

HOUSE BILL NO. 1399

Introduced by

Representatives D. Johnson, Kingsbury, Mueller

Senators Flakoll, Miller

1 A BILL for an Act to amend and reenact sections 4-09-06.1, 4-11-01, 4-11-03, 4-11-04,
2 4-11-04.1, 4-11-14, 4-11-15.2, 4-11-20, 4-11-22, and 4-11-23 of the North Dakota Century Code
3 or in the alternative to amend and reenact sections 4.1-53-10, 4.1-57-01, 4.1-57-03, 4.1-57-04,
4 4.1-57-05, 4.1-57-12, 4.1-57-15, 4.1-57-19, 4.1-57-21, and 4.1-57-22 of the North Dakota
5 Century Code, relating to phytosanitary certificates and wholesale potato dealers; to repeal
6 sections 4-09-22, 4-11-17, and 4-11-18 of the North Dakota Century Code or in the alternative
7 to repeal sections 4.1-53-56, 4.1-57-17, and 4.1-57-18 of the North Dakota Century Code,
8 relating to reports, complaints, and the prosecution of violations pertaining to the sale of
9 potatoes; and to provide a penalty.

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

11 **SECTION 1. AMENDMENT.** If House Bill No. 1027 does not become effective, section
12 4-09-06.1 of the North Dakota Century Code is amended and reenacted as follows:

13 **4-09-06.1. Inspection - Export certification - Fees.**

14 ~~The commissioner may inspect agricultural seed, flower seed, vegetable seed, tree and~~
15 ~~shrub seed, and Irish potato tubers when the seed or tubers are offered for export. The~~
16 ~~commissioner may issue a phytosanitary certificate to plant quarantine officials and may make~~
17 ~~reasonable charges for this service. The commissioner may withhold the certificate if the~~
18 ~~product does not meet sanitary requirements and all state licensing and bonding requirements.~~
19 ~~The name and address of the consignee on the phytosanitary certificate is confidential if~~
20 authorized to do so by the United States department of agriculture animal and plant health
21 inspection service or the agriculture commissioner.

22 **SECTION 2. AMENDMENT.** If House Bill No. 1027 does not become effective, section
23 4-11-01 of the North Dakota Century Code is amended and reenacted as follows:

1 **4-11-01. Definitions.**

2 In this chapter, unless the context otherwise requires:

- 3 1. "Commissioner" means the state seed commissioner.
- 4 2. ~~"Insolvency" means an unability or unwillingness to provide payment for potatoes~~
5 ~~purchased by the dealer.~~
- 6 3. "Potato" means a tuber commonly classed as white or Irish.
- 7 4.3. "Wholesale potato dealer" means any person who buys potatoes in wholesale lots
8 directly from a grower or grower cooperative, who sells or handles potatoes in
9 wholesale lots for the purpose of processing or resale, or who handles potatoes on
10 account of or as an agent for another.

11 **SECTION 3. AMENDMENT.** If House Bill No. 1027 does not become effective, section
12 4-11-03 of the North Dakota Century Code is amended and reenacted as follows:

13 **4-11-03. Application for license - Contents.**

14 To obtain a license as a wholesale potato dealer, a person must complete an application
15 and submit it to the commissioner. The application must be signed by the applicant ~~under~~
16 ~~oath~~ and notarized and must include:

- 17 1. The location in which the applicant intends to operate as a wholesale potato dealer.
- 18 2. The estimated dollar amount of business to be done monthly.
- 19 3. The dollar amount of business done the preceding year, if any.
- 20 4. The greatest volume of potatoes, by hundredweight, purchased during any one month
21 in the preceding calendar year.
- 22 5. The greatest value of potatoes purchased during any one month in the preceding
23 calendar year.
- 24 6. The name of each partner if the applicant is a partnership.
- 25 7. The name of each corporate officer and the state of incorporation if the applicant is a
26 corporation.
- 27 8. The name of each manager and the state of organization if the applicant is a limited
28 liability company.
- 29 9. The name of every agent employed by the applicant on the date of the application.
- 30 10. A financial statement prepared in accordance with generally accepted accounting
31 principles and showing the assets and liabilities of the applicant.

- 1 11. A list of similar licenses issued to the applicant in other states.
- 2 12. The name of every state that has:
 - 3 a. Denied the applicant's request for similar licensure;
 - 4 b. Denied a request for similar licensure submitted by an agent employed by the
5 applicant;
 - 6 c. Issued to the applicant a similar license and thereafter suspended or revoked the
7 license; or
 - 8 d. Issued to an agent of the applicant a similar license and thereafter suspended or
9 revoked the agent's license.

10 **SECTION 4. AMENDMENT.** If House Bill No. 1027 does not become effective, section
11 4-11-04 of the North Dakota Century Code is amended and reenacted as follows:

12 **4-11-04. Form of security to accompany application for license.**

13 The commissioner may require the applicant to file a ~~current financial statement prepared in~~
14 ~~accordance with generally accepted accounting principles,~~ a cash bond or a surety bond in an
15 amount and form determined by the commissioner, or an irrevocable letter of credit. ~~The form of~~
16 ~~security required by the commissioner must be conditioned for the faithful performance of the~~
17 ~~applicant's duties as a wholesale potato dealer, for compliance with all laws and rules relating to~~
18 ~~the purchase of potatoes by the dealer, for prompt payment in the case of insolvency, and for~~
19 ~~the protection and~~ is for the benefit of any potato producer in this state during the period the
20 license is in effect and must be conditioned for the payment of any financial obligation owed by a
21 wholesale potato dealer to a potato producer in this state.

22 **SECTION 5. AMENDMENT.** If House Bill No. 1027 does not become effective, section
23 4-11-04.1 of the North Dakota Century Code is amended and reenacted as follows:

24 **4-11-04.1. Termination of bond - Notice to commissioner.**

25 The surety may terminate its liability under a bond by giving the commissioner at least
26 ninety days' written notice of intent to terminate. The surety on a bond is released from all future
27 liability accruing on the bond after the expiration of ninety days from the date the commissioner
28 received the notice or on a later date specified by the surety. This section does not relieve,
29 release, or discharge the surety from any liability incurred before the expiration of the ninety-day
30 period. Unless the wholesale potato dealer files a new bond at least thirty days before the
31 surety's liability ceases, the commissioner, without hearing, shall suspend the wholesale potato

1 dealer's license. The commissioner may not remove the suspension until a new bond or other
2 form of surety has been filed and approved by the commissioner.

3 **SECTION 6. AMENDMENT.** If House Bill No. 1027 does not become effective, section
4 4-11-14 of the North Dakota Century Code is amended and reenacted as follows:

5 **4-11-14. BondsSecurity - Additional required.**

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

12 **SECTION 7. AMENDMENT.** If House Bill No. 1027 does not become effective, section
13 4-11-15.2 of the North Dakota Century Code is amended and reenacted as follows:

14 **4-11-15.2. Representation of commissioner by attorney general.**

15 ~~The attorney general shall represent the commissioner in any action or proceeding brought~~
16 ~~under this chapter and may employ legal assistance when necessary. Any expenses incurred by~~
17 ~~the attorney general in providing representation to the commissioner~~ in carrying out the duties
18 set forth in sections 4.1-57-13 and 4.1-57-14 may be deducted from the trust fund.

19 **SECTION 8. AMENDMENT.** If House Bill No. 1027 does not become effective, section
20 4-11-20 of the North Dakota Century Code is amended and reenacted as follows:

21 **4-11-20. Investigation - Hearing - Action on license.**

22 ~~If the commissioner receives a complaint against any person dealing in, shipping,~~
23 ~~transporting, storing, or selling potatoes, the commissioner may initiate an investigation. The~~
24 commissioner and the commissioner's agents have access, at all times, to all buildings, yards,
25 warehouses, storage, and transportation facilities, and railway cars in which any potatoes are
26 kept, stored, handled, or transported, and may take any necessary samples. After an
27 investigation, the commissioner may suspend the license of any wholesale potato dealer. The
28 commissioner shall schedule, provide notice of, and hold a hearing on the suspension within ten
29 days of the action. After receiving both testimony and documentary evidence, the commissioner
30 may reverse the suspension, continue the suspension, or revoke the wholesale potato dealer's
31 license. If appropriate, the commissioner may demand the return of any agent's identification

1 card issued by the commissioner. Any hearing held under this section must be conducted in
2 accordance with chapter 28-32. Any aggrieved party may appeal a decision of the
3 commissioner under this section to the district court in accordance with chapter 28-32.

4 **SECTION 9. AMENDMENT.** If House Bill No. 1027 does not become effective, section
5 4-11-22 of the North Dakota Century Code is amended and reenacted as follows:

6 **4-11-22. Enforcement of chapter.**

7 The commissioner is charged with the enforcement of this chapter and all rules adopted to
8 implement this chapter. ~~The attorney general or the state's attorney in the county where a case~~
9 ~~arises shall prosecute violations of this chapter and the rules.~~

10 **SECTION 10. AMENDMENT.** If House Bill No. 1027 does not become effective, section
11 4-11-23 of the North Dakota Century Code is amended and reenacted as follows:

12 **4-11-23. Violations of chapter defined - Penalty.**

- 13 1. A person is guilty of a class A misdemeanor and subject to a civil penalty in an amount
14 up to five hundred dollars per violation, which may be imposed by a court or by the
15 seed commissioner in an administrative hearing, if the person:
- 16 a. Makes any false statement or report as to the grade, condition, markings, quality,
17 or quantity of potatoes received or delivered, or acts in a manner designed to
18 deceive the consignor or purchaser of the potatoes;
 - 19 b. Refuses to accept, on agreed terms, any shipment for which the person has
20 contracted, unless the refusal is based on a state inspection certificate, secured
21 with reasonable promptness after receipt of the shipment, and showing that the
22 kind or quality of potatoes is not that which was purchased or ordered;
 - 23 c. Fails to account for potatoes or to pay for potatoes within the time required by
24 this chapter;
 - 25 d. Breaches any contract entered by the person for the purchase or sale of
26 potatoes;
 - 27 e. Purchases for the person's own account any potatoes received on consignment,
28 either directly or indirectly, without the consent of the consignor;
 - 29 f. Issues false or misleading market quotations;
 - 30 g. Cancels any quotations during the period advertised by the person;

- 1 h. Makes any false or misleading statement on an application for licensure as a
- 2 wholesale potato dealer;
- 3 i. Increases the sales charges on shipped potatoes by means of fictitious sales;
- 4 j. Fails to keep accurate records and financial accounts of all transactions as a
- 5 wholesale potato dealer;
- 6 k. Receives potatoes from foreign states or countries for sale or resale, within or
- 7 outside this state, and gives the purchaser the impression through any method of
- 8 advertising or description that the potatoes are from a source other than their true
- 9 origin; or
- 10 l. Violates this chapter or any rule adopted to implement this chapter.
- 11 2. If the commissioner is notified that a wholesale potato dealer has been convicted of an
- 12 offense listed in this section, of an offense involving fraudulent use of the mails, or of
- 13 any other criminal act pertaining to the conduct of the person as a wholesale potato
- 14 dealer, the commissioner shall provide at least ten days' notice and hold a hearing to
- 15 determine whether the wholesale potato dealer's license should be suspended or
- 16 revoked.

17 **SECTION 11. AMENDMENT.** Section 4.1-53-10 of the North Dakota Century Code as
18 created by section 3 of House Bill No. 1027, as approved by the sixty-second legislative
19 assembly, is amended and reenacted as follows:

20 **4.1-53-10. Seed commissioner - Powers.**

21 The seed commissioner may:

- 22 1. Contract with North Dakota state university of agriculture and applied science for the
- 23 use of facilities and equipment;
- 24 2. Contract with any person for any lawful purpose;
- 25 3. Enter upon real property and access any structure and personal property, at any time,
- 26 to:
- 27 a. Inspect, sample, and test seed for compliance with this chapter; and
- 28 b. Inspect records for compliance with this chapter; ~~and~~
- 29 4. Collect royalty, research, and patent fees; and

- 1 5. Issue phytosanitary certificates if authorized to do so by the United States department
2 of agriculture animal and plant health inspection service or the agriculture
3 commissioner.

4 **SECTION 12. AMENDMENT.** Section 4.1-57-01 of the North Dakota Century Code as
5 created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative
6 assembly, is amended and reenacted as follows:

7 **4.1-57-01. Definitions.**

8 In this chapter, unless the context otherwise requires:

- 9 1. ~~"Insolvency" means an inability to provide payment for potatoes purchased by the~~
10 ~~dealer.~~
- 11 2. "Potato" means an Irish potato.
- 12 ~~3.2.~~ "Wholesale potato dealer" means any person who:
- 13 a. Buys potatoes in wholesale lots directly from a producer or a producer
14 cooperative;
- 15 b. Sells or handles potatoes in wholesale lots for the purpose of processing or
16 resale; or
- 17 c. Handles potatoes on account of or as an agent for another.

18 **SECTION 13. AMENDMENT.** Section 4.1-57-03 of the North Dakota Century Code as
19 created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative
20 assembly, is amended and reenacted as follows:

21 **4.1-57-03. Application for license - Content.**

22 To obtain a license as a wholesale potato dealer, a person must complete an application
23 and submit it to the seed commissioner. The application must be signed by the applicant ~~under~~
24 ~~oath~~ and notarized and must include:

- 25 1. The location in which the applicant intends to operate as a wholesale potato dealer;
- 26 2. The estimated dollar amount of business to be done monthly;
- 27 3. The dollar amount of business done the preceding year, if any;
- 28 4. The greatest volume of potatoes, by hundredweight, purchased during any one month
29 in the preceding calendar year;
- 30 5. The greatest value of potatoes purchased during any one month in the preceding
31 calendar year;

- 1 6. The name of each partner if the applicant is a partnership;
- 2 7. The name of each corporate officer and the state of incorporation if the applicant is a
- 3 corporation;
- 4 8. The name of each manager and the state of organization if the applicant is a limited
- 5 liability company;
- 6 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
- 8 principles showing the assets and liabilities of the applicant;
- 9 11. A list of similar licenses issued to the applicant by other states; and
- 10 12. The name of each state that has:
 - 11 a. Refused to issue the applicant a wholesale potato dealer's license;
 - 12 b. Suspended or revoked a wholesale potato dealer's license that had been issued
 - 13 to the applicant;
 - 14 c. Refused to issue a wholesale potato dealer's license to an agent of the applicant;
 - 15 or
 - 16 d. Suspended or revoked a wholesale potato dealer's license that had been issued
 - 17 to an agent of the applicant.

18 **SECTION 14. AMENDMENT.** Section 4.1-57-04 of the North Dakota Century Code as
19 created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative
20 assembly, is amended and reenacted as follows:

21 **4.1-57-04. Application for license - Required security.**

- 22 1. As a condition of licensure, the seed commissioner shall require an applicant to file a
23 ~~current financial statement prepared in accordance with generally accepted~~
24 ~~accounting principles and:~~
 - 25 a. A cash bond or a surety bond, in an amount and form determined by the seed
 - 26 commissioner; or
 - 27 b. An irrevocable letter of credit.
- 28 2. The ~~form of~~ security required by the seed commissioner under subsection 1 is for the
29 benefit of potato producers in this state and must be conditioned for:
 - 30 a. ~~The faithful performance of the person's duties as a wholesale potato dealer;~~

- 1 b. ~~Compliance with all laws and rules relating to the purchase of potatoes by the~~
2 ~~wholesale potato dealer;~~
3 e. ~~Prompt payment in the case of insolvency; and~~
4 d. ~~The protection and benefit of any potato producer in this state during the period~~
5 ~~the license is in effect the payment of any financial obligation owed by a~~
6 ~~wholesale potato dealer to a potato producer in this state.~~

7 **SECTION 15. AMENDMENT.** Section 4.1-57-05 of the North Dakota Century Code as
8 created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative
9 assembly, is amended and reenacted as follows:

10 **4.1-57-05. Termination of bond - Notice to seed commissioner - Suspension of**
11 **license.**

12 The surety may terminate its liability under a bond by giving the seed commissioner at least
13 ninety days' written notice of intent to terminate. The surety is released from all future liability
14 accruing on the bond after the expiration of ninety days from the date the seed commissioner
15 received the notice or on a later date specified by the surety. This section does not relieve,
16 release, or discharge the surety from any liability incurred before the expiration of the ninety-day
17 period. Unless the wholesale potato dealer files a new bond or an irrevocable letter of credit at
18 least thirty days before the surety's liability ceases, the seed commissioner, without hearing,
19 shall suspend the wholesale potato dealer's license. The seed commissioner may not remove
20 the suspension until a new bond or an irrevocable letter of credit has been filed with and
21 approved by the seed commissioner.

22 **SECTION 16. AMENDMENT.** Section 4.1-57-12 of the North Dakota Century Code as
23 created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative
24 assembly, is amended and reenacted as follows:

25 **4.1-57-12. ~~Bonds~~Security - Requirements for increase - Production of verified**
26 **financial statements - Hearing.**

27 The seed commissioner ~~may~~ at any time ~~require an~~may increase in ~~the amount~~the security
28 required of a wholesale potato ~~dealer's bond~~dealer. The seed commissioner ~~may~~ at any time
29 may require verified financial statements from a dealer. If a dealer fails to furnish the information
30 or fails to ~~furnish a new or higher bond~~provide increased security when directed by the seed
31 commissioner, the seed commissioner shall suspend the dealer's license. After providing the

1 dealer with at least ten days' notice and a hearing, the seed commissioner may revoke the
2 dealer's license.

3 **SECTION 17. AMENDMENT.** Section 4.1-57-15 of the North Dakota Century Code as
4 created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative
5 assembly, is amended and reenacted as follows:

6 **4.1-57-15. Representation Expenses of seed commissioner - Deduction from trust**
7 **fund.**

8 The attorney general shall represent the seed commissioner in any action or proceeding
9 brought under this chapter and may employ legal assistance when necessary. Any expenses
10 incurred by the attorney general in providing representation to the seed commissioner in
11 carrying out the duties set forth in sections 4.1-57-13 and 4.1-57-14 may be deducted from the
12 trust fund.

13 **SECTION 18. AMENDMENT.** Section 4.1-57-19 of the North Dakota Century Code as
14 created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative
15 assembly, is amended and reenacted as follows:

16 **4.1-57-19. Investigation - Hearing - Action on license.**

- 17 1. ~~If the seed commissioner receives a complaint against any person dealing in,~~
18 ~~shipping, transporting, storing, or selling potatoes, the seed commissioner may initiate~~
19 ~~an investigation.~~
- 20 2. The seed commissioner may enter upon real property and access any structure and
21 personal property at any time to inspect and sample potatoes for compliance with the
22 laws of this state.
- 23 ~~3.2.~~ After an investigation, the seed commissioner may suspend the license of any
24 wholesale potato dealer. Within ten days of the suspension, the seed commissioner
25 shall schedule, provide notice of, and hold a hearing on the suspension.
- 26 ~~4.3.~~ After receiving both testimony and documentary evidence, the seed commissioner
27 may reverse the suspension, continue the suspension, or revoke the wholesale potato
28 dealer's license. If appropriate, the seed commissioner may demand the return of any
29 agent's identification card issued by the seed commissioner.
- 30 ~~5.4.~~ Any aggrieved party may appeal a decision of the seed commissioner under this
31 section to the district court.

1 **SECTION 19. AMENDMENT.** Section 4.1-57-21 of the North Dakota Century Code as
2 created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative
3 assembly, is amended and reenacted as follows:

4 **4.1-57-21. Enforcement of chapter.**

5 The seed commissioner shall do all things necessary to enforce this chapter and rules
6 implementing this chapter. ~~The attorney general or the state's attorney in the county where a~~
7 ~~case arises shall prosecute violations of this chapter and the rules.~~

8 **SECTION 20. AMENDMENT.** Section 4.1-57-22 of the North Dakota Century Code as
9 created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative
10 assembly, is amended and reenacted as follows:

11 **4.1-57-22. Violations of chapter - Penalty.**

12 A person is guilty of a class A misdemeanor and subject to a civil penalty in an amount up to
13 five hundred dollars per violation, which may be imposed by a court or by the seed
14 commissioner in an administrative hearing, if the person:

- 15 1. Makes any false statement or report as to the grade, condition, markings, quality, or
16 quantity of potatoes received or delivered, or acts in a manner designed to deceive the
17 consignor or purchaser of the potatoes;
- 18 2. Breaches any contract for the purchase or sale of potatoes to which the person was a
19 party unless the breach is based on a state inspection certificate, secured with
20 reasonable promptness after receipt of the shipment and showing that the kind or
21 quality of potatoes is not that which was purchased or ordered;
- 22 3. Fails to account for potatoes or to pay for potatoes within the time required by this
23 chapter;
- 24 4. Purchases for the person's own account any potatoes received on consignment, either
25 directly or indirectly, without the consent of the consignor;
- 26 5. Issues false or misleading market quotations;
- 27 6. Cancels any quotations during the period advertised by the person;
- 28 7. Makes any false or misleading statement on an application for licensure as a
29 wholesale potato dealer;
- 30 8. Increases the sales charges on shipped potatoes by means of fictitious sales;

1 9. Receives potatoes from foreign states or countries for sale or resale, within or outside
2 this state, and gives the purchaser the impression through any method of advertising
3 or description that the potatoes are from a source other than their true origin; or

4 10. Violates this chapter or any rule implementing this chapter.

5 **SECTION 21. REPEAL.** If House Bill No. 1027 does not become effective, sections
6 4-09-22, 4-11-17, and 4-11-18 of the North Dakota Century Code are repealed.

7 **SECTION 22. REPEAL.** Sections 4.1-53-56, 4.1-57-17, and 4.1-57-18 of the North Dakota
8 Century Code as created by House Bill No. 1027, as approved by the sixty-second legislative
9 assembly, are repealed.