

2011 HOUSE AGRICULTURE

HB 1399

2011 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB 1399
February 3, 2011
Job # 13937

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to phytosanitary certificates and wholesale potato dealers; relating to reports, complaints, and the prosecution of violations pertaining to the sale of potatoes; and to provide a penalty.

Minutes:

Representative Mueller, Co-Sponsor: This is a bill we did not want to consider in the rewrite effort of the seed laws. There are some sections that if we don't get HB1027 passed, this can still go into effect. The bill is about an interesting area having to do with seed potatoes. There seems to be more challenges with potatoes than wheat seed, canola seed, etc. It changes some things in regard to financial conditions, surety bonds, cash bonds, sale of potatoes, and who is in charge of executing the provisions of the law.

Ken Bertsch, State Seed Commissioner: (See attached #1)

The objectives here are to take care of phytosanitary language to make it clear to the general public, take care of the Attorney General's concerns regarding the mandate language, and to modernize and narrow the scope of the licensing program.

Representative Wrangham: Do you know the penalty for a Class A misdemeanor?

Ken Bertsch: I don't. I think they vary.

Chairman Johnson: One year in jail and a \$2,000 fine.

Representative Wrangham: When we are changing this Class A misdemeanor which allows for a day in court, can you tell us what the appeal is from a judgment against a person by an administrative hearing.

Ken Bertsch: We sit down with the party that has violated a section of law and propose a fine. If the party objects to the fine, we try to negotiate with them. If we can't come to an agreement, we would get the Attorney General involved in our behalf in preparation to take the matter to court. We normally levy an administration fine for a labeling violation of \$250 for each labeling violation. The most serious fine as a Class A misdemeanor, we do administer fines up to \$5,000 for violation of Plant Variety Protection.

Representative Wrangham: I'm concerned about the other party and what their recourse is. Do they have an opportunity to appeal?

Ken Bertsch: Yes. If they refuse to pay the administrative fine and disagreed with our assessment, then it would go to court. Then the state would appeal to the court the State Seed Department's position on that violation. The person would have an opportunity in court to deny.

Representative Wrangham: If they didn't comply, could you not pull their license?

Ken Bertsch: In regard to the wholesale potato dealer chapter, yes. With seed dealers, we can also pull their license.

Representative Mueller: On p. 4, line 22 & 23 there is overstriking. Then the rest isn't and talks about a process where you can inspect, revoke licenses, etc. How does one trigger an investigation? Happens that sets the process?

Ken Bertsch: The language to take a complaint and begin an investigative process still exists. What that overstrike does is the guts of what we are doing with this bill. We removed the definition of insolvency. On page 2 the definition of insolvency also says unwillingness to pay. We had a situation where somebody delivers potatoes on consignment with the agreement unwritten that says "I will take your potatoes and try to sell them." The potatoes sit in storage and some have gone out of condition. The guy delivers the potatoes and says he didn't get paid. We haven't inspected so we can't prove the condition when they came into storage or when they became unmarketable. This program is to marshal the funds of the bond in his favor. We don't have any way of doing what the law says we are suppose to do with the current resources.

Representative Mueller: What triggers that investigation?

Ken Bertsch: A failure to pay. That is how the language is drafted by the Attorney General. We have the authority to receive a complaint, begin an investigation. Now that investigation will be based on a failure to pay. That most often is someone who went insolvent.

Chairman Johnson: Page 5, line 13. Explain it again. We have a Class A misdemeanor and we are adding the ability to assess \$500. What is the reason for that?

Ken Bertsch: The expanded language means instead of us going to court, now we can also levy an administrative fine of \$500 as an agency. We would bring the dealer and grower into the department, hold an administrative hearing, find the facts, and file on that wholesale potato dealer's licensee's bond and marshall those funds to the grower. We have a graduated bonding schedule.

Chairman Johnson: You can levy the fine in the administrative hearings and Class A in court.

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Opposition: None

Chairman Johnson: closed the hearing

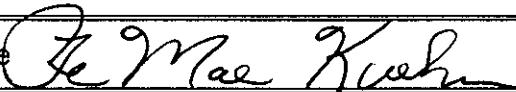
2011 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

HB 1399
February 17, 2011
Job #14660

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Committee Work—relating to phytosanitary certificates and wholesale potato dealers, etc.

Minutes:

Chairman Johnson: We have amendments presented the day of the hearing.

Vice Chairman Kingsbury: Moved the amendment LC #11.0705.01001

Representative Trottier: Seconded the motion

Voice vote taken. Amendment passed.

Representative Mueller: Moved Do Pass as amended.

Representative Schmidt: Seconded the motion

A Roll Call vote was taken. Yes: 14, No: 0, Absent: 0,

DO PASS as amended carries.

Representative Kingsbury will carry the bill.

WL
2/17/11

February 2, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1399

Page 1, line 3, after the first comma insert "4.1-53-35,"

Page 1, line 5, after the first "to" insert "label requirements,"

Page 1, line 5, after "certificates" insert a comma

Page 7, after line 3, insert:

"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."

Renumber accordingly

Date: 2/17/11

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1399

House Agriculture Committee

Legislative Council Amendment Number 11.0705.01004

Action Taken: Do Pass Do Not Pass Amended

Refer to Appropriations

Motion Made By Representative Kingsbury Seconded By Representative Trottier

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair			Tracy Boe		
Joyce Kingsbury, Vice Chair			Tom Conklin		
Wesley Belter			Richard Holman		
Craig Headland			Phillip Mueller		
David Rust					
Mike Schatz					
Jim Schmidt					
Wayne Trottier					
John Wall					
Dwight Wrangham					

Total Yes **No**

Absent

Bill Carrier

If the vote is on an amendment, briefly indicate intent:

If the vote is on an amendment, briefly indicate intent:

If the vote is on an amendment, briefly indicate intent:

Date: 2/17/11

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1399

House Agriculture Committee

Legislative Council Amendment Number 11.0705.0100/

Action Taken: Do Pass Do Not Pass Amended

Refer to Appropriations

Motion Made By Representative Mueller Seconded By Representative Schmidt

Total Yes 14 **No** 0

Absent 0

Bill Carrier Vice Chairman Kingsbury

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1399: Agriculture Committee (Rep. D. Johnson, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1399 was placed on the Sixth order on the calendar.

Page 1, line 3, after the first comma insert "4.1-53-35,"

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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."

Renumber accordingly

2011 SENATE AGRICULTURE

HB 1399

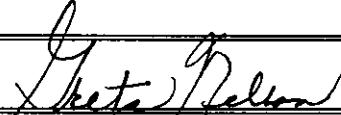
2011 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

HB 1399
March 11, 2011
Job #15307

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to reports, complaints, and the prosecution of violations pertaining to the sale of potatoes; and to provide a penalty.

Minutes:

Attachments: #1,

Vice Chairman Senator Larsen: Meeting called to order for HB 1399 on March 11, 2011 at 10:00 am

Joyce Kingsbury: Rep District 16. I am introducing HB 1399 a companion bill to 1027 and contains amendments to the interim re-write the seed dept chapter of century code Ag interim committee has worked on this re-write. This is the coming together of that effort. These chapters relate to the wholesale potato dealers license program operated by the seed dept and actions of these amendments serve to narrow the responsibilities of the dept in a manner that follow the actual operating activities of the commercial potato industry.

Ken Bertsch: State Seed Commissioner and Administrator of the Seed Dept (Attachment #1)

Senator Murphy; When you narrow the scope of responsibility of your department, which is the basic aim of this re-write, to which entity does this responsibility fall on or is it left to the parties to knock it out in court?

Ken Bertsch: Yes, we believe it is what happens or what should happen in regard to disputes of that nature. If it involved product quality, that is usually the biggest problem, we believe those are civil matters. Should be handled between buyer and seller between attorneys/courts. We are not equipped to deal with thisthe buyer makes a promise....grower delivers to the storage....and potatoes are faulty. Dump potatoes and loses hundreds of dollars. If we are drawn into the dispute and haven't inspected the potatoes.....we do inspect wherever in the state, but if buyer or seller hasn't contacted us to inspect, we have no bases to make a determination of what has happened in the case.

Senator Miller; Why wasn't the Attorney General language taken care of in the re-write....seems as one of those things like an extra mistake?

Ken Bertsch: Can't answer that exactly....probably someone on that committee would have seen where they were not comfortable with.....we weren't prepared to bring that to the Ag committee, we were in the process of working with the Attorney General's office last fall. Since this would be looked as a policy change, let's let it be a side line issue. Let's start stacking upif you have anything to add....we'll make this off the side of the re-write. We are going to do a potato chapter in the next interim, but 4-11 came in and timing wise, it was appropriated to do in amendment form this time around.

Senator Klein: Section 1 is related to sanitary certificatesthe Ag commissioner had authority before as did USDA.....explain how that would work where you sell a load of potatoes to Cuba (example) the seed commission, do you get certificates authorized?

Ken Bertsch: USDA gives authority to state entity to issue the final certificates which are USDA certificates and entity in each state that has that authority. In ND it is the Ag dept. For us to do that, we have to have approval from the Ag Dept or inter agency agreement. They have to be trained to do the final sanitary certificate authorization. We come up with a lot of information that goes into any document that is issued out of the state of ND for Ag products as we do a lot of the testing in our labs. For reasons of efficiency, people in potato industry like us to write them because we can get it done quicker as we have the information and people on siteif an inspection needs to be made of the product, it is usually going to Canada. Canada requires a FIDO sanitary certificate for anything going over the border....so does any other foreign country. Our people are able to get the work/process done quicker so we can expedite the process better. That's why we are involved US FIDO.....old language was different.....reason initially repealed we didn't believe it needed to exist because we thought we could have an inter agency agreement with the Ag dept and everything would be fine. you didn't need it in the code. The Ag dept asked if we put something back in there and that is why you see it as today.

Senator Larsen: Discussion?

Senator Larsen: Opposition?

Senator Larsen: Further discussion?

Senator Larsen: Close hearing on HB 1399

Senator Miller: I move a Do Pass on HB 1399

Senator Luick: Second

Senator Larsen: Do pass by Senator Miller and second by Senator Luick; Discussion?

Senator Heckaman: Was please they took the time to address this independently of the re-write because there are enough significant changes that the committee felt would have interfered with that and we had a clear explanation of the issues this morning and I will support the motion.

Senate Agriculture Committee

HB 1399

March 11, 2011

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Senator Larsen; Further discussion? Clerk take the roll

Clerk: 6-0-1 (Senator Flakoll Absent)

Senator Larsen: Passes with 6-0-1 Carrier Senator Miller

Senator Larsen; Close the hearing HB 1399

Date: 3/11/11

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1399

Senate Agriculture Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Refer to Appropriations Reconsider

Motion Made By Senator Miller Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chairman Flakoll			Senator Heckaman	✓	
Vice-Chair Oley Larsen	✓				
Senator Klein	✓				
Senator Luick	✓				
Senator Miller	✓				
Senator Murphy	✓				

Total (Yes) 6 No 0

Absent 1 (Senator Flakoll)

Floor Assignment Senator Miller

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1399: Agriculture Committee (Sen. Flakoll, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1399 was placed on the
Fourteenth order on the calendar.

2011 TESTIMONY

HB 1399



North Dakota State
NDSSD
Seed Department

#1
1313 18th St. N.,
P.O. Box 5257
Fargo, ND 58105-5257
Phone: (701) 231-5400
Fax: (701) 231-5401
Web: ndseed.com

**Testimony
HB 1399**

**House Agriculture Committee
February 3, 2011**

Ken Bertsch, Commissioner

Good morning Mr. Chairman and members of the House Agriculture Committee. For the record, my name is Ken Bertsch and I serve as State Seed Commissioner and administrator of the Seed Department. I appreciate the opportunity to speak to you today regarding HB 1399. HB 1399 is the companion bill to HB 1027 and contains amendments to the interim re-write of Seed Department chapters of ND Century Code.

As discussed with this committee, the Interim Agriculture Committee avoided any substantive changes to Seed Department code in writing HB 1027. The amendments proposed in HB 1399 are fairly straightforward and requested by our agency, the Department of Agriculture and the Attorney General. You will notice that, similarly to HB 1378 heard last week, this bill is "double drafted". The amendments are duplicated in both the existing chapters and in the re-written language found in HB 1027 in case the legislation fails to pass both chambers and be signed into law.

Section 1 (page 1)

Phytosanitary certificates are required in most cases where seed and commercial products are exported. The certificate program is largely implemented by the state through the North Dakota Agriculture Department, with authority granted by USDA-APHIS.

The original phyto language was repealed in the re-write, but on further review was reinserted at the request of the Agriculture Department. The Attorney General agreed that the new statement as written is necessary to denote the relationship between agencies, and to allow the Seed Department to issue phytosanitary certificates conditioned on authorization from either USDA or the state Agriculture Department. The bill makes clear that the Seed Commissioner has the statutory power to issue phytosanitary certificates if either of those agencies so authorize.

Sections 2-6 (pages 1-4), Section 8 (pages 4-5)

The entirety of these sections relate to the Wholesale Potato Dealers License program operated by the Seed Department, which are currently found in Chapter 4-11.

The Seed Department administers the law requiring that wholesale potato dealers be licensed and bonded. If a potato producer is not paid, this triggers the seed commissioner's involvement. This can start with an investigation and ultimately lead to the commissioner being appointed by a court as trustee over the bond with the duty to use it to pay unpaid producers.

The statutes regarding these matters, however, are written broadly and could be (and sometimes are) interpreted as requiring that the commissioner get involved in any kind of dispute between a wholesale potato dealer and a producer. They could be read to require that the commissioner investigate and try to resolve business disputes, even those over which the Commissioner has no experience or expertise, and that would be more suitably addressed in court. These disputes most often involve product quality or marketability.

The Department and Attorney General believe this was not the law's original intent. What the legislature likely had in mind was a situation in which a potato dealer gets into financial difficulty and as a result cannot pay his suppliers, including potato growers. This is the primary purpose for the license and financial security, and the commissioner has the duty to fairly divide the bond amount among all unpaid potato farmers.

There are a number of other minor modifications to the license program language included in these sections, but overall, HB 1399 makes clear that the commissioner's role is limited to serious financial situations and does not extend to any and all disputes that might arise between dealers and producers.

Section 7 (page 4), Section 9 (page5)

The current law states that the attorney general and local states attorneys have a mandatory obligation to go to court when the seed commissioner demands. The A.G.'s Office believes that such provisions don't reflect the proper relationship between an agency and the attorney general or state's attorneys.

In looking at the provisions more closely, they don't even appear needed in the code; for of course it will be the local state's attorney that would prosecute criminal violations under the chapter and it will be the attorney general who provides the Seed Department with legal advice and legal services should we be required to go to court on a civil matter.

The language in Section 7 and Section 9 satisfies the problems associated with attorney services to the Department. Another (identical) amendment on this issue is found in repealer language in Sections 21 and 22.

Section 10 (pages 5-6)

The final significant change to the chapter governing wholesale potato dealers is to add authority to levy fines on those who violate the chapter. Right now the only remedy is a class A misdemeanor, with financial consequences determined by the court. Some violations don't merit criminal prosecution, but they do warrant a penalty. In consultation with the Attorney General, we believe it is appropriate to allow the Commissioner to impose a fine through an administrative process.

Most regulatory agencies have this authority. It adds flexibility in responding to violations, and if exercised would result in a cheaper and less formal process for all participants than would a criminal prosecution.

We suggest that the maximum amount of the fine be \$500. That amount is probably on the low end of what other agencies can assess, and a relatively minor amount in the potato industry.

Sections 11-20

Sections 11-20 of the bill are the duplicate drafting referred to in the outset of my testimony. If HB 1027 passes and is signed by the Governor, the operative portion of HB 1399 begins on Section 11, page 6. All of the language in these sections exactly duplicates what we have reviewed in the previous sections.

Sections 21-22 (Page 12)

These sections repeal language on two issues that is found in existing code and in HB 1027.

4-09-22 and 4.1-53-56: These sections mirror language that is amended in Section 7 and 9 of HB 1399 regarding the duty of the Attorney General and States Attorney to represent the Seed Department. The repeal simply removes the mandate of each party to initiate legal proceedings.

4-11-17/18 and 4.1-57-17/18: These two sections require written reports from receiver to shipper on potatoes delivered to a wholesale potato dealer. The Department believes this is outdated language.

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

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, the shipper may file a complaint with the commissioner. Upon receipt of a complaint, the commissioner shall initiate an investigation.

There are likely many different written transactions between buyers and sellers, from invoices to various types of contracts. In practical terms, payment schedules (4-11-17) have little to do with providing payment at the time a report is provided and would be agreed upon by the two parties. Similarly, dissatisfaction of the seller regarding "remittance, sale or report" is an issue that may have been a regulatory matter decades ago, but is irrelevant in terms of the industry today.

As with many of the amendments in the wholesale potato dealers sections of the bill, this action serves to narrow the responsibilities of the Department in a manner that more closely follows the actual operating activities of the commercial potato industry.

This completes my review of the amendments contained in HB 1399. I would be happy to answer questions from the Committee. Thank you.



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NDSSD
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1313 18th St. N.,
P.O. Box 5257
Fargo, ND 58105-5257
Phone: (701) 231-5400
Fax: (701) 231-5401
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**Testimony
HB 1399**

(#1)

**Senate Agriculture Committee
March 11, 2011**

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Sections 11-21 (beginning on page 6 through page 11)

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