50058.0100

Fifty-ninth Legislative Assembly of North Dakota FIRST DRAFT:
Prepared by the Legislative Council staff for the Public Services Committee

May 2004

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, 4-11-08, 4-11-09, 4-11-10, 4-11-12, 4-11-13, 4-11-14, 4-11-15, 4-11-15.1, 4-11-15.2,
- 3 4-11-16, 4-11-18, 4-11-19, 4-11-20, 4-11-22, 4-11-23, and 4-11-24 of the North Dakota Century
- 4 Code, relating to the regulation of wholesale potato dealers; and to repeal section 4-11-21 of
- 5 the North Dakota Century Code, relating to a continuing appropriation.

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

- SECTION 1. AMENDMENT. Section 4-11-01 of the North Dakota Century Code is
   amended and reenacted as follows:
- 9 **4-11-01. Definitions.** In this chapter, unless the context otherwise requires:
- "Commissioner Commission" means the state seed commissioner public service
   commission.
- "Insolvency" means an unableness or unwillingness to provide payment for
   potatoes purchased by the dealer.
- 14 3. "Potato" means a tuber commonly classed as white or Irish.
- "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.
- 19 **SECTION 2. AMENDMENT.** Section 4-11-02 of the North Dakota Century Code is 20 amended and reenacted as follows:
- 4-11-02. Wholesale potato dealer license required. Before a person may engage in the business of a wholesale potato dealer, the person must be licensed by the commissioner commission.

| 1  | SEC                               | <b>FION 3. AMENDMENT.</b> Section 4-11-03 of the North Dakota Century Code is         |  |  |
|----|-----------------------------------|---|--|--|
| 2  | amended and reenacted as follows: |   |  |  |
| 3  | 4-11                              | 03. Application for license - Contents. To obtain a license as a wholesale            |  |  |
| 4  | potato deale                      | r, a person must complete an application and submit it to the <del>commissioner</del> |  |  |
| 5  | commission                        | The application must be signed by the applicant under oath and must include:          |  |  |
| 6  | 1.                                | The location in which the applicant intends to operate as a wholesale potato          |  |  |
| 7  |                                   | dealer.   |  |  |
| 8  | 2.                                | The estimated amount of business to be done monthly.                                  |  |  |
| 9  | 3.                                | The amount of business done the preceding year, if any.                               |  |  |
| 10 | 4.                                | The greatest volume of potatoes, by hundredweight, purchased during any one           |  |  |
| 11 |                                   | month in the preceding calendar year.   |  |  |
| 12 | 5.                                | The greatest value of potatoes purchased during any one month in the preceding        |  |  |
| 13 |                                   | calendar year.  |  |  |
| 14 | 6.                                | The name of each partner if the applicant is a partnership.                           |  |  |
| 15 | 7.                                | The name of each corporate officer and the state of incorporation if the applicant is |  |  |
| 16 |                                   | a corporation.  |  |  |
| 17 | 8.                                | The name of each manager and the state of organization if the applicant is a          |  |  |
| 18 |                                   | limited liability company.  |  |  |
| 19 | 9.                                | The name of every agent employed by the applicant on the date of the application.     |  |  |
| 20 | 10.                               | A financial statement prepared in accordance with generally accepted accounting       |  |  |
| 21 |                                   | principles and showing the assets and liabilities of the applicant.                   |  |  |
| 22 | 11.                               | A list of similar licenses issued to the applicant in other states.                   |  |  |
| 23 | 12.                               | The name of every state that has:   |  |  |
| 24 |                                   | a. Denied the applicant's request for similar licensure;                              |  |  |
| 25 |                                   | b. Denied a request for similar licensure submitted by an agent employed by the       |  |  |
| 26 |                                   | applicant;  |  |  |
| 27 |                                   | c. Issued to the applicant a similar license and thereafter suspended or revoked      |  |  |
| 28 |                                   | the license; or   |  |  |
| 29 |                                   | d. Issued to an agent of the applicant a similar license and thereafter suspended     |  |  |
| 30 |                                   | or revoked the agent's license.   |  |  |

amended and reenacted as follows:

1 SECTION 4. AMENDMENT. Section 4-11-04 of the North Dakota Century Code is 2 amended and reenacted as follows: 3 4-11-04. Form of security to accompany application for license. The eommissioner 4 commission may require the applicant to file a current financial statement prepared in 5 accordance with generally accepted accounting principles, a cash bond or a surety bond in an 6 amount and form determined by the <del>commissioner</del> commission, or an irrevocable letter of 7 credit. The form of security required by the eommissioner commission must be conditioned for 8 the faithful performance of the applicant's duties as a wholesale potato dealer, for compliance 9 with all laws and rules relating to the purchase of potatoes by the dealer, for prompt payment in 10 the case of insolvency, and for the protection and benefit of any potato producer in this state 11 during the period the license is in effect. 12 SECTION 5. AMENDMENT. Section 4-11-04.1 of the North Dakota Century Code is 13 amended and reenacted as follows: 14 4-11-04.1. Termination of bond - Notice to commissioner commission. The surety 15 may terminate its liability under a bond by giving the commissioner commission at least ninety 16 days notice of intent to terminate. The surety on a bond is released from all future liability 17 accruing on the bond after the expiration of ninety days from the date the commissioner 18 commission received the notice or on a later date specified by the surety. This section does not 19 relieve, release, or discharge the surety from any liability incurred before the expiration of the 20 ninety-day period. Unless the wholesale potato dealer files a new bond at least thirty days 21 before the surety's liability ceases, the commissioner commission, without hearing, shall 22 suspend the wholesale potato dealer's license. The commissioner commission may not 23 remove the suspension until a new bond or other form of surety has been filed and approved by 24 the commissioner commission. 25 SECTION 6. AMENDMENT. Section 4-11-06 of the North Dakota Century Code is 26 amended and reenacted as follows: 27 4-11-06. License - Fee - Expiration. The commissioner commission shall establish 28 the fee for a wholesale potato dealer's license. The license expires on June thirtieth of each 29 year. 30 SECTION 7. AMENDMENT. Section 4-11-08 of the North Dakota Century Code is

| 1  | 4-11-08   | B. Refusal, cancellation, or suspension of license - Grounds.                                |  |  |
|----|---|--|--|--|
| 2  | 1. Th   | e <del>commissioner</del> <u>commission</u> may refuse to issue a license to operate as a    |  |  |
| 3  | wh  | nolesale potato dealer if:   |  |  |
| 4  | a.  | The applicant was refused a wholesale potato dealer's license in another                     |  |  |
| 5  |   | state;   |  |  |
| 6  | b.  | The applicant had a wholesale potato dealer's license suspended or revoked                   |  |  |
| 7  |   | in another state; or   |  |  |
| 8  | C.  | The applicant employs in a position of responsibility an individual who had a                |  |  |
| 9  |   | wholesale potato dealer's license suspended or revoked in another state.                     |  |  |
| 10 | 2. Th   | ne <del>commissioner</del> <u>commission</u> may suspend or revoke a license to operate as a |  |  |
| 11 | wh  | nolesale potato dealer if:   |  |  |
| 12 | a.  | The dealer was the subject of a license suspension or revocation in another                  |  |  |
| 13 |   | state;   |  |  |
| 14 | b.  | The dealer had a wholesale potato dealer's license suspended or revoked in                   |  |  |
| 15 |   | another state; or  |  |  |
| 16 | C.  | The dealer employs in a position of responsibility an individual who had a                   |  |  |
| 17 |   | wholesale potato dealer's license suspended or revoked in another state.                     |  |  |
| 18 | SECTIO  | ON 8. AMENDMENT. Section 4-11-09 of the North Dakota Century Code is                         |  |  |
| 19 | amended and reenacted as follows:   |  |  |  |
| 20 | 4-11-09   | D. Agent of licensee - Ineligibility. The commissioner commission may                        |  |  |
| 21 | determine that  | an individual may not act as an authorized agent for a licensee if the individual            |  |  |
| 22 | was refused a   | wholesale potato dealer's license in another state or if the individual had a                |  |  |
| 23 | wholesale pota  | to dealer's license suspended or revoked in another state.                                   |  |  |
| 24 | SECTIO  | ON 9. AMENDMENT. Section 4-11-10 of the North Dakota Century Code is                         |  |  |
| 25 | amended and reenacted as follows:   |  |  |  |
| 26 | 4-11-10   | Identification cards required. A licensed wholesale potato dealer shall                      |  |  |
| 27 | obtain from the   | commissioner commission an identification card for each agent and for each                   |  |  |
| 28 | individual licensee operating as an agent. Each agent shall carry the identification card |  |  |  |
| 29 | whenever the agent is soliciting or transacting potato business for the licensee. The     |  |  |  |
| 30 | commissioner (  | commission shall charge a fee for each identification card.                                  |  |  |

1 **SECTION 10. AMENDMENT.** Section 4-11-12 of the North Dakota Century Code is 2 amended and reenacted as follows: 3 4-11-12. Accounts and records. A wholesale potato dealer shall keep accurate 4 accounts and records of all transactions as a dealer and shall retain the records for eighteen 5 months. The commissioner commission is entitled access to the records at all times. 6 SECTION 11. AMENDMENT. Section 4-11-13 of the North Dakota Century Code is 7 amended and reenacted as follows: 8 4-11-13. Discontinuation of business - Duty of dealer. If a wholesale potato dealer 9 sells, disposes of, or discontinues the business for which the dealer obtained a license, during 10 the period covered by the license, the dealer shall notify the commissioner commission in 11 writing and, at the request of the commissioner commission, shall produce a statement of 12 assets and liabilities as of the date the business was sold, disposed of, or discontinued. 13 **SECTION 12. AMENDMENT.** Section 4-11-14 of the North Dakota Century Code is 14 amended and reenacted as follows: 15 4-11-14. Bonds - Additional required. The commissioner may commission at any 16 time may require an increase in the amount of the wholesale potato dealer's bond. The 17 commissioner may commission at any time may require verified financial statements from a 18 dealer. If a dealer fails to furnish the information or fails to furnish a new or higher bond when 19 directed by the commissioner commission, the commissioner commission shall suspend the 20 dealer's license. After providing the dealer with at least ten days' notice and a hearing, the 21 <del>commissioner</del> <u>commission</u> may revoke the dealer's license. 22 SECTION 13. AMENDMENT. Section 4-11-15 of the North Dakota Century Code is 23 amended and reenacted as follows: 24 4-11-15. Damage claims - Hearing - Procedure. 25 If a person notifies the <del>commissioner</del> commission that a wholesale potato dealer 26 has breached any of the conditions for which security was given under this chapter, 27 the commissioner commission shall investigate the allegation. 28 The eommissioner commission may hold a hearing to obtain additional testimony 2. 29 and documentary evidence. If the commissioner commission determines that the

allegation is supportable, the <del>commissioner</del> commission shall apply to the district

- court of the county in which the claim is alleged to have occurred for appointment as trustee.
  - 3. Upon notice to the wholesale potato dealer as the court may prescribe or upon waiver of notice by the dealer, the court shall hear the matter in a summary manner. If the court determines that the dealer has breached any condition for which security was given under section 4-11-04, and if the court determines that it would be in the best interest of all persons holding claims against the dealer that the commissioner commission execute the trust, the court shall issue an order appointing the commissioner commission as a trustee, without bond. The commissioner commission shall proceed in the manner provided for in this chapter.
  - 4. The eemmissioner commission, as trustee, shall notify all persons having claims against the dealer by certified mail that the claims must be filed with the eemmissioner commission by a date certain. Any person who fails to file a claim within the time allotted is barred from participation in any fund marshalled by the eemmissioner commission under this chapter.
  - All moneys collected and received by the commissioner commission as trustee
    must be deposited in the Bank of North Dakota pending the marshalling of the
    fund.
- **SECTION 14. AMENDMENT.** Section 4-11-15.1 of the North Dakota Century Code is amended and reenacted as follows:
- 4-11-15.1. Recovery of trust fund Report Notice to claimants. Upon recovery of the trust fund, or so much of the fund as is possible to recover or as is necessary to pay all outstanding claims, the eemmissioner commission shall file the report in court showing the amount payable on each claim. If the fund is insufficient to pay all claims in full, the eemmissioner commission shall prorate the fund among the claimants. The court shall notify the claimants by mail regarding the proposed distribution and direct that the claimants show cause why the report should not be approved and distribution made in accordance with the report. After holding a hearing on the matter, the court shall approve or modify the report, issue an order directing the distribution of the fund, and discharge the eemmissioner commission from all duties as trustee.

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

**4-11-15.2.** Representation of <del>commissioner</del> <u>commission</u> by attorney general. The attorney general shall represent the <del>commissioner</del> <u>commission</u> 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 <del>commissioner</del> <u>commission</u> may be deducted from the trust fund.

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

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

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

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

**4-11-18. Sales reports unsatisfactory - Remedy of shipper.** Whenever a shipper, after demand, receives no remittance or report of sale of potatoes, or is dissatisfied with the remittance, sale, or report, the shipper may file a complaint with the <del>commissioner</del> commission. Upon receipt of a complaint, the <del>commissioner</del> commission shall initiate an investigation.

1 **SECTION 18. AMENDMENT.** Section 4-11-19 of the North Dakota Century Code is 2 amended and reenacted as follows: 3 **4-11-19.** Rules. The <del>commissioner</del> <u>commission</u> may adopt rules to implement this 4 chapter, to govern the rates charged by wholesale potato dealers, and the buying, selling, 5 advertising, and trading practices of wholesale potato dealers. 6 **SECTION 19. AMENDMENT.** Section 4-11-20 of the North Dakota Century Code is 7 amended and reenacted as follows: 8 4-11-20. Investigation - Hearing - Action on license. If the commissioner 9 commission receives a complaint against any person dealing in, shipping, transporting, storing, 10 or selling potatoes, the commissioner commission may initiate an investigation. The 11 commissioner commission and the commissioner's commission's agents have access, at all 12 times, to all buildings, yards, warehouses, storage, and transportation facilities, and railway cars 13 in which any potatoes are kept, stored, handled, or transported, and may take any necessary 14 samples. After an investigation, the commissioner commission may suspend the license of any 15 wholesale potato dealer. The commissioner commission shall schedule, provide notice of, and 16 hold a hearing on the suspension within ten days of the action. After receiving both testimony 17 and documentary evidence, the commissioner commission may reverse the suspension, 18 continue the suspension, or revoke the wholesale potato dealer's license. If appropriate, the 19 commissioner commission may demand the return of any agent's identification card issued by 20 the commissioner commission. Any hearing held under this section must be conducted in 21 accordance with chapter 28-32. Any aggrieved party may appeal a decision of the 22 commissioner under this section to the district court in accordance with chapter 28-32. 23 **SECTION 20. AMENDMENT.** Section 4-11-22 of the North Dakota Century Code is 24 amended and reenacted as follows: 25 **4-11-22.** Enforcement of chapter. The <del>commissioner</del> commission is charged with the 26 enforcement of this chapter and all rules adopted to implement this chapter. The attorney 27 general or the state's attorney in the county where a case arises shall prosecute violations of 28 this chapter and the rules. 29 SECTION 21. AMENDMENT. Section 4-11-23 of the North Dakota Century Code is 30 amended and reenacted as follows: 31 4-11-23. Violations of chapter defined - Penalty.

1 A person is guilty of a class A misdemeanor if the person: 2 a. Makes any false statement or report as to the grade, condition, markings, 3 quality, or quantity of potatoes received or delivered, or acts in a manner 4 designed to deceive the consignor or purchaser of the potatoes; 5 b. Refuses to accept, on agreed terms, any shipment for which the person has 6 contracted, unless the refusal is based on a state inspection certificate. 7 secured with reasonable promptness after receipt of the shipment, and 8 showing that the kind or quality of potatoes is not that which was purchased or 9 ordered; 10 Fails to account for potatoes or to pay for potatoes within the time required by C. 11 this chapter; 12 d. Breaches any contract entered by the person for the purchase or sale of 13 potatoes; 14 Purchases for the person's own account any potatoes received on e. 15 consignment, either directly or indirectly, without the consent of the consignor; 16 f. Issues false or misleading market quotations: 17 Cancels any quotations during the period advertised by the person; g. 18 h. Makes any false or misleading statement on an application for licensure as a 19 wholesale potato dealer; 20 i. Increases the sales charges on shipped potatoes by means of fictitious sales; 21 j. Fails to keep accurate records and financial accounts of all transactions as a 22 wholesale potato dealer; 23 k. Receives potatoes from foreign states or countries for sale or resale, within or 24 outside this state, and gives the purchaser the impression through any 25 method of advertising or description that the potatoes are from a source other 26 than their true origin; or 27 I. Violates this chapter or any rule adopted to implement this chapter. 28 2. If the eommissioner commission is notified that a wholesale potato dealer has been 29 convicted of an offense listed in this section, of an offense involving fraudulent use 30 of the mails, or of any other criminal act pertaining to the conduct of the person as 31 a wholesale potato dealer, the commissioner commission shall provide at least ten

1 days' notice and hold a hearing to determine whether the wholesale potato dealer's 2 license should be suspended or revoked. 3 SECTION 22. AMENDMENT. Section 4-11-24 of the North Dakota Century Code is amended and reenacted as follows: 4 5 4-11-24. Cooperation with governmental agencies. The commissioner commission may cooperate with federal entities, and with state and local entities, of this and other states, 6 and may do all things necessary to carry out this chapter. 7 8 SECTION 23. REPEAL. Section 4-11-21 of the North Dakota Century Code is 9 repealed.