~~ deposited in the ~~highway tax distribution~~ ethanol production incentive fund, and four cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural research fund.

(Effective January 1, 2004) Refund of tax for fuel used for agricultural purposes - Reductions. Any consumer who buys or uses any motor vehicle fuel for an agricultural purpose on which the motor vehicle fuel tax has been paid may file a claim with the commissioner for a refund under this chapter. The amount of the tax refund under this section must be reduced by six cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users. Two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund and four cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural research fund.

SECTION 8. REPEAL. Section 4-14.1-07 of the North Dakota Century Code is repealed.

SECTION 9. EFFECTIVE DATE. Section 8 of this Act becomes effective on July 1, 2005.

Approved April 14, 2003
Filed April 14, 2003

CHAPTER 58**SENATE BILL NO. 2199**

(Senators Erbele, Klein, Nichols)
(Representatives Belter, Headland, Wald)

SOIL CONSERVATION DISTRICT MEMBERS

AN ACT to create and enact a new section to chapter 4-22 of the North Dakota Century Code, relating to training for newly elected or appointed soil conservation district supervisors; and to amend and reenact section 4-22-04 of the North Dakota Century Code, relating to the soil conservation committee chairmanship.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-22-04 of the North Dakota Century Code is amended and reenacted as follows:

4-22-04. Committee - Chairman - Quorum - Compensation. The committee shall meet annually and select its chairman. The chairman shall serve for a term of one year from the date of selection and is not eligible for a second term. An individual may be selected as chairman for a total of three terms. Additional meetings may be held by the committee as considered necessary by the chairman, at a time and place to be fixed by the chairman. The chairman shall call special meetings upon written request of any four members. The members of the committee are entitled to receive forty-five dollars per day as compensation for their services on the committee, and are entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee, in the same manner and at the same rate as prescribed by law for state employees and officials.

SECTION 2. A new section to chapter 4-22 of the North Dakota Century Code is created and enacted as follows:

Soil conservation district supervisors - Training. As soon as practicable after an individual is elected or appointed to the position of a soil conservation district supervisor, the individual shall attend a training session delivered by the state soil conservation committee. An individual who has attended a training session as an elected or as an appointed soil conservation district supervisor may not be required to attend any additional or subsequent session.

Approved April 4, 2003
Filed April 4, 2003

CHAPTER 59

HOUSE BILL NO. 1486

(Representatives Nicholas, Boucher, Monson)
(Senators Robinson, Tallackson, Urlacher)

WHEAT TAX LEVY USE

AN ACT to amend and reenact section 4-28-07 of the North Dakota Century Code, relating to uses for the wheat tax levy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-28-07 of the North Dakota Century Code is amended and reenacted as follows:

4-28-07. Wheat tax levy.

1. a. A tax of ten mills per bushel [35.24 liters] by weight must be levied and imposed upon all wheat grown in this state, delivered into this state, or sold through commercial channels to a first purchaser in this state.
- b. The tax must be levied and assessed at the time of sale and deducted by the purchaser from the price paid, or in the case of a lien, pledge, or mortgage, deducted from the proceeds of the loan or claim secured, subject to adjustment at the time of settlement in the event the number of bushels [liters] is not accurately determined at the time of the lien, pledge, or mortgage.
- c. At the time of sale, the first purchaser in this state shall issue and deliver to the producer or seller a record of the transaction in the manner prescribed by the commission.
2. a. Any producer who sells wheat to a first purchaser in this state and who is subject to the deduction provided in this chapter, within sixty days following the deduction or final settlement, may make application by personal letter to the wheat commission for a refund application blank.
- b. Upon the return of the blank, properly executed by the producer, accompanied by a record of the deduction by the purchaser, the producer must be refunded the net amount of the deduction collected.
- c. If no request for refund has been made within the period prescribed above, then the producer is presumed to have agreed to the deduction. However, a producer, for any reason, having paid the tax more than once on the same wheat, upon furnishing proof of this to the commission, is entitled to a refund of the overpayment.
3. The commission, to inform the producer, shall develop and disseminate information and instructions relating to the purpose of the wheat tax and

manner in which refunds may be claimed and to this extent shall cooperate with governmental agencies, state and federal, and private businesses engaged in the purchase of wheat.

4. The commission may use the amount raised by two mills of the ~~ten-mill~~ levy provided for in this section to support the commission's involvement in trade issues throughout the world.
5. The commission may use the amount raised by up to two mills of the levy provided for in this section for the purposes of providing market maintenance and development services, utilization research, transportation research, and education; addressing domestic policy issues; and engaging in other related activities; or for the purposes of contracting for market maintenance and development services, utilization research, transportation research, and education; addressing domestic policy issues; and engaging in other related activities, with no more than two trade associations that are incorporated in this state and which have as their primary purpose the representation of wheat producers.
6. When the wheat commission presents the report required by section 4-24-10, the commission shall present a separate report detailing the nature and extent of the commission's efforts to address domestic policy issues.

Approved April 21, 2003

Filed April 21, 2003

CHAPTER 60

HOUSE BILL NO. 1129

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

MILK ASSESSMENTS AND DAIRY REGULATIONS

AN ACT to amend and reenact sections 4-27-06, 4-30-36, 4-30-36.2, and 4-30-36.4 of the North Dakota Century Code, relating to milk assessments and dairy regulations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-27-06 of the North Dakota Century Code is amended and reenacted as follows:

4-27-06. Assessment - Appropriation.

1. There is hereby levied on each producer an assessment of ten cents per hundredweight [45.36 kilograms] on all milk or some product therefrom produced and sold by that producer.
2. All assessments levied under this chapter must be collected by the first dealer or processor through deduction of the same from the gross receipts, with the exception that where the producer sells directly to the consumer, the assessment must be collected from the producer. All moneys received by the dealers, processors, and producers from the assessment must be remitted to the state treasurer and deposited by him in the North Dakota dairy promotion commission fund and are hereby appropriated to the commission and must be disbursed by the commission in accordance with the provisions of this chapter. The remittance of such assessments must be made monthly ~~within fifteen days after the period for which remittance is made~~ not later than the last day of the month following the month in which the milk was marketed. Assessments unpaid on the date on which they are due and payable ~~must~~ may be increased by ~~ten~~ one and one-half percent of the amount of the assessment.
3. Any producer desiring a refund of such assessment shall himself make written application to the secretary-treasurer of the commission therefor. Such application must be made to the secretary-treasurer upon forms provided by the commission no later than thirty days from the time of any payment made to a producer. Upon request, refunds must be made by the secretary-treasurer on a monthly basis.

SECTION 2. AMENDMENT. Section 4-30-36 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36. Standards for grade A milk and milk products - Adoption of amendments. Only grade A milk may be sold as fluid beverage for human consumption. The minimum standards for milk and milk products designated as grade A are the same as the minimum requirements of the "Grade A Pasteurized Milk Ordinance, ~~1999 Recommendations of the United States Public Health Service~~

2001 Revision, Public Health Service, Food and Drug Administration, Publication No. 229" including "Grade "A" Condensed and Dry Milk Ordinance 1995 Revision, Grade A Condensed and Dry Milk Products and Condensed and Dry Whey Supplement 1" and all supplements added thereto except that the minimum requirements for solids-not-fat in all grade A milk is eight and one-half percent and the butterfat content of grade A whole milk is three and one-fourth percent. The commissioner may adopt as department regulations other standards in addition to any amendments, supplements to, or new editions of the milk ordinance which are in the interest of public safety, wholesomeness of product, consumer interest, sanitation, good supply, salability, and promotion of grade A milk and milk products.

SECTION 3. AMENDMENT. Section 4-30-36.2 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.2. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines. The state milk sanitation rating and sampling surveillance officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service/food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Supplies - 1999 revision corrected Shippers - 2001 Revision, Edition" and the sampling of milk and dairy products must be in accordance with the guidelines recommended in the sixteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association.

SECTION 4. AMENDMENT. Section 4-30-36.4 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.4. Grade A pasteurized milk ordinance. Dairy producers, processors, and manufacturers shall comply with the "Grade A Pasteurized Milk Ordinance of 1999, 2001 Revision, Public Health Service, Food and Drug Administration, Publication No. 229" and its supplements and follow the procedures standards set by the "Procedures Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments 1999 revisions, 2001 Revision".

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 61

HOUSE BILL NO. 1420

(Representatives Belter, Onstad)

(Senators Christmann, Nichols)

CATTLE TRANSACTION RECORDS AND BEEF COMMISSION

AN ACT to create and enact two new sections to chapter 4-34 of the North Dakota Century Code, relating to records of cattle transactions; to amend and reenact sections 4-34-02, 4-34-03, 4-34-04, 4-34-05, 4-34-06, 4-34-08, and 4-34-10 of the North Dakota Century Code, relating to the North Dakota beef commission; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-34 of the North Dakota Century Code is created and enacted as follows:

Cattle purchasers - List of sellers to commission - Certain records exempt from disclosure - Penalty.

1. The commission may adopt rules requiring the purchaser of cattle subject to assessment under this chapter to furnish the commission with the names of persons from whom the cattle were purchased. Any person who knowingly refuses to furnish the commission with required information is guilty of a class B misdemeanor.
2. Except as otherwise provided by law, the following records are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota:
 - a. Records furnished to the commission pursuant to subsection 1;
 - b. Records furnished pursuant to section 2 of this Act; and
 - c. The identity of a person requesting refund of an assessment under section 4-34-11, and the amount of the person's requested refund.
3. This section does not limit the issuance of general statements based upon the reports of persons subject to this chapter, or the publication by the commission of the name of any person violating this chapter and a statement of the manner of violation by that person.

SECTION 2. A new section to chapter 4-34 of the North Dakota Century Code is created and enacted as follows:

Records of cattle transactions - Inspection by commission.

1. Each selling agency, livestock auction market, livestock dealer, and any other person subject to assessment under this chapter shall keep a record of:

- a. The number of cattle purchased, initially transferred, or otherwise subject to assessment, and the date of such transaction;
 - b. The identification of the seller of cattle;
 - c. The number of cattle imported or the equivalent of beef or beef products;
 - d. The amount of assessment remitted;
 - e. The basis, if necessary, to show why the remittance is less than the number of head of cattle multiplied by the per head assessment; and
 - f. The date any assessment was paid.
2. Each person subject to this section shall maintain and make available for inspection by the commission or its agents the records required by this section, including records necessary to verify any required reports. The records must be maintained for the period of time that the commission may prescribe by rule, but the records must be maintained for at least three years.

SECTION 3. AMENDMENT. Section 4-34-02 of the North Dakota Century Code is amended and reenacted as follows:

4-34-02. Definitions. Unless the context otherwise requires:

1. "Beef producer" means any person or firm engaged in the production of cattle.
2. "Cattle" means live domesticated bovine animals regardless of age.
3. "Cattle feeder" means any person or firm engaged in the growing of cattle or finishing of cattle for slaughter.
4. "Commission" means the North Dakota beef commission.
5. "Dairy producer" means any person or firm engaged in the production and sale of milk from cows.
6. "Livestock auction markets" has the same definition as contained in subsection 2 of section 36-05-01.
7. "Livestock dealer" has the same definition as contained in section 36-04-01.
8. "Participating producer" means a person who has not claimed a refund for the payment of assessment on the sale of cattle under this chapter for the preceding three years.
9. "Person" includes individuals, corporations, limited liability companies, partnerships, trusts, associations, cooperatives, and any and all other business units.

- 9- 10. "Selling agency" means any person engaged in the business of buying or selling in commerce livestock on a commission basis.

SECTION 4. AMENDMENT. Section 4-34-03 of the North Dakota Century Code is amended and reenacted as follows:

4-34-03. North Dakota beef commission - Appointments - Vacancies - Qualifications.

1. There is hereby created a North Dakota beef commission consisting of nine members who must be appointed by the governor. The commission must be composed of three beef producers, one cattle feeder, one dairy producer, one public livestock market representative, and three representatives at large. The Subject to section 4-34-05, the commission may also appoint up to two nonvoting ex officio members.
2. Three initial members must be appointed for one year; three members must be appointed for two years; and three members must be appointed for three years. All subsequent members must be appointed for three years unless the appointment is to fill a vacancy in which case such appointment must be for the unexpired term. No members may serve more than two successive three-year terms. In the event a position on the commission becomes vacant for any reason, the unexpired term of such position must be filled in the same mode and manner as the original appointments. In addition to those causes enumerated under section 44-02-01, a position on the commission is deemed vacant if a member fails to attend, without justification, three consecutive meetings of the commission.
3. Each member must:
 - a. Be a United States citizen and a resident of this state;
 - b. Be actually engaged in that phase of the cattle industry the member represents;
 - c. Have been actually engaged in that phase of the cattle industry for a period of five years; ~~and~~
 - d. Have during that period derived a substantial portion of the member's income therefrom; and
 - e. Except for the public livestock market representative, be a participating producer.

SECTION 5. AMENDMENT. Section 4-34-04 of the North Dakota Century Code is amended and reenacted as follows:

4-34-04. Nomination of members. With the exception of the representatives at large, who must be of the governor's ~~own~~ choosing, the voting members of the commission must be appointed by the governor from nominations made to him by the following organizations: to represent beef producers, by the North Dakota stockmen's association; to represent cattle feeders, by the North Dakota cattle feeders council; to represent dairy producers, by the North Dakota state milk producers association; and to represent public livestock markets, by the North Dakota livestock marketing association.

Not less than two nominations must be submitted for each office to be filled. Upon the expiration of the initial appointments, only those organizations which have the authorization to nominate candidates representing the specific classification for which an opening or openings exist are eligible to submit nominations. The initial appointments must be made immediately after the effective date of this chapter.

SECTION 6. AMENDMENT. Section 4-34-05 of the North Dakota Century Code is amended and reenacted as follows:

4-34-05. Powers and duties of commission.

1. The commission shall administer and enforce the provisions of this chapter and do all things reasonably necessary to effectuate the purposes of this chapter.
2. The commission shall elect a ~~chairman~~ presiding officer and such other officers as it ~~deems~~ determines advisable.
3. The commission shall employ and discharge at its discretion such personnel, including agents, as the commission determines are necessary to carry out the purposes of this chapter, and to prescribe their duties and powers and to fix their compensation.
4. The commission is empowered to adopt, ~~rescind, and amend~~ reasonable rules, regulations, and orders for the exercise of its powers ~~hereunder~~. The provisions of chapter 28-32 ~~shall~~ apply to this chapter.
5. The commission is authorized to establish by resolution a headquarters centrally located within the state of North Dakota which shall continue until so changed by the commission.
6. The commission may require that the person or persons who receive and disburse the moneys of the commission must be bonded, by and in the amount to be determined by the commission. The premium for such bond or bonds must be paid by the commission from assessments collected.
7. The commission shall deposit its funds in a special account in the state treasury.
8. The commission may incur expenses and enter into contracts and create such liabilities as may be reasonably necessary for the enforcement of this chapter.
9. The commission may borrow money, not in excess of its estimate of revenue from the current year's assessments.
10. The commission shall keep or cause to be kept accurate records of all assessments, expenditures, moneys, and other financial transactions performed pursuant to this chapter. Such records, books, and accounts must be audited by the state auditor, in accordance with established auditing and accounting procedures.
11. The commission may prosecute in the name of the state any action to enforce collection or assure payment of the assessment authorized by this chapter, and sue and be sued as a commission without individual

liability for acts of the commission within the scope and powers conferred upon it by this chapter.

12. The commission is empowered to cooperate with any person or any local, state, or national commission, organization, or agency, whether voluntary or established by state or federal law, including recognized livestock groups, engaged in activities similar to the work of the commission and to make contracts and agreements for carrying out programs consistent with the purpose and intent of this chapter and to expend funds in connection with this chapter.
13. The commission may appoint up to two nonvoting ~~ex officio~~ members for a term of one year that may be extended on an annual basis and the commission shall adopt policies to further define ~~ex officio~~ nonvoting member eligibility and term limitations.
14. The commission may accept grants, donations of funds, property, and services, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the work and objectives of the commission, and shall deposit all funds received under this subsection in the North Dakota beef commission fund in the state treasury.
15. The commission may contract with similar entities and qualified beef councils in other states.

SECTION 7. AMENDMENT. Section 4-34-06 of the North Dakota Century Code is amended and reenacted as follows:

4-34-06. Meetings. ~~The commission shall hold an annual meeting at which time an annual report and proposed budget must be presented.~~ The commission shall hold at least ~~two~~ other three regular meetings each year at the call of the ~~chair~~ presiding officer, and may hold special meetings at the call of the presiding officer or by request of any three voting members of the commission. ~~The chairman~~ presiding officer shall establish the time, manner, and place of all meetings and shall give reasonable notice to the members. A majority of voting members constitutes a quorum for the transaction of any business.

SECTION 8. AMENDMENT. Section 4-34-08 of the North Dakota Century Code is amended and reenacted as follows:

4-34-08. Assessment for sale of cattle - Penalty.

1. There is ~~hereby~~ levied on each ~~person who is~~ a resident of this state selling cattle within the state or from the state, an assessment of fifty cents per head for each animal sold, or the amount assessed pursuant to the federal Beef Promotion and Research Act of 1985 [7 U.S.C. 2901 et seq.] and applicable regulations, whichever is greater. The moneys collected pursuant to this chapter must be paid to the commission pursuant to this chapter and must be expended by the commission only as authorized by this chapter.
2. For the purposes of this chapter, a person is not considered to have sold cattle ~~if the~~ and the assessment may not apply to cattle owned by a person if that person certifies to the commission, on forms provided by the commission, that:

- a. The person's only share in the proceeds of a sale of cattle is a sales commission, handling fee, or other service fee, ~~or the~~; or
 - b. The person acquired ownership of cattle to facilitate the transfer of ownership of the cattle from the seller to a third party, resold the cattle no later than ten days from the date on which the person acquired ownership, and ~~certified, as required by regulations prescribed by the cattlemen's beef promotion and research board and approved by the secretary of agriculture of the United States, that the requirements of 7 CFR 1260.116 have been satisfied. The moneys collected pursuant to this chapter must be paid to the commission pursuant to this chapter and must be expended by the commission only as authorized by this chapter~~ that the assessment levied upon the person from who the person purchased cattle, if an assessment was due, has been collected and has been remitted, or will be remitted in a timely fashion.
3. Any person seeking nonproducer status under this section who willfully provides a false or misleading certification to the commission is guilty of a class B misdemeanor.

SECTION 9. AMENDMENT. Section 4-34-10 of the North Dakota Century Code is amended and reenacted as follows:

4-34-10. Remittance of assessments collected - Penalties. All assessments collected by licensed dealers, selling agencies at terminal markets, or auction markets, or required to be paid by any other person as provided in this chapter must be remitted to the North Dakota beef commission no later than the fifteenth day of the month following the month in which the cattle were sold. The assessments must be accompanied by remittance forms as prescribed and furnished by the commission. All moneys collected by the commission pursuant to this chapter must be remitted by the commission to the state treasurer and deposited by the state treasurer in the North Dakota beef commission fund and are hereby appropriated to the commission and must be disbursed by the commission in accordance with this chapter. Any licensed dealer, selling agency at terminal markets, auction markets, or any other person required to remit assessments but who fails to remit the assessments as required by this chapter within thirty days following the month in which the cattle were sold is guilty of a class B misdemeanor. Any licensed dealer, owner or operator of a selling agency at a terminal market, livestock auction market operator or any other person required to collect assessments but who fails to collect assessments as required by this chapter is guilty of a class B misdemeanor. Any person who sells cattle from the state of North Dakota outside the state or to an out-of-state buyer who fails to remit the assessments required by this chapter within thirty days following the month in which the cattle were sold is guilty of a class B misdemeanor. Any unpaid assessments due pursuant to this chapter ~~must~~ may be increased by two percent each month beginning with the day following the date the assessments were due. Any remaining amount due which includes any unpaid charges previously due pursuant to this section, ~~must~~ may be increased at the same rate on the corresponding day of each month thereafter until paid. The timeliness of the remittance of an assessment as required by this chapter must be based on the applicable postmark date or the date the assessment is actually received by the commission. The commission ~~is authorized to~~ may sue for and collect assessments and any penalties on unpaid assessments.

CHAPTER 62

SENATE BILL NO. 2082

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

PESTICIDE APPLICATORS, USE, AND FEES

AN ACT to amend and reenact subsections 5, 6, 11, 28, and 29 of section 4-35-05, sections 4-35-09, 4-35-16, 4-35-17, and 4-35-18, and subsection 4 of section 4-35-23 of the North Dakota Century Code, relating to the North Dakota pesticide act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 5, 6, 11, 28, and 29 of section 4-35-05 of the North Dakota Century Code are amended and reenacted as follows:

5. "Certified applicator" means any individual who is certified under this chapter ~~The term includes a commercial applicator and a private applicator as authorized to use or supervise the use of any pesticide that is classified for restricted use.~~
6. "Commercial applicator" means ~~a certified applicator who uses any pesticide, for any purpose or on any property, other than as provided for by a private applicator~~ an applicator, whether or not the applicator is a private applicator with respect to some uses, who uses or supervises the use of a pesticide, whether classified as restricted or general use, for any purpose or on any property, other than as provided by subsection 26.
11. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply pesticides in this state.
28. "Public ~~operator~~ applicator" means a certified applicator who applies ~~restricted use~~ pesticides as an employee of a state or federal agency, municipal corporation, public utility, or other governmental agency.
29. "Restricted use pesticide" means any pesticide formulation which is classified for restricted use by the ~~board~~ United States environmental protection agency. The term also includes a pesticide formulation classified for restricted use by the agriculture commissioner under section 19-18-05.

SECTION 2. AMENDMENT. Section 4-35-09 of the North Dakota Century Code is amended and reenacted as follows:

4-35-09. Commercial and public applicator's certification.

1. A commercial or public applicator may not purchase ~~or,~~ use, or supervise the use of a pesticide without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board.

2. An individual may be certified as a commercial or public applicator within a classification if the individual successfully completes an examination for the classification as prescribed by the board and administered by the North Dakota state university extension service or the service's designee. An application for certification must be on a form prescribed by the board and accompanied by a reasonable examination fee set by the board.
3. If the North Dakota state university extension service, or its designee, finds the applicant qualified to apply pesticides in the classifications for which the applicant has applied, after examination as the board requires, and the applicant meets all other requirements of this chapter, the North Dakota state university extension service shall issue a commercial applicator's certificate limited to the classifications in which the applicant is qualified.
4. If certification is not to be issued as applied for, the North Dakota state university extension service, or its designee, shall inform the applicant in writing of the reasons for not issuing the certification. Individuals certified pursuant to this section are deemed certified commercial or public applicators for the use of pesticides.

SECTION 3. AMENDMENT. Section 4-35-16 of the North Dakota Century Code is amended and reenacted as follows:

4-35-16. Commercial and public applicators to keep records - Duration - Submission to commissioner. The board shall require the holders of certificates to maintain records of sales of restricted use and special exemption pesticides and all ~~commercial~~ applications of pesticides by commercial or public applicators. The board may also require restricted use pesticide application records of private applicators. Such relevant information as the board may deem necessary may be specified by rule. The records must be kept for a period of three years from the date of the application or sale of the ~~restricted use~~ pesticide to which the records refer. Upon request, these records or pertinent parts thereof, must be submitted to the commissioner.

SECTION 4. AMENDMENT. Section 4-35-17 of the North Dakota Century Code is amended and reenacted as follows:

4-35-17. License plates for equipment. The board may require all motor vehicles, as defined in chapter 39-01, which are used for the application of restricted use pesticides to be identified by a license plate or decal furnished by the board. Such license plate or decal must be issued at no cost to the certified applicator or public applicator, and must be affixed to the vehicle as prescribed by the board. This section must not be interpreted to apply to aircraft engaged in aerial spraying which are licensed under section 2-05-18.

SECTION 5. AMENDMENT. Section 4-35-18 of the North Dakota Century Code is amended and reenacted as follows:

4-35-18. Reciprocal agreement. The North Dakota state university extension service, or its designee, may issue a certification on a reciprocal basis, without examination, to a nonresident who is certified to use restricted use pesticides under a plan substantially similar to this chapter and after the applicant has paid a fee, set by the board, not greater than the fee or charge authorized under sections 4-35-09, 4-35-12, or 4-35-14 if the applicant would have taken the appropriate

examination. Such a certification may be suspended or revoked in the same manner and on the same grounds as certifications pursuant to this chapter, and must be suspended or revoked if the nonresident's home state certification is suspended or revoked.

SECTION 6. AMENDMENT. Subsection 4 of section 4-35-23 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~In addition to the criminal sanctions which may be imposed pursuant to subsections 4 and 2, a person found guilty of violating~~ A person who violates a provision of this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner of agriculture through an administrative hearing adjudicative proceeding pursuant to chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by law, this chapter, or rules adopted under this chapter.

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 63

HOUSE BILL NO. 1066

(Representatives Nicholas, Aarsvold)

(Senators Nichols, Klein)

(At the request of the Agriculture Commissioner)

PESTICIDE AND CONTAINER DISPOSAL PROGRAM

AN ACT to provide for the continuation of an agricultural pesticide and pesticide container disposal program; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Pesticide and pesticide container disposal program - Pesticide container management - Compensation.

1. The definitions contained in section 4-35-05 apply to this section.
2. In consultation with an advisory board consisting of the state health officer, director of the North Dakota state university extension service, two individuals representing agribusiness organizations, two individuals representing farm organizations, all of whom must be selected by the agriculture commissioner, the commissioner shall continue to implement the project authorized by section 1 of chapter 77 of the 2001 Session Laws, which is known as project safe send. The purpose of the project is to:
 - a. Collect and either recycle or dispose of unusable pesticides and unusable pesticide containers. The commissioner shall provide for the establishment and operation of temporary collection sites for the pesticides and pesticide containers. The commissioner may limit the type and quantity of pesticides and pesticide containers acceptable for collection.
 - b. Promote proper pesticide container management. In consultation with the director of the North Dakota state university extension service, the commissioner shall evaluate and promote proper methods of pesticide container management, including information on the variety of pesticide containers available.
3. Any entity collecting pesticide containers or unusable pesticides shall manage and dispose of the containers and pesticides in compliance with applicable federal and state requirements. When called upon, any state agency shall assist the commissioner in implementing the project.
4. For services rendered in connection with the design and implementation of this project, the members selected by the commissioner are entitled to reimbursement for mileage and travel expenses in the same manner and for the same amounts provided for state employees and officials. Compensation and expense reimbursement must be paid from the environment and rangeland protection fund.

SECTION 2. Project scope and evaluation - Proposed legislation. The project described in section 1 of this Act must occur in areas to be determined by the agriculture commissioner in consultation with the advisory board under subsection 2 of section 1 of this Act. Before December 12, 2004, the commissioner shall determine whether the project implemented and continued under section 1 of this Act should be continued. If the commissioner determines that the project should be continued or expanded, the commissioner shall introduce appropriate legislation in the fifty-ninth legislative assembly.

SECTION 3. Project safe send pesticide and pesticide container collection - User fees. The agriculture commissioner, in consultation with the advisory board for the project safe send pesticide and pesticide container disposal program, may charge a fee for collection of rinsate. The fees must be established at a level that will generate enough revenue to cover the cost of disposal associated with the rinsate that is collected. Collections from this fee must be deposited in the environment and rangeland protection fund.

SECTION 4. EXPIRATION DATE. This Act is effective through July 31, 2005, and after that date is ineffective.

Approved April 7, 2003
Filed April 7, 2003

CHAPTER 64

SENATE BILL NO. 2385

(Senators Taylor, Fairfield, Klein)
(Representatives DeKrey, Gulleson, Kerzman)

ORGANIC FOOD STANDARDS

AN ACT to create and enact two new sections to chapter 4-38 of the North Dakota Century Code, relating to organic food standards; to amend and reenact section 4-38-02 of the North Dakota Century Code, relating to certifying agents; to repeal sections 4-38-01, 4-38-03, 4-38-04, 4-38-05, and 4-38-06 of the North Dakota Century Code, relating to organic food standards; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-38-02 of the North Dakota Century Code is amended and reenacted as follows:

4-38-02. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Certifying agent" means a person or persons registered with the North Dakota agriculture commissioner who have demonstrated to the North Dakota agriculture commissioner that they have the staff and expertise to carry out the requirements of certification as outlined in this chapter accredited by the United States department of agriculture as an organic certifying agent under 7 CFR part 205.
2. "Organic food" means any food product, including meat, dairy, or a beverage, that is marketed or sold using the term or a derivative of the term organic food in the labeling or advertising of the product.
3. "Pesticides" means synthetic herbicides, insecticides, and fungicides, and all other toxic materials. The term does not include material from naturally derived substances.
4. "Synthetic fertilizer" means all nitrogen sources derived from ammonia; phosphorus derived from the acid treatment of rock phosphates; refined or highly soluble potassium salts, whether manufactured or mined; and all other chemically refined, synthesized, or acid treated material.
5. "Vendor" means any person who sells organic food to a consumer or another vendor, or who processes, manufactures, or otherwise transforms an organic food on behalf of a seller of organic food.
6. "Verification" means a system maintained by the vendor of organic foods that demonstrates compliance to standards under which product identity may be traced from farm to consumer, using a series of documents that record information about the vendor's production and processing techniques, including records documenting inspection visits by a certifying agent, records documenting inventory, and records

~~documenting adherence to standards.~~ "Commissioner" means the agriculture commissioner.

SECTION 2. A new section to chapter 4-38 of the North Dakota Century Code is created and enacted as follows:

Certifying agent - Registration. Before a person may act as a certifying agent in this state, the person must register with the commissioner on a form prescribed by the commissioner. The form must include:

1. The name of the certifying agent;
2. The name of all partners if the certifying agent is a partnership and all officers if the certifying agent is a corporation;
3. A copy of the certifying agent's program requirements;
4. A copy of all documents relating to the certifying agent's certification process;
5. A copy of the certifying agent's letter of authorization or certificate of accreditation issued by the national organic program; and
6. Any other information requested by the commissioner.

SECTION 3. A new section to chapter 4-38 of the North Dakota Century Code is created and enacted as follows:

Penalty. A person that violates this chapter is guilty of a class B misdemeanor.

SECTION 4. REPEAL. Sections 4-38-01, 4-38-03, 4-38-04, 4-38-05, and 4-38-06 of the North Dakota Century Code are repealed.

Approved April 11, 2003
Filed April 14, 2003