

**Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE BILL NO. 1399
(Representatives D. Johnson, Kingsbury, Mueller)
(Senators Flakoll, Miller)

AN ACT to amend and reenact sections 4-09-06.1, 4-11-01, 4-11-03, 4-11-04, 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 or in the alternative to amend and reenact sections 4.1-53-10, 4.1-53-35, 4.1-57-01, 4.1-57-03, 4.1-57-04, 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 Century Code, relating to label requirements, phytosanitary certificates, and wholesale potato dealers; to repeal sections 4-09-22, 4-11-17, and 4-11-18 of the North Dakota Century Code or in the alternative to repeal sections 4.1-53-56, 4.1-57-17, and 4.1-57-18 of the North Dakota Century Code, relating to reports, complaints, and the prosecution of violations pertaining to the sale of potatoes; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

SECTION 2. AMENDMENT. If House Bill No. 1027 does not become effective, 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 otherwise requires:

1. "Commissioner" means the state seed commissioner.
2. ~~"Insolvency" means an unableness or unwillingness to provide payment for potatoes purchased by the dealer.~~
3. "Potato" means a tuber commonly classed as white or Irish.
4. 3. "Wholesale potato dealer" means any person who buys 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.

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

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

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

1. The location in which the applicant intends to operate as a wholesale potato dealer.
2. The estimated dollar amount of business to be done monthly.
3. The dollar 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 name of each partner if the applicant is a partnership.
7. The name of each corporate officer and the state of incorporation if the applicant is a corporation.
8. The name of each manager and the state of organization if the applicant is a limited liability company.
9. The name of every agent employed by the applicant on the date of the application.
10. A financial statement prepared in accordance with generally accepted accounting principles and showing the assets and liabilities of the applicant.
11. A list of similar licenses issued to the applicant in other states.
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. If House Bill No. 1027 does not become effective, section 4-11-04 of the North Dakota Century Code is amended and reenacted as follows:

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

The commissioner may require the applicant 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 is for the benefit of any potato producer in this state during the period the license is in effect and must be conditioned for the payment of any financial obligation owed by a wholesale potato dealer to a potato producer in this state.~~

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

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

The surety may terminate its liability under a bond by giving the commissioner at least ninety days' written 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. If House Bill No. 1027 does not become effective, section 4-11-14 of the North Dakota Century Code is amended and reenacted as follows:

4-11-14. BondsSecurity - Additional required.

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

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

4-11-15.2. 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 in carrying out the duties set forth in sections 4.1-57-13 and 4.1-57-14 may be deducted from the trust fund.~~

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

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

~~If the commissioner receives a complaint against any person dealing in, shipping, transporting, storing, or selling potatoes, the commissioner may initiate an investigation. The commissioner and the commissioner's agents 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. After an investigation, the commissioner 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 the wholesale potato dealer's license. If appropriate, the commissioner may demand the return of any agent's identification card issued by the commissioner. Any hearing held under this section must be conducted in accordance with chapter 28-32. Any aggrieved party may appeal a decision of the commissioner under this section to the district court in accordance with chapter 28-32.~~

SECTION 9. AMENDMENT. If House Bill No. 1027 does not become effective, 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 this chapter and all rules adopted to implement this chapter. ~~The attorney general or the state's attorney in the county where a case arises shall prosecute violations of this chapter and the rules.~~

SECTION 10. AMENDMENT. If House Bill No. 1027 does not become effective, 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. A person is guilty of a class A misdemeanor and subject to a civil penalty in an amount up to five hundred dollars per violation, which may be imposed by a court or by the seed commissioner in an administrative hearing, if the person:
 - a. Makes any false statement or report as to the grade, condition, markings, quality, or quantity of potatoes received or delivered, or acts in a manner designed to deceive the consignor or purchaser of the potatoes;
 - b. Refuses to accept, on agreed terms, any shipment for which the person has contracted, unless the refusal is based on a state inspection certificate, secured with reasonable promptness after receipt of the shipment, and showing that the kind or quality of potatoes is not that which was purchased or ordered;
 - c. Fails to account for potatoes or to pay for potatoes within the time required by this chapter;
 - d. Breaches any contract entered by the person for the purchase or sale of potatoes;
 - e. Purchases for the person's own account any potatoes received on consignment, either directly or indirectly, without the consent of the consignor;
 - f. Issues false or misleading market quotations;
 - g. Cancels any quotations during the period advertised by the person;
 - h. Makes any false or misleading statement on an application for licensure as a wholesale potato dealer;
 - i. Increases the sales charges on shipped potatoes by means of fictitious sales;
 - j. Fails to keep accurate records and financial accounts of all transactions as a wholesale potato dealer;
 - k. Receives potatoes from foreign states or countries for sale or resale, within or outside this state, and gives the purchaser the impression through any method of advertising or description that the potatoes are from a source other than their true origin; or
 - l. Violates this chapter or any rule 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 act pertaining to the conduct of the person as a wholesale potato dealer, the commissioner shall 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 11. AMENDMENT. Section 4.1-53-10 of the North Dakota Century Code as created by section 3 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

4.1-53-10. Seed commissioner - Powers.

The seed commissioner may:

1. Contract with North Dakota state university of agriculture and applied science for the use of facilities and equipment;
2. Contract with any person for any lawful purpose;
3. Enter upon real property and access any structure and personal property, at any time, to:
 - a. Inspect, sample, and test seed for compliance with this chapter; and
 - b. Inspect records for compliance with this chapter; ~~and~~
4. Collect royalty, research, and patent fees; and
5. Issue phytosanitary certificates if authorized to do so by the United States department of agriculture animal and plant health inspection service or the agriculture commissioner.

SECTION 12. AMENDMENT. Section 4.1-53-35 of the North Dakota Century Code as created by section 3 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

4.1-53-35. Tree seed and shrub seed - Label requirements - Percentage of germination.

1. If the tree seed or shrub seed belongs to a species for which standard germination testing procedures are prescribed by the association of official seed analysts, the label must include:
 - a. (1) The percentage of germination, exclusive of hard seed;
 - (2) The percentage of hard seed; and
 - (3) The month and year in which the percentage of germination was determined; or
 - b. A statement indicating that the test to determine the percentage of germination is not yet completed and that the results will be supplied upon request.
2. If the tree or shrub seed belongs to a species for which standard germination testing procedures are not prescribed, the label must include the year in which the seed was collected.

SECTION 13. AMENDMENT. Section 4.1-57-01 of the North Dakota Century Code as created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

4.1-57-01. Definitions.

In this chapter, unless the context otherwise requires:

1. ~~"Insolvency" means an inability to provide payment for potatoes purchased by the dealer.~~
2. "Potato" means an Irish potato.
- 3-2. "Wholesale potato dealer" means any person who:
 - a. Buys potatoes in wholesale lots directly from a producer or a producer cooperative;
 - b. Sells or handles potatoes in wholesale lots for the purpose of processing or resale; or
 - c. Handles potatoes on account of or as an agent for another.

SECTION 14. AMENDMENT. Section 4.1-57-03 of the North Dakota Century Code as created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

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

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

1. The location in which the applicant intends to operate as a wholesale potato dealer;
2. The estimated dollar amount of business to be done monthly;
3. The dollar 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 name of each partner if the applicant is a partnership;
7. The name of each corporate officer and the state of incorporation if the applicant is a corporation;
8. The name of each manager and the state of organization if the applicant is a limited liability company;
9. The name of every agent employed by the applicant on the date of the application;
10. A financial statement prepared in accordance with generally accepted accounting principles showing the assets and liabilities of the applicant;
11. A list of similar licenses issued to the applicant by other states; and
12. The name of each 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.

SECTION 15. AMENDMENT. Section 4.1-57-04 of the North Dakota Century Code as created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

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

1. As a condition of licensure, the seed commissioner shall require an applicant to file ~~a current financial statement prepared in accordance with generally accepted accounting principles and:~~
 - a. A cash bond or a surety bond, in an amount and form determined by the seed commissioner; or

- b. An irrevocable letter of credit.
2. ~~The form of security required by the seed commissioner under subsection 1 is for the benefit of potato producers in this state and~~ must be conditioned for:
- a. ~~The faithful performance of the person's duties as a wholesale potato dealer;~~
 - b. ~~Compliance with all laws and rules relating to the purchase of potatoes by the wholesale potato dealer;~~
 - e. ~~Prompt payment in the case of insolvency; and~~
 - d. ~~The protection and benefit of any potato producer in this state during the period the license is in effect~~ the payment of any financial obligation owed by a wholesale potato dealer to a potato producer in this state.

SECTION 16. AMENDMENT. Section 4.1-57-05 of the North Dakota Century Code as created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

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

The surety may terminate its liability under a bond by giving the seed commissioner at least ninety days' written notice of intent to terminate. The surety is released from all future liability accruing on the bond after the expiration of ninety days from the date the seed 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 or an irrevocable letter of credit at least thirty days before the surety's liability ceases, the seed commissioner, without hearing, shall suspend the wholesale potato dealer's license. The seed commissioner may not remove the suspension until a new bond or an irrevocable letter of credit has been filed with and approved by the seed commissioner.

SECTION 17. AMENDMENT. Section 4.1-57-12 of the North Dakota Century Code as created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

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

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

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

4.1-57-15. ~~Representation~~Expenses of seed commissioner - Deduction from trust fund.

~~The attorney general shall represent the seed 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 seed commissioner in carrying out the duties set forth in sections 4.1-57-13 and 4.1-57-14~~ may be deducted from the trust fund.

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

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

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

SECTION 20. AMENDMENT. Section 4.1-57-21 of the North Dakota Century Code as created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

4.1-57-21. Enforcement of chapter.

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

SECTION 21. AMENDMENT. Section 4.1-57-22 of the North Dakota Century Code as created by section 5 of House Bill No. 1027, as approved by the sixty-second legislative assembly, is amended and reenacted as follows:

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

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

1. Makes any false statement or report as to the grade, condition, markings, quality, or quantity of potatoes received or delivered, or acts in a manner designed to deceive the consignor or purchaser of the potatoes;
2. Breaches any contract for the purchase or sale of potatoes to which the person was a party unless the breach is based on a state inspection certificate, secured with reasonable promptness after receipt of the shipment and showing that the kind or quality of potatoes is not that which was purchased or ordered;
3. Fails to account for potatoes or to pay for potatoes within the time required by this chapter;
4. Purchases for the person's own account any potatoes received on consignment, either directly or indirectly, without the consent of the consignor;
5. Issues false or misleading market quotations;

6. Cancels any quotations during the period advertised by the person;
7. Makes any false or misleading statement on an application for licensure as a wholesale potato dealer;
8. Increases the sales charges on shipped potatoes by means of fictitious sales;
9. Receives potatoes from foreign states or countries for sale or resale, within or outside this state, and gives the purchaser the impression through any method of advertising or description that the potatoes are from a source other than their true origin; or
10. Violates this chapter or any rule implementing this chapter.

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

SECTION 23. REPEAL. Sections 4.1-53-56, 4.1-57-17, and 4.1-57-18 of the North Dakota Century Code as created by House Bill No. 1027, as approved by the sixty-second legislative assembly, are repealed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1399.

House Vote: Yeas 92 Nays 1 Absent 1

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2011.

Approved at _____ M. on _____, 2011.

Governor

Filed in this office this _____ day of _____, 2011,

at _____ o'clock _____ M.

Secretary of State