

July 2010

Introduced by

1 A BILL for an Act to amend and reenact sections 4-11-01, 4-11-02, 4-11-03, 4-11-04, 4-11-04.1,
2 4-11-06, 4-11-07, 4-11-08, 4-11-09, 4-11-12, 4-11-13, 4-11-14, 4-11-15, 4-11-15.1, 4-11-15.2,
3 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
4 North Dakota Century Code, relating to wholesale potato dealers; to provide a penalty; and to
5 provide a continuing appropriation.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

9 **4-11-01. Definitions.** In this chapter, unless the context otherwise requires:

- 10 1. ~~"Commissioner" means the state seed commissioner.~~
11 2. "Insolvency" means an unableness or unwillingness to provide payment for
12 potatoes purchased by the dealer.
13 ~~3. 2.~~ "Potato" means a tuber commonly classed as white or Irish.
14 ~~4. 3.~~ "Wholesale potato dealer" means any person ~~who buys that:~~
15 a. Buys potatoes in wholesale lots directly from a ~~grower or grower~~ producer or
16 a producer cooperative, who sells;
17 b. Sells or handles potatoes in wholesale lots for the purpose of processing or
18 resale; ~~or who handles~~
19 c. Handles potatoes on account of or as an agent for another.

NOTE: Insolvency is an inability to provide payment. It generally involves a declaration of insolvency and placement under an order of liquidation by a court. An unwillingness to provide payment is generally a breach of contract. Are both to be covered by the surety required under Section 4-11-04?

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

1 **4-11-02. Wholesale potato dealer license required.** Before a person may engage in
2 ~~the business of~~ as a wholesale potato dealer, the person must be licensed by the seed
3 commissioner.

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

6 **4-11-03. Application for license - Contents.** To obtain a license as a wholesale
7 potato dealer, a person must complete an application and submit it to the seed commissioner.
8 The application must be signed by the applicant under oath or affirmation and must include:

- 9 1. The location in which the applicant intends to operate as a wholesale potato
10 dealer;
- 11 2. The estimated amount of business to be done monthly;
- 12 3. The amount of business done the preceding year, if any;
- 13 4. The greatest volume of potatoes, by hundredweight, purchased during any one
14 month in the preceding calendar year;
- 15 5. The greatest value of potatoes purchased during any one month in the preceding
16 calendar year;
- 17 6. The name of each partner if the applicant is a partnership;
- 18 7. The name of each corporate officer and the state of incorporation if the applicant is
19 a corporation;
- 20 8. The name of each manager and the state of organization if the applicant is a
21 limited liability company;
- 22 9. The name of every agent ~~employed by~~ acting on behalf of the applicant on the date
23 of the application;
- 24 10. A financial statement prepared in accordance with generally accepted accounting
25 principles and showing the assets and liabilities of the applicant;
- 26 11. ~~A list of similar licenses issued to the applicant in other states.~~ The name of each
27 state in which the applicant is licensed as a wholesale potato dealer; and
- 28 12. The name of ~~every~~ each state that has:
 - 29 a. Denied the ~~applicant's request for~~ applicant similar licensure;
 - 30 b. Denied a ~~request for similar licensure submitted by~~ an agent ~~employed by~~ of
31 the applicant similar licensure;

- 1 c. Issued to the applicant a similar license and thereafter suspended or revoked
2 the license; or
3 d. Issued to an agent of the applicant a similar license and thereafter suspended
4 or revoked the agent's license.

NOTE: Here is an alternative to subsection 12 that eliminates any confusion about what might constitute a "similar license":

The application must include ...

The name of every state that has:

- a. Refused to issue the applicant a wholesale potato dealer's license;
- b. Suspended or revoked a wholesale potato dealer's license that had been issued to the applicant;
- c. Refused to issue a wholesale potato dealer's license to an agent of the applicant; or
- d. Suspended or revoked a wholesale potato dealer's license that had been issued to an agent of the applicant.

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

7 **4-11-04. Form of security to accompany application for license.** ~~The~~

8 1. As a condition of licensure, the seed commissioner may require ~~the~~ an applicant to
9 file a:

10 a. A current financial statement prepared in accordance with generally accepted
11 accounting principles;~~a~~

12 b. A cash bond or a surety bond in an amount and form determined by the seed
13 commissioner;~~i~~ or ~~an~~

14 c. An irrevocable letter of credit.

15 2. The form of security required by the seed commissioner under subsection 1 must
16 be conditioned for ~~the~~:

17 a. The faithful performance of the applicant's person's duties as a wholesale
18 potato dealer;~~for compliance;~~

19 b. Compliance with all laws and rules relating to the purchase of potatoes by the
20 wholesale potato dealer;~~for prompt;~~

21 c. Prompt payment in the case of insolvency;~~i~~ and ~~for the~~

- 1 a. The applicant was refused a wholesale potato dealer's license ~~in~~ by another
2 state;
- 3 b. The applicant had a wholesale potato dealer's license suspended or revoked
4 ~~in~~ by another state; or
- 5 c. The applicant employs in a position of responsibility an individual who had a
6 wholesale potato dealer's license suspended or revoked ~~in~~ by another state.
- 7 2. The seed commissioner may suspend or revoke a license to operate as a
8 wholesale potato dealer if:
- 9 a. The dealer was the subject of a license suspension or revocation ~~in~~ by
10 another state;
- 11 b. The dealer had a wholesale potato dealer's license suspended or revoked ~~in~~
12 by another state; or
- 13 c. The dealer employs in a position of responsibility an individual who had a
14 wholesale potato dealer's license suspended or revoked ~~in~~ by another state.

NOTE: Are Sections 4-11-08(1)(c) and 4-11-08(2)(c) intended to reference agents, employees, or both?

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

17 **4-11-09. Agent of licensee - Ineligibility.** The seed commissioner may determine that
18 an individual may not act as an authorized agent for a licensee if the individual was refused a
19 wholesale potato dealer's license ~~in~~ by another state or if the individual had a wholesale potato
20 dealer's license suspended or revoked ~~in~~ by another state.

21 **SECTION 10. AMENDMENT.** Section 4-11-12 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **4-11-12. Accounts and records.** A wholesale potato dealer shall keep accurate
24 accounts and retain records of all transactions as a dealer ~~and shall retain the records~~ for
25 eighteen months. The dealer shall make the records available to the seed commissioner is
26 ~~entitled access to the records at all times~~ upon request.

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

29 **4-11-13. Discontinuation of business - Duty of dealer.** If a wholesale potato dealer
30 sells, disposes of, or discontinues the business for which the dealer obtained a license, during

1 the period covered by the license, the dealer shall notify the seed commissioner in writing and,
2 at the request of the seed commissioner, shall produce a statement of assets and liabilities as
3 of the date the business was sold, disposed of, or discontinued.

4 **SECTION 12. AMENDMENT.** Section 4-11-14 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **4-11-14. Bonds - Additional required.** The seed commissioner may at any time
7 require an increase in the amount of the wholesale potato dealer's bond. The seed
8 commissioner may at any time require verified financial statements from a dealer. If a dealer
9 fails to furnish the information or fails to furnish a new or higher bond when directed by the seed
10 commissioner, the seed commissioner shall suspend the dealer's license. After providing the
11 dealer with at least ten days' notice and a hearing, the seed commissioner may revoke the
12 dealer's license.

13 **SECTION 13. AMENDMENT.** Section 4-11-15 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **4-11-15. Damage claims - Hearing - Procedure.**

- 16 1. If a person notifies the seed commissioner that a wholesale potato dealer has
17 breached any of the conditions for which security was given under this chapter, the
18 seed commissioner shall investigate the allegation.
- 19 2. The seed commissioner may hold a hearing to obtain additional testimony and
20 documentary evidence. If the seed commissioner determines that the allegation is
21 supportable, the seed commissioner shall apply to the district court of the county in
22 which the claim is alleged to have occurred for appointment as trustee.
- 23 3. Upon notice to the wholesale potato dealer as the court may prescribe or upon
24 waiver of notice by the dealer, the court shall hear the matter in a summary
25 manner. If the court determines that the dealer has breached any condition for
26 which security was given under ~~section 4-11-04~~ this chapter, and if the court
27 determines that it would be in the best interest of all persons holding claims against
28 the dealer that the seed commissioner execute the trust, the court shall issue an
29 order appointing the seed commissioner as a trustee, without bond. The seed
30 commissioner shall proceed in the manner provided for in this chapter.

1 4. The seed commissioner, as trustee, shall notify by certified mail all persons having
2 claims against the dealer ~~by certified mail~~ that the claims must be filed with the
3 seed commissioner by a date certain. Any person who fails to file a claim within
4 the time allotted is barred from participation in any fund marshalled by the seed
5 commissioner under this chapter.

6 5. All moneys collected and received by the seed commissioner as trustee must be
7 deposited in the Bank of North Dakota pending the marshalling of the fund.

8 **SECTION 14. AMENDMENT.** Section 4-11-15.1 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **4-11-15.1. Recovery of trust fund - Report - Notice to claimants.** Upon recovery of
11 the trust fund, or so much of the fund as is possible to recover or as is necessary to pay all
12 outstanding claims, the seed commissioner shall file the report in court showing the amount
13 payable on each claim. If the fund is insufficient to pay all claims in full, the seed commissioner
14 shall prorate the fund among the claimants. The court shall notify the claimants by mail
15 regarding the proposed distribution and direct that the claimants show cause why the report
16 should not be approved and distribution made in accordance with the report. After holding a
17 hearing on the matter, the court shall approve or modify the report, issue an order directing the
18 distribution of the fund, and discharge the seed commissioner from all duties as trustee.

19 **SECTION 15. AMENDMENT.** Section 4-11-15.2 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **4-11-15.2. Representation of seed commissioner by attorney general.** The
22 attorney general shall represent the seed commissioner in any action or proceeding brought
23 under this chapter and may employ legal assistance when necessary. Any expenses incurred
24 by the attorney general in providing representation to the seed commissioner may be deducted
25 from the trust fund.

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

28 **4-11-16. Inspection of potatoes - Right to demand - Certificate of inspection.**

29 1. Whenever potatoes are ready for sale or are on their way to market, the owner,
30 conveyor, prospective buyer, or any other interested party may demand and is

1 entitled to inspection of the potatoes and to an inspection certificate as provided for
2 by law.

3 2. Whenever potatoes are shipped to or received by a wholesale potato dealer for
4 handling, purchase, or sale in this state and the wholesale potato dealer ~~at~~
5 ~~wholesale~~ finds the potatoes to be spoiled, damaged, unmarketable, in
6 unsatisfactory condition, mislabeled, or misrepresented in any way, unless both
7 parties waive inspection before sale or other disposition, the wholesale potato
8 dealer shall cause the potatoes to be examined by an inspector assigned by the
9 seed commissioner for that purpose. The inspector shall execute and deliver a
10 certificate to the wholesale potato dealer, stating the day, the time, and the place of
11 inspection and the condition of the potatoes. The wholesale potato dealer shall
12 mail or deliver a copy of the certificate to the shipper of the inspected potatoes.

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

15 **4-11-17. Consignee of potatoes to make report.** A wholesale potato dealer to whom
16 potatoes have been shipped or consigned for sale and to whom title has not yet passed shall
17 provide the shipper, within a reasonable time after receiving the potatoes, a written report
18 detailing the potatoes' time of arrival, the quantity, the quality, and the price per unit. At the
19 time of providing the report, the wholesale potato dealer shall pay the shipper the net amount
20 due the shipper for the potatoes.

NOTE: This section is included for administrative purposes only. No change is
recommended.

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

23 **4-11-18. Sales reports unsatisfactory - Remedy of shipper.** Whenever a shipper,
24 after demand, receives no remittance or report of sale of potatoes, or is dissatisfied with the
25 remittance, sale, or report, the shipper may file a complaint with the seed commissioner. Upon
26 receipt of a complaint, the seed commissioner shall initiate an investigation.

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

1 **4-11-19. Rules.** The seed commissioner may adopt rules to implement this chapter, to
2 govern the rates charged by wholesale potato dealers, and to regulate the buying, selling,
3 advertising, and trading practices of wholesale potato dealers.

NOTE: The Seed Commissioner already has the authority to adopt rules implementing the chapter. That concept does not need to be reiterated. If the Seed Commissioner is to address the rates charged by wholesale potato dealers, that should be included as a "duty" of the Seed Commissioner. There should be a discussion regarding rules regulating "the buying, selling, advertising, and trading practices of wholesale potato dealers," to ensure that what is intended does not amount to an unlawful delegation of legislative authority.

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

6 **4-11-20. Investigation - Hearing - Action on license.**

- 7 1. If the seed commissioner receives a complaint against any person dealing in,
8 shipping, transporting, storing, or selling potatoes, the seed commissioner may
9 initiate an investigation.
- 10 2. The seed commissioner and the seed commissioner's agents have access, at all
11 times, to all buildings, yards, warehouses, storage, and transportation facilities, and
12 railway cars in which any potatoes are kept, stored, handled, or transported, and
13 may take any necessary samples.
- 14 3. After an investigation, the seed commissioner may suspend the license of any
15 wholesale potato dealer. ~~The~~ Within ten days of the suspension, the seed
16 commissioner shall schedule, provide notice of, and hold a hearing on the
17 suspension ~~within ten days of the action.~~
- 18 4. After receiving both testimony and documentary evidence, the seed commissioner
19 may reverse the suspension, continue the suspension, or revoke the wholesale
20 potato dealer's license. If appropriate, the seed commissioner may demand the
21 return of any agent's identification card issued by the seed commissioner.
- 22 5. ~~Any hearing held under this section must be conducted in accordance with chapter~~
23 ~~28-32.~~ Any aggrieved party may appeal a decision of the seed commissioner
24 under this section to the district court ~~in accordance with chapter 28-32.~~

NOTE: Chapter 28-32 applies to all state agencies except for agencies specifically excluded from the definition of "administrative agency." The chapter applies to the Seed Commissioner. Chapter 28-32 grants rulemaking authority and provides procedures governing hearings. To refer to Chapter 28-32 with respect to specific provisions

outside Chapter 28-32 creates an ambiguity when other sections outside Chapter 28-32 do not contain such references.

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

3 **4-11-21. Fees and collections - ~~Revolving fund~~ Appropriation Continuing**
4 **appropriation.** The seed commissioner shall deposit forward all moneys arising received from
5 the collection of fees and other charges under this chapter ~~with~~ to the state treasurer for ~~credit~~
6 ~~to~~ deposit in a special fund known as the seed department revolving fund. ~~Moneys in this~~ All
7 moneys in the seed department fund must be disbursed upon order of the commissioner, with
8 ~~the approval of the office of management and budget, and funds so approved by the office of~~
9 ~~management and budget must be disbursed within limits of legislative appropriations~~ are
10 appropriated on a continuing basis to the seed department to carry out statutory directives.

NOTE: The rewrite reconciles this section with the changes proposed to Section 4-09-20, i.e., clarifying that the Seed Department fund is a special fund and providing that all moneys in the fund are appropriated to the department on a continuing basis. The continuing appropriation for the purpose of "carrying out specific statutory directives" was selected rather than the standard phrase "to carry out this chapter" because other chapters also reference this particular fund. (When the bill draft is prepared in final form, it is likely that only one such section will be necessary.)

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

13 **4-11-22. Enforcement of chapter.** The seed commissioner is charged with the
14 enforcement of this chapter and all rules ~~adopted to implement~~ implementing this chapter. The
15 attorney general or the state's attorney in the county where a case arises shall prosecute
16 violations of this chapter and the rules.

NOTE: When the bill draft is prepared in final form, it is likely that there will be one section setting forth the powers of the Seed Commissioner. This should include the authority to "do all things necessary and proper to enforce and administer the chapter."

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

19 **4-11-23. Violations of chapter defined - Penalty.**

- 20 1. A person is guilty of a class A misdemeanor if the person:
- 21 a. Makes any false statement or report as to the grade, condition, markings,
22 quality, or quantity of potatoes received or delivered, or acts in a manner
23 designed to deceive the consignor or purchaser of the potatoes;

- 1 b. Refuses to accept, on agreed terms, any shipment for which the person has
- 2 contracted, unless the refusal is based on a state inspection certificate,
- 3 secured with reasonable promptness after receipt of the shipment, and
- 4 showing that the kind or quality of potatoes is not that which was purchased or
- 5 ordered;
- 6 c. Fails to account for potatoes or to pay for potatoes within the time required by
- 7 this chapter;
- 8 d. Breaches any contract ~~entered by~~ to which the person is a party for the
- 9 purchase or sale of potatoes;
- 10 e. Purchases for the person's own account any potatoes received on
- 11 consignment, either directly or indirectly, without the consent of the consignor;
- 12 f. Issues false or misleading market quotations;
- 13 g. Cancels any quotations during the period advertised by the person;
- 14 h. Makes any false or misleading statement on an application for licensure as a
- 15 wholesale potato dealer;
- 16 i. Increases the sales charges on shipped potatoes by means of fictitious sales;
- 17 j. Fails to keep accurate records and financial accounts of all transactions as a
- 18 wholesale potato dealer;
- 19 k. Receives potatoes from foreign states or countries for sale or resale, within or
- 20 outside this state, and gives the purchaser the impression through any
- 21 method of advertising or description that the potatoes are from a source other
- 22 than their true origin; or
- 23 l. Violates this chapter or any rule ~~adopted to implement~~ implementing this
- 24 chapter.
- 25 2. If the seed commissioner is notified that a wholesale potato dealer has been
- 26 convicted of an offense listed in this section, of an offense involving fraudulent use
- 27 of the mails, or of any other criminal act pertaining to the conduct of the person as
- 28 a wholesale potato dealer, the seed commissioner shall provide at least ten days'
- 29 notice and hold a hearing to determine whether the wholesale potato dealer's
- 30 license should be suspended or revoked.

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

3 **4-11-24. Cooperation with governmental agencies.** The seed commissioner may
4 cooperate ¹ with federal entities and with state and local entities of this and other states and
5 may do all things necessary to carry out this chapter.²

NOTE:

- ¹ It is not necessary to authorize the Seed Commissioner to "cooperate" with federal, state, and local entities. If, however, there is a particular activity in which the Seed Commissioner is required to engage, that should be articulated as a "duty" of the Seed Commissioner.
- ² As suggested by the note following Section 22 (the amendment of Section 4-11-22), when the bill draft is prepared in final form, it is likely that there will be one section setting forth the powers of the Seed Commissioner. This should include the authority to "do all things necessary and proper to enforce and administer the chapter." Under such circumstances, the latter part of Section 4-11-24 would become unnecessary.