

AGRICULTURE

CHAPTER 59

HOUSE BILL NO. 1244

(Representative M. Nelson)

AN ACT to create and enact a new section to chapter 4-01 of the North Dakota Century Code, relating to equine carcasses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-01 of the North Dakota Century Code is created and enacted as follows:

Equine slaughter - Establishments.

The agriculture commissioner shall monitor federal statutory and regulatory actions related to the slaughter of horses, mules, and other equines, and in particular, those actions pertaining to the establishments in which the slaughter and preparation of the carcasses may take place. The agriculture commissioner may pursue or support federal legislative, regulatory, or contractual avenues that would allow for the slaughter and processing of horses, mules, and other equines in this state, without the restriction that the slaughter or product preparation be conducted in establishments separate from any in which cattle, sheep, swine, or goats are slaughtered or their products are prepared.

Approved April 25, 2011

Filed April 25, 2011

CHAPTER 60

HOUSE BILL NO. 1341

(Representatives Kingsbury, Paur)
(Senator Olafson)

AN ACT to amend and reenact section 4-02-27.3 of the North Dakota Century Code, relating to the disposition of property used for county fairs; and to repeal section 4-02-06 of the North Dakota Century Code, relating to the filing of agricultural fair exhibition dates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-02-27.3 of the North Dakota Century Code is amended and reenacted as follows:

4-02-27.3. Disposition of property.

Any property used for county fair purposes may be sold by the board of county commissioners upon such terms and conditions as the board shall determine, and the proceeds of such sale shall be placed in the county fair fund and used exclusively for county fair purposes, provided that if the county fails to hold a fair within the county for two successive years, any property on hand may be sold and the proceeds of such sale, together with any other unexpended balance in the county fair fund ~~may~~, at the discretion of the board of county commissioners, may be transferred to the county general fund. The levy of the tax authorized by section 4-02-27.2, expenditures of the proceeds thereof, and the conduct of the fair shall be governed by ~~the provisions of sections 4-02-06, 4-02-07~~ through 4-02-31 to the extent such sections are consistent with ~~the provisions of~~ section 4-02-27.2 and this section.

SECTION 2. REPEAL. Section 4-02-06 of the North Dakota Century Code is repealed.

Approved March 28, 2011
Filed March 28, 2011

CHAPTER 61

HOUSE BILL NO. 1182

(Representatives Kingsbury, Mueller)
(Senator Wanzek)

AN ACT to amend and reenact section 4-24-09 of the North Dakota Century Code, relating to investments of agricultural commodity funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-24-09 of the North Dakota Century Code is amended and reenacted as follows:

4-24-09. Agricultural commodity assessments funds - Investment income allocation.

The state treasurer, notwithstanding any other provision of law to the contrary, shall invest in accordance with section 21-10-07 all available moneys in the spud fund, oilseed fund, dry bean fund, dry pea and lentil fund, barley fund, soybean fund, corn fund, honey fund, turkey fund, milk stabilization fund, dairy promotion commission fund, state wheat commission fund, ethanol fund, and the beef commission fund. The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer, ~~by rule,~~ shall establish, in cooperation with the agricultural commodity organizations, guidelines to be followed regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services when provided without cost by the state to the agricultural commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 62

HOUSE BILL NO. 1090

(Agriculture Committee)
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact subsection 21 of section 4-30-01 and sections 4-30-36.2, 4-30-36.3, and 4-30-36.4 of the North Dakota Century Code, relating to dairy products regulations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 21 of section 4-30-01 of the North Dakota Century Code is amended and reenacted as follows:

21. "Pasteurized Milk Ordinance" means the ~~2007~~2009 revision of the Grade "A" Pasteurized Ordinance issued by the United States food and drug administration and by the United States department of agriculture's public health service.

SECTION 2. AMENDMENT. Section 4-30-36.2 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.2. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines.

The state milk sanitation rating and sampling surveillance officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service/food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Shippers - ~~2007~~2009 Revision, Edition" and the sampling of milk and dairy products must be in accordance with the guidelines in the Standard Methods.

SECTION 3. AMENDMENT. Section 4-30-36.3 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.3. Milk laboratory evaluations officer - Duties - Guidelines.

The milk laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy products laboratories within the state. Evaluations and certification of milk laboratories must be made in accordance with the Standard Methods and the procedures outlined in the public health service/food and drug administration publication entitled "Evaluation of Milk Laboratories - ~~2005~~2009 Edition".

SECTION 4. AMENDMENT. Section 4-30-36.4 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.4. Grade A pasteurized milk ordinance.

Dairy producers, processors, and manufacturers shall comply with the Pasteurized Milk Ordinance and follow the standards set by the "Procedures Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, ~~2007~~2009 Revision".

Approved March 14, 2011

Filed March 14, 2011

CHAPTER 63

HOUSE BILL NO. 1305

(Representatives Kingsbury, Paur)
(Senator Olafson)

AN ACT to amend and reenact sections 4-37-01, 4-37-02, 4-37-03, and 4-37-04 of the North Dakota Century Code, relating to agriculture in the classroom.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-37-01 of the North Dakota Century Code is amended and reenacted as follows:

4-37-01. Agriculture in the classroom program.

Recognizing the need to promote and foster an understanding of the agricultural economy of the state of North Dakota and the values of rural lifestyles, an agriculture in the classroom program is hereby established ~~to be administered by an agriculture in the classroom council in conjunction with the~~. The agriculture commissioner shall administer the program with the advice of the agriculture in the classroom council.

SECTION 2. AMENDMENT. Section 4-37-02 of the North Dakota Century Code is amended and reenacted as follows:

4-37-02. Agriculture in the classroom council.

- ~~1. An~~ The agriculture in the classroom council is established. The council consists of sixteen members to be appointed by theseven individuals. The agriculture commissioner. One member must be the agriculture commissioner or the commissioner's designee, and one member must be shall appoint six council members. The seventh council member is the superintendent of public instruction or the superintendent's designee. Agriculture in the classroom grant recipients are nonvoting members of the council.
- The council members may select one from among themselves to serve as the chairman.
- The council shall meet at least twice each year, at the call of the chairman, for the purpose of providing advice to the agriculture commissioner regarding issues related to agriculture in the classroom.

SECTION 3. AMENDMENT. Section 4-37-03 of the North Dakota Century Code is amended and reenacted as follows:

4-37-03. Purpose - Powers and duties.

- ~~1. The agriculture in the classroom council may provide~~ commissioner may award grants and contract with any person for the provision of an agriculture in the classroom program, the development of agricultural curriculum activities applicable to students from kindergarten through grade twelve, and the training of teachers in agricultural curriculum activities.

- ~~2.~~ The council~~agriculture commissioner~~ shall work with teachers, the superintendent of public instruction, the department of career and technical education, and the United States department of agriculture,~~and the state agriculture commissioner in accomplishing this purpose. The council to provide and promote an agriculture in the classroom program.~~
- ~~3.~~ In addition to any other powers and duties set forth in this section, the agriculture commissioner may:
 - ~~4-4.~~ Consult with the ~~state~~ superintendent of public instruction, the department of career and technical education, ~~the state agriculture commissioner, and the United States department of agriculture,~~ and any other public or nonpublic entities;
 - ~~2-5.~~ Prepare instructional, informational, and reference publications on the North Dakota agricultural economy and rural lifestyles;~~;~~
 - ~~3-6.~~ Provide training programs for public school teachers in agricultural curriculum activities;~~;~~
 - ~~4-7.~~ Encourage research on and identification of new instructional, informational, and reference publications relating to this state's agricultural economy and rural lifestyles;~~;~~ and
 - ~~5-8.~~ Monitor the quality and condition of the agriculture in the classroom program.

SECTION 4. AMENDMENT. Section 4-37-04 of the North Dakota Century Code is amended and reenacted as follows:

4-37-04. Gifts and grants.

The agriculture in the classroom ~~council~~commissioner may accept and expend private contributions, gifts, and grants in aid from the federal government, private industry, and other sources. ~~The council shall expend any moneys received under this section for the gifts, grants, and donations in support of the agriculture in the classroom program. If any gifts, grants, or donations are designated for a specific purpose if a, the commissioner shall honor the purpose is included as a condition of the gift, grant, or donation. The council may use all other moneys received under this section to carry out the purposes of provided the purpose is consistent with this chapter.~~

Approved March 14, 2011

Filed March 14, 2011

CHAPTER 64

SENATE BILL NO. 2222

(Senators Flakoll, Bowman, Heckaman)
(Representatives D. Johnson, Boe, Brandenburg)

AN ACT relating to the development of crop insurance proposals; to provide for crop insurance development grants; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1.

Crop insurance development board - Membership - Terms.

1. The crop insurance development board consists of:
 - a. The agriculture commissioner or the commissioner's designee;
 - b. One individual representing an agricultural organization in this state, appointed by the governor;
 - c. One individual representing an agricultural organization in this state, appointed by the agriculture commissioner;
 - d. One individual involved in the crop insurance industry, appointed by the governor; and
 - e. One individual involved in the crop insurance industry, appointed by the agriculture commissioner.
2. The term of each appointed member is two years and begins on July 1, 2011.
3. An appointed member may serve consecutive terms.
4. If at any time a member ceases to possess any of the qualifications required by this section or otherwise terminates the appointment, the member's office is deemed vacant and must be filled in the same manner as the original appointment.

SECTION 2.

Crop insurance development board - Chairman.

1. Biennially, the crop insurance development board shall elect one member to serve as the chairman. The chairman's term begins July 1, 2011. The chairman may serve consecutive terms.
2. The chairman shall call all meetings of the board.
3. The board shall meet as often as necessary to fulfill its duties under section 3 of this Act.

SECTION 3.**Crop insurance development board - Duties.**

1. The crop insurance development board shall assess the feasibility and desirability of proposals submitted by individuals and by public and nonpublic entities pertaining to the development and implementation of crop insurance instruments. The board may authorize the awarding of grants to assist with future actuarial and development costs.
2. Grants may be awarded for up to seventy-five percent of the first fifty thousand dollars and up to fifty percent of the costs thereafter.
3. The board shall establish conditions pertaining to the receipt of grants, including the repayment of some or all of the grants with moneys received by the applicant from the federal crop insurance corporation for continued development of the proposal. The board shall forward any moneys received as repayments under this section to the state treasurer for deposit in the agricultural fuel tax fund.

SECTION 4.**Access to board records.**

Materials and data submitted to, or made or received by, the board, to the extent that the board determines the materials or data consist of trade secrets or commercial, financial, or proprietary information of individuals or entities applying to or contracting with the board or receiving board services under this chapter are subject to section 44-04-18.4. The names or identities of the independent technical reviewers on any project or program are confidential and may not be disclosed by the board.

SECTION 5. CROP INSURANCE DEVELOPMENT GRANTS. During each biennium, the agricultural products utilization commission shall reserve \$150,000 from the agricultural fuel tax fund for the purpose of awarding grants that have been approved by the crop insurance development board in accordance with this Act. If any portion of the reserved amount remains unexpended at the conclusion of a biennium, the unexpended amount must also be made available for the purpose of awarding grants during the ensuing biennium.

SECTION 6. EXPIRATION DATE. This Act is effective through June 30, 2015, and after that date is ineffective.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 65

SENATE BILL NO. 2134

(Senators Erbele, Christmann, Wanzek)
(Representatives S. Meyer, Pollert, Heller)

AN ACT to amend and reenact sections 4.1-08-02, 4.1-08-06, and 4.1-08-07 of the North Dakota Century Code, relating to the assessment on colonies of honeybees; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

4.1-08-02. Assessment.

An annual assessment in the amount of ~~five~~^{ten} cents is imposed on each colony of honeybees licensed by the beekeeper. The minimum annual assessment is one dollar.

SECTION 2. AMENDMENT. Section 4.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

4.1-08-06. Assessment - Authorized expenditures.

The assessment required by this chapter may be used to fund research, including efforts that focus on honeybee colony health; education programs; and market development efforts, as well as promotional efforts such as the North Dakota honey queen program.

SECTION 3. AMENDMENT. Section 4.1-08-07 of the North Dakota Century Code is amended and reenacted as follows:

4.1-08-07. Commissioner - Powers.

The commissioner may:

1. Expend moneys appropriated under this chapter for the purposes set forth in section 4.1-08-06, provided the commissioner first consults with ~~a committee appointed by the board of directors of~~ the North Dakota beekeepers' association; and
2. Do all things necessary and proper to enforce and administer this chapter.

SECTION 4. EXPIRATION DATE. This Act is effective through June 30, 2015, and after that date is ineffective.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 66

HOUSE BILL NO. 1302

(Representatives D. Johnson, DeKrey, Mueller)
(Senators Flakoll, Miller)

AN ACT to amend and reenact sections 4.1-11-02, 4.1-11-03, 4.1-11-04, and 4.1-11-05 of the North Dakota Century Code, relating to soybean council elections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-11-02 of the North Dakota Century Code is amended and reenacted as follows:

4.1-11-02. Soybean districts - Establishment.

1. The state consists of the following eight soybean districts:
 4. a. Richland County;
 2. b. Dickey, LaMoure, Ransom, and Sargent Counties;
 3. c. Cass County;
 4. d. Barnes, Griggs, and Steele Counties;
 5. e. Traill County;
 6. f. Grand Forks County;
 7. g. Pembina, Nelson, and Walsh Counties; and
 8. h. All other North Dakota counties in which soybeans are grown.
2. Beginning April 1, 2012, the state consists of the following twelve soybean districts:
 - a. District one: Richland County;
 - b. District two: Ransom and Sargent Counties;
 - c. District three: Dickey and LaMoure Counties;
 - d. District four: Cass County;
 - e. District five: Barnes County;
 - f. District six: Stutsman County;
 - g. District seven: Grand Forks and Traill Counties;

- h. District eight: Griggs, Nelson, and Steele Counties;
- i. District nine: Eddy, Foster, and Wells Counties;
- j. District ten: Cavalier, Pembina, and Walsh Counties;
- k. District eleven: Benson, Bottineau, Burke, Divide, McHenry, Mountrail, Pierce, Ramsey, Renville, Rolette, Towner, Ward, and Williams Counties; and
- l. District twelve: Adams, Billings, Bowman, Burleigh, Dunn, Emmons, Golden Valley, Grant, Hettinger, Kidder, Logan, McIntosh, McKenzie, McLean, Mercer, Morton, Oliver, Sheridan, Sioux, Slope, and Stark Counties.

SECTION 2. AMENDMENT. Section 4.1-11-03 of the North Dakota Century Code is amended and reenacted as follows:

4.1-11-03. North Dakota soybean council - Membership - Terms.

1. The council consists of one producer elected from each of the ~~eight~~ districts established in section 4.1-11-02.
2. Each member of the council must be a resident of and a producer in the district that the member represents.
3. a. The term of each elected member is three years and begins on April first following the member's election. ~~The~~Except as otherwise provided in this subsection, the terms must be staggered so that no more than three expire each year.
 - b. Notwithstanding subdivision a, the terms of all council members expire on March 31, 2012. Between January 1, 2012, and March 31, 2012, each district established by subsection 2 of section 4.1-11-02 shall elect an individual to serve as a council member with a term beginning April 1, 2012. The initial terms of individuals elected to begin serving as council members on April 1, 2012, are:
 - (1) One year for council members representing districts one, five, seven, and nine;
 - (2) Two years for council members representing districts two, eight, ten, and twelve; and
 - (3) Three years for council members representing districts three, four, six, and eleven.
4. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this section, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified producer to serve for the remainder of the term.
5. An elected member of the council may not serve more than two consecutive terms.

6. If an individual is appointed to complete a vacancy, that service is not counted as a term for purposes of this section unless the duration of that service exceeds one year.

SECTION 3. AMENDMENT. Section 4.1-11-04 of the North Dakota Century Code is amended and reenacted as follows:

4.1-11-04. Election of county representative.

1. ~~a. No later than March first of the year in which the term of a council member is to expire, the extension agent for each county in that member's district shall hold a meeting of soybean producers for the purpose of electing a county representative.~~
 - ~~b. The county extension agent shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last notice must be published no fewer than five nor more than ten days before the meeting.~~
 - ~~c. The meeting must be held within the county.~~
 - ~~d. During the meeting, the county extension agent shall conduct the election.~~
 - ~~e. Any producer who resides in the county may vote in the election.~~
 - ~~f. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the council that the election has taken place, and provide to the director and the council the name and address of the newly elected county representative.~~
2. ~~Subsection 1 does not apply if the county extension agent, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no soybean producers willing to serve as county representatives reside within the county.~~
1. Before January first, the council shall identify each district represented by a council member whose term is about to expire and notify the extension agent for each county in that member's district that an election to select a county representative must occur before March first.
2. Each year during the month of January, each county extension agent required to conduct an election in accordance with this section shall publish notice of the election in the official newspaper of the county for one week. The notice must contain a description of the election process, a request for the nomination of potential candidates for the position, and a deadline for the receipt of all nominations.
3. In order for a nomination to be valid, it must be submitted to the county extension agent in writing and signed by a nominating producer who resides in the county. The county extension agent shall determine if a nomination is valid. A decision by the county extension agent under this subsection is final.
4. The county extension agent shall:
 - a. Compile all valid nominations;

- b. Contact each nominee to determine if the nominee consents to being on the ballot; and
 - c. Forward the name of each nominee to the council.
5. The council shall prepare the election ballots and mail to each producer of record in the county:
 - a. A ballot;
 - b. A stamped self-addressed return envelope;
 - c. Instructions for completing and returning the ballot; and
 - d. A statement indicating the last date by which the ballots must be postmarked or filed with the county extension agent.
6. The county extension agent shall publish notice of the pending election in the official newspaper of the county for one week. The notice must announce the election, provide information regarding the manner in which a producer may obtain a ballot if one was not received by mail, and indicate the deadline by which all ballots must be returned.
7. Any producer who resides in the county may vote in the election.
8. Immediately after the passing of the deadline by which the ballots must be returned, the county extension agent shall:
 - a. Tabulate the ballots;
 - b. Notify the director of the North Dakota state university extension service and the council that the election has taken place and provide to the director and the council the name and address of the newly elected county representative; and
 - c. Notify the newly elected county representative.
9. Subsections 1 through 8 do not apply if the county extension agent, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no soybean producers willing to serve as county representatives reside within the county.

SECTION 4. AMENDMENT. Section 4.1-11-05 of the North Dakota Century Code is amended and reenacted as follows:

4.1-11-05. Election of council member - District representative.

1. Upon receiving ~~the~~ notice that the election has taken place, as required by subdivision ~~fh~~ of subsection 1 of section 4.1-11-04, the director of the North Dakota state university extension service shall call a meeting of all county representatives in the district represented by the member whose term is to expire.
2. The director shall notify each county representative in the district of the meeting by registered mail at least five days before the meeting.

3. ~~The meeting~~At the discretion of the director of the North Dakota state university extension service, the meeting may be held by any means, including by conference call or other electronic medium. If the meeting requires physical presence at a particular location, that location must be held within the district.
4. At the meeting, the county representatives shall elect one from among themselves to serve as the council member from that district.
5. The director shall notify ~~the governor and~~ the council that the election has taken place and shall provide to the ~~governor and the~~ council the name and address of the newly elected council member.
6. If the county representatives fail to elect an individual, as required by this section, the director of the North Dakota state university extension service shall notify the council and the council shall appoint a producer from the district to serve as the district's council member. An individual appointed under this subsection has the same rights, duties, and privileges as an elected council member.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 67

SENATE BILL NO. 2085

(Agriculture Committee)
(At the request of the Agriculture Commissioner)

AN ACT to create and enact subdivision c to subsection 1 of section 4.1-47-31 of the North Dakota Century Code, relating to the penalty for selling noxious weeds; to amend and reenact section 4.1-47-02 of the North Dakota Century Code, relating to the control and sale of noxious weeds; to provide a penalty; and to allow the agriculture commissioner to use environment and rangeland protection funds for invasive species control.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-47-02 of the North Dakota Century Code is amended and reenacted as follows:

4.1-47-02. Control of noxious weeds –Responsibility.

1. Each person shall do all things necessary and proper to control the spread of noxious weeds.
2. No person may distribute, sell, or offer for sale within this state a noxious weed.

SECTION 2. Subdivision c to subsection 1 of section 4.1-47-31 of the North Dakota Century Code is created and enacted as follows:

- c. A person who violates subsection 2 of section 4.1-47-02 is subject to a civil penalty not to exceed one hundred dollars for each violation.

SECTION 3. ENVIRONMENT AND RANGELAND PROTECTION FUND - INVASIVE SPECIES CONTROL. The agriculture commissioner may use up to \$50,000 of the amount available to the commissioner from legislative appropriation for the biennium beginning July 1, 2011, and ending June 30, 2013, from environment and rangeland protection funds for the purpose of controlling invasive species as provided by section 4.1-47-33.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 68

HOUSE BILL NO. 1317

(Representatives D. Johnson, Hofstad, Mueller)
(Senators Flakoll, Klein, Wanzek)

AN ACT to amend and reenact sections 4.1-47-16 and 4.1-47-28 of the North Dakota Century Code, relating to noxious weed control; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-47-16 of the North Dakota Century Code is amended and reenacted as follows:

4.1-47-16. State appropriations for noxious weed control - Landowner assistance program.

1. The commissioner shall consult with representatives of county and city weed boards and develop a formula for the distribution to eligible county weed boards and eligible city weed boards of all moneys appropriated by the state for the landowner assistance program.
2.
 - a. The formula must require that county officials budget, from county sources, an amount equal to the revenue that could be raised by a levy of at least three mills for noxious weed control; provided, however, that this amount does not apply to property that lies within the boundaries of a city having a noxious weed control program under this chapter.
 - b. The formula must require that city officials budget, from city sources, an amount equal to the revenue that could be raised by a levy of at least three mills for noxious weed control.
3.
 - a. The formula must require that the landowner contribute an amount equal to at least twenty percent of the cost to be expended on behalf of the landowner.
 - b. ~~The formula may include payment in kind criteria by which nature and type of the landowner's contribution may be realized.~~ must be determined by the weed board having jurisdiction over the area in which the landowner's property is located.

SECTION 2. AMENDMENT. Section 4.1-47-28 of the North Dakota Century Code is amended and reenacted as follows:

4.1-47-28. Entry upon land for noxious weed control purposes - Notices - Landowner rights - Remedial requirements - Liens.

1.
 - a. If a county weed officer determines that any land other than that referenced in subsection 2 contains noxious weeds, the county weed control officer may first contact the occupant and request that the occupant control the noxious weeds within a prescribed time period and in a prescribed manner. If the county weed control officer determines that the

occupant has failed to control the noxious weeds, as requested, the county weed officer shall serve upon the landowner written notice, either personally or by certified mail, requiring the landowner to control the noxious weeds within the time period prescribed by the county weed control officer.

- b. The notice must:
 - (1) Specify the minimal remedial requirements;
 - (2) Specify the time within which the landowner must meet the minimum remedial requirements;
 - (3) Specify that the landowner may be subject to penalties provided under this chapter if the landowner fails to comply with the remedial requirements;
 - (4) Include a statement of costs if the landowner fails to control the noxious weeds and the county weed officer must provide for control of the weeds; and
 - (5) Provide that the landowner may stay any efforts by the county weed officer to control noxious weeds on the land by requesting in writing that the county weed board hold a hearing on the matter.
 - ~~c. The county weed officer shall deliver a copy of the notice personally or forward a copy of the notice by certified mail to any tenant, lessee, or operator of the land on which the noxious weeds are located.~~
 - ~~d.~~ If the landowner does not meet the minimum remedial requirements within the time specified in the notice and does not request a hearing on the matter by the county weed board, the county weed control officer may cause the noxious weeds to be controlled and the expenses charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes.
 - ~~e.d.~~ If after holding a hearing on the matter, the county weed board directs that the noxious weeds be controlled by the county weed officer, the landowner may appeal the decision to the board of county commissioners. A decision by the board of county commissioners is final.
 - ~~f.e.~~ If the landowner does not appeal the decision to the board of county commissioners, or if the board of county commissioners upholds the decision of the county weed board, the county weed control officer may cause the noxious weeds to be controlled and any expenses incurred by the county weed officer in controlling the weeds must be charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes.
2. a. If a city weed control officer determines that land within the officer's jurisdiction contains noxious weeds, the officer may serve upon the landowner written notice either personally or by certified mail, requiring the

- landowner to control the noxious weeds within the time period prescribed by the city weed control officer.
- b. The notice must:
 - (1) Specify the minimal remedial requirements;
 - (2) Specify the time within which the landowner must meet the minimum remedial requirements;
 - (3) Specify that the landowner may be subject to penalties provided under this chapter if the landowner fails to comply with the remedial requirement;
 - (4) Include a statement of costs if the landowner fails to control the noxious weeds and the city weed officer must provide for control of the weeds; and
 - (5) Provide that the landowner may stay any efforts by the city weed officer to control noxious weeds on the land, by requesting in writing that the city weed board hold a hearing on the matter.
 - c. The city weed officer shall deliver a copy of the notice personally or forward a copy of the notice by certified mail to any tenant, lessee, or operator of the land on which the noxious weeds are located.
 - d. If the landowner does not meet the minimum remedial requirements within the time specified in the notice and does not request a hearing on the matter by the city weed board, the city weed control officer may cause the noxious weeds to be controlled and the expenses charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes.
 - e. If after holding a hearing on the matter the city weed board directs that the noxious weeds be controlled by the city weed officer, the landowner may appeal the decision to the governing body of the city. A decision by the governing body is final.
 - f. If the landowner does not appeal the decision to the governing body of the city, or if the governing body of the city upholds the decision of the city weed board, the city weed control officer may cause the noxious weeds to be controlled and any expenses incurred by the city weed officer in controlling the weeds must be charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

CHAPTER 69

HOUSE BILL NO. 1027

(Legislative Management)
(Agriculture Committee)

AN ACT to create and enact a new section to chapter 4-10, chapters 4.1-53, 4.1-54, and 4.1-57, a new section to chapter 11-08, a new section to chapter 40-05, and a new section to chapter 58-03 of the North Dakota Century Code, relating to the labeling, certification, and sale of seed; to amend and reenact sections 4-10-12.1, 60-02-01, and 60-02.1-01 of the North Dakota Century Code, relating to seed labeler and wholesale potato dealer licenses; to repeal chapters 4-09, 4-09.1, 4-11, 4-25, and 4-42 of the North Dakota Century Code, relating to the labeling, certification, and sale of seed; to provide a penalty; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10-12.1 of the North Dakota Century Code is amended and reenacted as follows:

4-10-12.1. Liability - Potato crop quantity and quality.

The state seed commission, state seed department, commissioner and the commissioner's employees, certified seed potato producers, and wholesale potato dealers licensed under chapter ~~4-44.1-57~~ make no expressed or implied warranty of any kind as to the quantity or quality of the crop produced from the seed potatoes or through other produce inspected and certified, including merchantability, fitness for a particular purpose, or absence of disease. The only representation is that the potatoes or other produce were ~~produced, graded, packed, and~~ inspected under the rules of the state seed department or United States department of agriculture. The commissioner and the commissioner's employees function and serve only in an official regulatory manner.

SECTION 2. A new section to chapter 4-10 of the North Dakota Century Code is created and enacted as follows:

Plant and seed records - Exempt.

The following records of the state seed commission are exempt from section 44-04-18:

1. Records of any plant or seed inspection, analysis, or testing and germination, purity, variety, or disease determinations conducted by the state seed department on a fee-for-service basis for nonpublic entities or persons.
2. Information received by the seed commission under this chapter from a nonpublic entity or person that the nonpublic entity or person determines is proprietary information or a trade secret.

¹⁵ **SECTION 3.** Chapter 4.1-53 of the North Dakota Century Code is created and enacted as follows:

4.1-53-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Agricultural seed" means:
 - a. The seed of cereal, fiber, forage, grass, or oil crops;
 - b. Irish potato seed tubers;
 - c. Lawn seed;
 - d. Any other seed designated by the seed commissioner as agricultural seed; and
 - e. Any mixture of seeds referenced in this subsection.
2. "Blend" means seed that consists of more than one variety, provided each variety consists of more than five percent of the whole, by weight.
3. "Brand" means a design, name, number, symbol, or word used to identify the seed of one person and distinguish the seed from that of another person.
4. "Certification" means a process that:
 - a. Is designed to maintain the genetic purity and varietal identity of crop cultivars; and
 - b. Requires a variety of components, including:
 - (1) An examination of records provided by the producer;
 - (2) An inspection of the field in which the plants producing seed for certification are growing; and
 - (3) The testing and grading of a representative sample.
5. "Certified" means a designation that the seed department has authorized a labeler to use on seed that met the requirements for certification.
6. "Conditioning" means any process to remove unwanted seeds or other matter from a seed lot in order to produce a uniform product.
7. "Flower seed" means the seed of a herbaceous plant grown for its bloom, ornamental foliage, or other ornamental part.

¹⁵ Section 4.1-53-10 was amended by section 11 of House Bill No. 1399, chapter 70; section 4.1-53-35 was amended by section 12 of House Bill No. 1399, chapter 70; section 4.1-53-56 was repealed by section 23 of House Bill No. 1399, chapter 70.

8. "Germination" means the physiological process of development and the emergence from the seed embryo of essential structures that are indicative of the ability to produce a normal plant under favorable conditions.
9. "Hard seed" means a seed that has an impermeable seed coat and has not absorbed water by the end of the prescribed test period.
10. "Inert matter" means anything other than unbroken seeds.
11. "Kind" means one or more related species or subspecies known singly or collectively by a common name.
12. "Label" means a device or tag attached to a seed container, printed or stamped information on a seed container, or written information accompanying a lot of bulk seed.
13. "Labeler" means the person identified by name and address on the label.
14. "Lot" means an identifiable quantity of seed that is uniform within permitted tolerances for the factors that appear on its label.
15. "Mixture" means seed consisting of more than one kind, each in excess of five percent of the whole, by weight.
16. "Official seed-certifying agency" means:
 - a. An agency that is authorized under the laws of a state, territory, or possession to officially certify seed and which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of any seed it certifies; or
 - b. An agency of a foreign country if the United States secretary of agriculture has determined that the agency adheres to seed certification procedures and standards that are comparable to those generally adhered to by a seed-certifying agency meeting the criteria set forth in subdivision a.
17. "Prohibited weed seed" means:
 - a. The seed or propagule of any weed designated as noxious by the agriculture commissioner in accordance with section 4.1-47-05; or
 - b. The seed or propagule of any weed determined by the seed commissioner to be highly destructive and difficult to control by good cultural practices or by the use of herbicides.
18. "Pure seed" means a quantity of seed that belongs to a particular kind or variety and which does not contain either inert matter or seeds of another kind or variety.
19. "Record" includes all information relating to origin or source, variety, lot identification, quantity, inspection, processing, testing, labeling, distribution, and file samples of the seed.
20. "Restricted weed seed" means a seed that is determined by the seed commissioner to be:

- a. Objectionable in agricultural seed, lawn or turf seed, vegetable seed, and flower seed; and
 - b. Controllable by good cultural practices or the use of herbicides.
21. "Selection" means a subgroup of a variety and includes clones, lines, and strains.
22. "Treated" means a seed has received an application of a substance intended to enhance the performance of the seed or alter a physiological process of the plant.
23. "Unbroken seed" means a seed that is more than fifty percent intact.
24. "Variety" means a subdivision of a kind that:
- a. Can be differentiated by one or more identifiable morphological, physiological, or other characteristics from other varieties of the same kind;
 - b. Has describable variations in essential and distinct characteristics; and
 - c. Will remain unchanged in its essential and distinct characteristics and uniformity when reproduced or reconstituted, as required by the different categories of varieties.

4.1-53-02. Seed department - Location.

The North Dakota seed department is the official seed-certifying agency of the state. The seed department must be located on the campus of North Dakota state university of agriculture and applied science.

4.1-53-03. Official seal.

The seed department shall have and use an official departmental seal that has been recorded in the office of the secretary of state.

4.1-53-04. Seed commission - Membership.

The seed commission is the governing board of the seed department. The seed commission consists of the following nine members:

1. An individual appointed by the North Dakota crop improvement association;
2. An individual appointed by the North Dakota certified seed potato growers association;
3. An individual appointed by the North Dakota dry edible bean seed growers association;
4. An individual appointed by the North Dakota agricultural association;
5. An individual appointed by the North Dakota potato council;
6. A resident of this state appointed by the northern plains potato growers association;

7. An individual who operates a seed-conditioning plant approved by the seed department, appointed by the North Dakota grain dealers association;
8. The director of the agricultural experiment station or the director's designee; and
9. The agriculture commissioner or the agriculture commissioner's designee.

4.1-53-05. Seed commission - Chairman - Meetings.

1. The agriculture commissioner shall serve as the chairman of the seed commission.
2. The chairman shall call all regular meetings of the seed commission and shall call a special meeting within seven days if petitioned to do so by two members of the seed commission.
3. The seed commission shall hold at least two regular meetings each year.

4.1-53-06. Seed commission - Appointment of proxy.

If a member of the seed commission is unable to attend a meeting of the commission, the member may appoint a proxy. The appointment must be in writing and must be presented to the chairman. The vote of the proxy is final.

4.1-53-07. Seed commission - Members - Compensation.

Each member of the seed commission, except the agriculture commissioner and the director of the agricultural experiment station, is entitled to receive compensation at the rate of one hundred thirty-five dollars per day and reimbursement for expenses, as provided by law for state officers, if the member is attending a commission meeting or performing duties directed by the commission.

4.1-53-08. Seed commission - Powers.

The seed commission may:

1. Establish branch offices and laboratories at locations in this state, other than the campus of North Dakota state university of agriculture and applied science, if the seed commissioner determines that they are necessary to carry out the duties of the seed commission, the seed commissioner, or the seed department;
2. Dismiss the seed commissioner for cause; and
3. Appoint an acting seed commissioner if the position becomes vacant.

4.1-53-09. Seed commission - Duties.

The seed commission shall:

1. Appoint a seed commissioner;
2. Compensate the seed commissioner; and
3. Review the appointment of a seed commissioner, annually.

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.

4.1-53-11. Seed commissioner - Duties.

The seed commissioner shall:

1. Manage the seed department;
2. Provide, equip, and maintain offices, laboratories, and any other facilities necessary to carry out this chapter, subject to the approval of the seed commission;
3. Employ and compensate necessary personnel;
4. Permit North Dakota state university of agriculture and applied science to use the seed department facilities and the services of the seed department laboratories at convenient times;
5. Determine the nature and size of any seed and plant samples required by the seed department in order to conduct official tests or make official determinations and shall prescribe the manner in which the seed and plant samples are to be obtained and delivered to the seed department;
6. Provide commodity inspection services upon request;
7. Establish and charge fees for services, subject to the approval of the seed commission;
8. Provide periodic reports to the seed commission regarding the management and operation of the seed department;
9. Recommend to the seed commission the biennial budget and annual salary schedules for the seed department;
10. Submit the seed department's biennial budget, as approved by the seed commission, to the office of management and budget;
11. Do all things necessary to enforce this chapter and rules implementing this chapter; and

12. Perform any other duties as directed by the seed commission.

4.1-53-12. Agricultural seed - Label requirements.

1. Agricultural seed offered for sale or sold in this state, for planting purposes, must be labeled.
2. a. If the agricultural seed is offered for sale or sold in a container, the label must be plainly printed in English and conspicuously placed on or attached to the container.

b. If the agricultural seed is offered for sale or sold in bulk, the label must be plainly printed in English and provided to the purchaser at or before the time of delivery.

4.1-53-13. Agricultural seed - Label - Content.

A label required by section 4.1-53-12 must include:

1. The lot number or other lot identification:
2. a. The state or foreign country in which the seed was grown; or
b. A statement indicating that the origin of the seed is unknown;
3. The percentage by weight of all weed seed;
4. The name of each restricted weed seed present and its rate of occurrence per pound [453.59 grams], if:
 - a. In seeds of grasses and small seeded legumes, the rate of occurrence exceeds thirteen seeds per pound [453.59 grams]; or
 - b. In any other agricultural seeds, the rate of occurrence exceeds five seeds per pound [453.59 grams];
5. The percentage by weight of any other agricultural seeds present;
6. The percentage by weight of inert matter;
7. a. The percentage of germination, exclusive of hard seed;
b. The percentage of hard seed, if applicable; and
c. The month and year in which the percentages were determined; and
8. The full name and address of the labeler.

4.1-53-14. Agricultural seed - Label requirements - Treated seed.

1. In addition to any other requirements set forth in this chapter, if the seed has been treated, the label must indicate that the treatment has occurred and must include the commonly accepted, coined, chemical, or abbreviated chemical name of the substance used in the treatment.

- a. If the substance with which the seed was treated is harmful to humans or to other vertebrate animals, the label must contain a cautionary statement prohibiting use of the seed for human or animal consumption.
 - b. If the substance with which the seed was treated is a mercurial or a similarly toxic substance, the label must contain a statement and symbol indicating that the substance is poison.
 - c. If the substance with which the seed was treated is an inoculant, the label must contain the date beyond which the inoculant is claimed not to be effective for use on that particular seed.
2. The information required by this section may be placed on a separate label.

4.1-53-15. Agricultural seed - Label requirement - Hermetically sealed containers.

In addition to any other label requirements set forth in this chapter, if agricultural seed that is offered for sale or sold is in a container that has been hermetically sealed, the label must so indicate.

4.1-53-16. Agricultural seed - Additional label requirements - Limited applicability.

1. In addition to any other label requirements set forth in this chapter, the label on each container of barley, canola, dry beans, durum, field peas, flax, oats, rye, soybeans, and wheat seed offered for sale or sold in this state for planting purposes must include:
 - a. The kind of each agricultural seed;
 - b. The variety of each agricultural seed component constituting more than five percent of the whole; and
 - c. The percentage by weight of each agricultural seed component constituting more than five percent of the whole.
2. In addition to any other requirements set forth in this chapter, the label on each container of agricultural seed other than barley, canola, dry beans, durum, field peas, flax, oats, rye, soybeans, and wheat seed offered for sale in this state for planting purposes:
 - a. Must include the kind of each agricultural seed;
 - b. May include the variety of each agricultural seed component constituting more than five percent of the whole; and
 - c. Must include the percentage by weight of each agricultural seed component constituting more than five percent of the whole.

4.1-53-17. Agricultural seed - Selling by brand - Label requirement.

The seed of barley, canola, dry beans, durum, field peas, flax, oats, rye, soybeans, and wheat may be sold by brand, provided the true variety name or number is clearly stated on the label.

4.1-53-18. Canola seed - Additional label requirements.

In addition to any other requirements set forth in this chapter, if the agricultural seed is canola, the seed must:

1. Have been certified by the seed commissioner as meeting the standards of this state; or
2. Have been certified by the appropriate agency of another state or country having canola certification standards that are determined by the seed commissioner to meet or exceed the standards of this state.

4.1-53-19. Agricultural seed components - Label requirements - Mixture or blend - Designation.

If more than ten percent of the whole consists of an aggregate of agricultural seed components, each present in an amount not exceeding five percent of the whole, the label must include each component in excess of one percent of the whole named together with the percentage by weight of each. Each component must be listed in the order of its predominance. If more than one component is named, the word "mixture" or "blend" must be stated appropriately with the name of the mixture or blend.

4.1-53-20. Agricultural seed - Sale of small quantities - Container label requirements.

If agricultural seed is sold in quantities of five pounds [2.26796 kilograms] or less, the container into which the seed is placed is exempt from the labeling requirements of this chapter provided:

1. The container from which the seed is taken is in compliance with the labeling requirements of this chapter; and
2. The seed is removed from the container referenced in subsection 1 and weighed, in the presence of the purchaser.

4.1-53-21. Vegetable seed - Label requirements.

1. Each container of vegetable seed offered for sale or sold in this state, for planting purposes, must be labeled.
2. The label must be plainly printed in English and placed conspicuously on or attached to the container.

4.1-53-22. Vegetable seed - Label - Content.

The label for vegetable seed packed in units of one pound or less and the label for vegetable seed on prepared mats, tapes, or in preplanted containers must include:

1. The kind and variety of seed;
2. The lot number or other lot identification;
3. The full name and address of the labeler;
4. The month and year in which the germination test was completed; and

5.
 - a. The percentage of germination; or
 - b. The date by which the seed must be sold, as established in section 4.1-53-52.

4.1-53-23. Vegetable seed - Additional label requirements.

If the germination test referenced in section 4.1-53-22 results in a finding that the seed does not meet the standards for germination, as established by the commissioner, the label must include:

1. The percentage of germination, exclusive of hard seed;
2. The percentage of hard seed, if present; and
3. The words "below standard" in at least eight-point type.

4.1-53-24. Vegetable seed - Larger units - Label requirements - Exception.

1. The label for any vegetable seed other than that referenced in section 4.1-53-22 must include:
 - a. The lot number or other lot identification;
 - b.
 - (1) The kind and variety of vegetable seed present in excess of five percent by weight;
 - (2) The percentage by weight of each seed referenced in paragraph 1, in order of its predominance;
 - (3) The percentage of germination for each seed referenced in paragraph 1, exclusive of hard seed;
 - (4) The percentage of hard seed, if present; and
 - (5) The month and year that the percentages were determined; and
 - c. The full name and address of that labeler.
2. If vegetable seed is sold in quantities of five pounds [2.26796 kilograms] or less, the container into which the seed is placed is exempt from the labeling requirements of this chapter provided:
 - a. The container from which the seed is taken is in compliance with the labeling requirements of this chapter; and
 - b. The seed is removed from the container referenced in subsection 1 and weighed, in the presence of the purchaser.

4.1-53-25. Vegetable seed - Quantity - Label requirement.

If the vegetable seeds are on a mat, on tape, or in some other germination medium, and the quantity of seed cannot be readily determined, the label must include the minimum number of seeds per definable unit.

4.1-53-26. Vegetable seed - Label requirements - Treated seed.

1. In addition to any other requirements set forth in this chapter, if the vegetable seed has been treated, the label must indicate that the treatment has occurred and must include the commonly accepted, coined, chemical, or abbreviated chemical name of any substance used in the treatment.
2. If the substance with which the seed was treated is harmful to humans or to other vertebrate animals, the label must contain a cautionary statement prohibiting use of the seed for human or animal consumption.
3. If the substance with which the seed was treated is a mercurial or a similarly toxic substance, the label must contain a statement and symbol indicating that the substance is poison.
4. If the substance with which the seed was treated is an inoculant, the label must contain the date beyond which the inoculant is claimed not to be effective on that particular seed.
5. The information required by this section may be placed on a separate label.

4.1-53-27. Vegetable seed - Label requirement - Hermetically sealed containers.

In addition to any other label requirements set forth in this chapter, if vegetable seed that is offered for sale or sold is in a container that has been hermetically sealed, the label must so indicate.

4.1-53-28. Flower seed - Label requirements.

1. Each container of flower seed offered for sale or sold in this state, for planting purposes, must be labeled.
2. The label must be plainly printed in English and conspicuously placed on or attached to the container.

4.1-53-29. Flower seed - Label - Content.

1. The label for flower seed must include:
 - a. (1) The kind and variety; or
(2) The information required by rule with respect to type and performance characteristics;
 - b. (1) The month and year in which the seed was tested; or
(2) The year for which the seed was packaged; and
 - c. The full name and address of the labeler.
2. If the flower seed is packed in units of more than one pound [453.59 grams], the label must also include the lot number or other lot identification, unless the flower seed is on prepared mats, on tapes, or in preplanted containers.

3. If the flower seed is of a kind for which standard testing procedures are prescribed by the association of official seed analysts, the label must also include:
 - a. The percentage of germination exclusive of hard seed; and
 - b. The percentage of hard seed, if present.
4. If the flower seed is of a kind for which standard testing procedures are prescribed by the association of official seed analysts and if the seed does not meet the standard for germination required by rule, the label must also include the percentage of germination exclusive of hard seeds and the words "below standard" in at least eight-point type.

4.1-53-30. Flower seed - Quantity - Label requirement.

If the flower seeds are on a mat, on tape, or in some other germination medium and the quantity of seed cannot be readily determined, the label must include the minimum number of seeds per definable unit.

4.1-53-31. Flower seed - Label requirements - Treated seed.

1. In addition to any other requirements set forth in this chapter, if the flower seed has been treated, the label must indicate that the treatment has occurred and must include the commonly accepted, coined, chemical, or abbreviated chemical name of the substance used in the treatment.
 - a. If the substance with which the flower seed was treated is harmful to humans or to other vertebrate animals, the label must contain a cautionary statement prohibiting use of the seed for human or animal consumption.
 - b. If the substance with which the seed was treated is a mercurial or a similarly toxic substance, the label must contain a statement and symbol indicating that the substance is poison.
 - c. If the substance with which the seed was treated is an inoculant, the label must contain the date beyond which the inoculant is claimed not to be effective on that particular seed.
2. The information required by this section may be placed on a separate label.

4.1-53-32. Tree seed and shrub seed - Label requirements.

1. a. Each container of tree seed or shrub seed offered for sale or sold in this state, for planting purposes, must be labeled.
 - b. The label must be plainly printed in English and conspicuously placed on or attached to the container.
2. If seed is supplied in fulfillment of a contract for the collection and gathering of the seed, the label requirements of this section may be met by an analysis tag attached to the invoice if each container is clearly identified by a lot number stenciled on the container or if the seed is in bulk.
3. If the seed is offered for sale or sold in bulk, the label must be provided to the purchaser at or before the time of delivery.

4.1-53-33. Tree seed and shrub seed - Label - Content.

A label required by this section must include:

1. The common name of the tree or shrub species and, if appropriate, the name of the subspecies;
2. The scientific name of the genus, the species, and, if appropriate, the name of the subspecies;
3. The lot number or other lot identification;
4. The elevation at which or the upper and lower elevations within which the seed was collected;
5. The percentage of pure seed by weight; and
6. The full name and address of the labeler.

4.1-53-34. Tree seed and shrub seed - Label - Statement of origin.

In addition to any other label requirements set forth in section 4.1-53-33, the label of tree seed or shrub seed must identify the location from which the seeds were collected by:

1. Latitude and longitude; or
2. County or township.

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 prescribed, the label must include the year in which the seed was collected.

4.1-53-36. Tree seed and shrub seed - Label requirements - Treated seed.

1. In addition to any other requirements set forth in this chapter, if the tree seed or shrub seed has been treated, the label must indicate that the treatment has

occurred and must include the commonly accepted, coined, chemical, or abbreviated chemical name of any substance used in the treatment.

2. If the substance with which the seed was treated is harmful to humans or to other vertebrate animals, the label must contain a cautionary statement prohibiting use of the seed for human or animal consumption.
3. If the substance with which the seed was treated is a mercurial or a similarly toxic substance, the label must contain a statement and symbol indicating that the substance is poison.
4. If the substance with which the seed was treated is an inoculant, the label must contain the date beyond which the inoculant is claimed not to be effective for use on that particular seed.

4.1-53-37. Tolerances.

1. In order to determine correctness and accuracy in labeling seed as required by this chapter, the seed commissioner shall:
 - a. Apply the tolerances established by the Federal Seed Act of August 9, 1939 [53 Stat. 1275; 7 U.S.C. 1551 et seq.], as amended through June 30, 2011; or
 - b. Establish stricter tolerances by rule.
2. Notwithstanding subsection 1, the tolerance for yellow starthistle is zero.

4.1-53-38. Seed labeling permit - Reports - Fees - Civil penalty.

1. Before a person in this state may label agricultural, vegetable, flower, or tree or shrub seed and before a person may label agricultural, vegetable, flower, or tree or shrub seed for delivery into this state, the person shall obtain a seed labeling permit from the seed commissioner.
2. Each person issued a seed labeling permit under this section shall:
 - a. Record all seeds sold by that person in this state;
 - b. Report all seeds sold by that person in this state to the seed commissioner at the time and in the manner determined by the seed commissioner; and
 - c. Submit at the time and in the manner determined by the seed commissioner, fees in the amount set by the seed commissioner and applicable to all seeds that the person sells in this state.
3. If a person issued a seed labeling permit under this section fails to submit the reports or fees required by this section within thirty days of the date determined by the seed commissioner, the seed commissioner may assess a penalty equal to five percent of the amount due or ten dollars, whichever is greater.

4.1-53-39. Invoice and records.

A labeler shall:

1. Retain a record of each lot of seed handled for three years after final disposition of the lot;
2. Retain a file sample of each lot of seed handled for one year after final disposition of the lot; and
3. Make the records and file samples required by this section available to the seed commissioner upon request.

4.1-53-40. Shipments from out of state - Label requirements.

The purchaser, vendor, or any other person receiving seed shipped into this state must have the seed labeled:

1. In accordance with this chapter; or
2. If permitted by the seed commissioner, in accordance with requirements applicable in other jurisdictions.

4.1-53-41. Nonresident seed dealer's license.

1. A person that is not a resident of this state may not offer for sale or sell any agricultural, vegetable, flower, or tree or shrub seed in this state directly to a consumer unless the person first obtains a nonresident seed dealer's license. In order to obtain the license, a person must submit to the seed commissioner an application for a license, together with the required fee.
2. A license issued under this section covers all employees and agents of the applicant, provided their names are included with the application.
3. A license issued under this section expires on December thirty-first.

4.1-53-42. Certified seed - Establishment of certification system.

1. The seed commissioner shall establish a seed certification system for this state.
2. The seed certification system must include standards of quality for any lot or stock of seed that may be or may become eligible for field inspection or for final certification.
3. The seed commissioner shall make the requirements for seed certification readily available in electronic and printed formats.

4.1-53-43. Requests for certification - Required submissions.

1. Any person may submit kinds, varieties, selections, and names of seed stock and request that the seed commissioner consider the submission for certification.
2. In order to pursue certification, a person shall provide to the seed commissioner:
 - a. The name of the variety;

- b. A statement regarding the variety's origin and the breeding procedure used in its development;
- c. A description of the morphological, physiological, or other characteristics that distinguish the variety from other varieties;
- d. Evidence supporting the identity of the variety;
- e. A statement regarding the geographic area of adaptation;
- f. A statement regarding plans and procedures for the maintenance of seed classes, including the number of generations through which the variety may be multiplied;
- g. A description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified;
- h. Any additional restrictions on the variety specified by the breeder; and
- i. A sample of seed that is representative of the variety as marketed.

4.1-53-44. Certified seed - Specific label requirements.

The seed commissioner shall prescribe the labels, seals, certificates, and statements that must be used for, or in relation to, any seed, or the various kinds and qualities grown, handled, stored, offered for sale, or sold in this state as "breeders", "foundation", "registered", or "certified" seed, and shall specify the words and information required to be on the labels, seals, certificates, and seed containers.

4.1-53-45. Certified seed - Use of certain terms - Required authorization.

A person may not use the terms "breeders", "foundation", "registered", or "certified", and may not use substantially equivalent terms, in the labeling or in the advertising, characterization, or representation of seed that is offered for sale or sold in this state, unless authorized to do so by the seed commissioner. The prohibition of this section applies to oral and written forms of advertising, characterizations, and representations.

4.1-53-46. Seed conditioning facilities - Other facilities - Standards.

The seed commissioner may establish standards for:

1. Seed conditioning facilities and any other facilities that handle seed eligible for certification; and
2. Facilities that handle and market "breeders", "foundation", "registered", or "certified" seed.

4.1-53-47. Seed for certification purposes - Increase in foundation seed stocks.

The seed commissioner may participate with any public or private entity in the selection, testing, and production of seed for certification purposes and in efforts to increase foundation seed stocks suitable for the production of certified seed.

4.1-53-48. Plant Variety Protection Act - Requirements for certification.

1. If a certificate of plant variety protection issued under the Plant Variety Protection Act [7 U.S.C. 2121 et seq.], as amended through July 31, 2011, specifies that the variety may be sold only as a class of certified seed, that seed must be certified by an official seed-certifying agency before it can be advertised for sale, offered for sale, or sold.
2. Seed from a certified lot may be used in a blend or mixture by or with the approval of the owner of the variety.

4.1-53-49. Identity-preserved seed and crops - Determination of genetic traits.

1. The seed commissioner may inspect and analyze seed or crops grown, sold, or otherwise present in this state to determine and verify the genetic traits of the seed or the crops.
2. For purposes of conducting the inspection, analysis, or verification, the seed commissioner may:
 - a. Accept samples of seed or crops grown in this state, sold in this state, or otherwise present in this state from any person that owns the seed or crops; and
 - b. Upon request of the owner, obtain samples of the seed or crops.

4.1-53-50. Identity-preserved seed and crops - Verification and certification services.

The seed commissioner may establish programs and procedures to provide producers with customized verification and certification services pertaining to identity-preserved seed and crops.

4.1-53-51. Sale of seed - Prohibitions.

A person may not offer for sale or sell any seed that:

1. Is not labeled in accordance with the requirements of this chapter;
2. Is labeled with information the person knows is false or misleading;
3. Is designated, represented, or advertised as having a variety name other than that by which the seed was originally known;
4. Contains restricted weed seeds in excess of twenty-five seeds per pound [453.59 grams];
5. Exceeds the stated tolerances for noxious weed seeds; or
6. Contains weed seeds in excess of one percent by weight.

4.1-53-52. Germination test - Requirement for sale.

1. a. Except as provided in subsection 4, a person may not offer for sale or sell any agricultural seed unless:

- (1) The seed has been tested to determine the percentage of germination; and
 - (2) The period of time between the first day of the month following that in which the germination test was completed and the date on which the seed is offered for sale or sold does not exceed nine months.
 - b. Subdivision a is not applicable to lawn and turf grasses.
2. a. Except as provided in subsection 4, a person may not offer for sale or sell any flower, vegetable, grass, or forb seed unless:
 - (1) The seed has been tested to determine the percentage of germination; and
 - (2) The period of time between the first day of the month following that in which the germination test was completed and the date on which the seed is offered for sale or sold does not exceed twelve months.
- b. Subdivision a is not applicable to lawn and turf grasses.
3. Except as provided in subsection 4, a person may not offer for sale or sell any lawn and turf grass seed, or any blends or mixtures of lawn and turf grass seed, unless:
 - a. The seed has been tested to determine the percentage of germination; and
 - b. The period of time between the first day of the month following that in which the germination test was completed and the date on which the seed is offered for sale or sold does not exceed fifteen months.
4. A person may not offer for sale or sell any agricultural, flower, vegetable, or tree or shrub seed in hermetically sealed packages unless:
 - a. The seed has been tested to determine the percentage of germination; and
 - b. The period of time between the first day of the month following that in which the germination test was completed and the date on which the seed is offered for sale or sold does not exceed thirty-six months.

4.1-53-53. Prohibited activities.

A person may not:

1. Detach, alter, deface, or destroy any label provided for in this chapter;
2. Alter or substitute seed with the intent to defeat the purpose of this chapter;
3. Engage in false or misleading advertising regarding seeds;
4. Use the name of the seed department or the name of the official laboratory for advertising purposes in connection with seed analyzed or tested by the seed department or the official laboratory, except in the case of certified seed;

5. Fail to comply with a stop-sale order issued by the seed commissioner:
6. Use the words "type" or "trace" on a label in connection with the name and description of any seed:
7. Disclaim in any manner or form a vendor's responsibility for any label content required by law; or
8. Sell or transfer a protected variety to another producer for the purpose of planting without obtaining the approval of the variety owner or developer.

4.1-53-54. Stop-sale order - Issuance - Enforcement - Appeal.

1. The seed commissioner may issue a written stop-sale order to the owner or custodian of any lot of seed that the seed commissioner finds to be in violation of this chapter.
2. The seed commissioner may attach terms and conditions that must be fulfilled before the order will be lifted.
3. The stop-sale order shall remain in effect until the seed commissioner is satisfied that the violation no longer exists. Upon making that determination, the seed commissioner shall lift the stop-sale order.
4. The seed commissioner shall do all things necessary and proper to enforce a stop-sale order issued under this section.
5. Any person subject to a stop-sale order under this section may appeal the order to a court of competent jurisdiction.

4.1-53-55. Seizure and injunction - Action.

1. If the seed commissioner determines that any lot of seed is not in compliance with this chapter, the seed commissioner may petition a court of competent jurisdiction for seizure of the seed. If the court orders the condemnation of the seed, it must be denatured, processed, destroyed, relabeled, or otherwise disposed of in accordance with the laws of this state.
2. A court may not order disposition of the seed without first having given the owner an opportunity to apply to the court for release of the seed, or for permission to process or relabel the seed in compliance with this chapter.
3. Any violation of this chapter may be enjoined in a court of competent jurisdiction without bringing any other civil or criminal action.

4.1-53-56. Prosecution for violations - Duty of attorney general and state's attorney.

Upon a complaint by the seed commissioner alleging a violation of this chapter or of any rule implementing this chapter, the attorney general or the state's attorney of the county in which the case arises shall initiate legal proceedings.

4.1-53-57. Penalty - Criminal - Civil - Exemption.

1. Any person willfully violating this chapter or the rules implementing this chapter is guilty of a class A misdemeanor.

2. When construing and enforcing this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must be deemed to be the act, omission, or failure of such person as well as that of the person employed.
3. Any person found guilty of violating this chapter or the rules implementing this chapter is subject to a civil penalty in an amount not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the seed commissioner.
4. A person is not subject to the penalties of this chapter for having offered for sale or sold any seed that was incorrectly represented as to kind, variety, or origin and which could not be identified through examination, unless the person failed to:
 - a. Obtain an invoice or grower's declaration stating the required information;
or
 - b. Take other actions necessary to ensure that the seed was properly identified.

4.1-53-58. Certificates and reports - Publication.

If the seed commissioner signs a document relating to the findings and determinations made in a laboratory by seed department personnel, a court shall accept the document as prima facie evidence of the statements contained in the document. The seed commissioner is subject to court order for a review of the findings and determinations set forth in the document.

4.1-53-59. Liability of seed commission, seed department, seed commissioner, and certified or noncertified agricultural seed producers.

A warranty of any kind, either expressed or implied, including a warranty of merchantability, fitness for a particular purpose, or absence of disease, is not made by the seed commission, the seed department, the seed commissioner, or certified or noncertified seed producers as to the quantity or quality of the crop produced from the seeds or as to other produce, which is inspected and certified, except as provided in this section. The sole warranty made is that the seeds were inspected under the rules of the seed department or the United States department of agriculture. The seed commissioner functions and serves only in an official regulatory manner.

4.1-53-60. Seed department records - Exemption.

The following records of the seed department are exempt from section 44-04-18:

1. Records of any plant or seed analysis, testing, and variety or disease determination conducted by the seed department on a fee-for-service basis for private persons; and
2. Information that is received by the seed department under this chapter from a private person and which the private person determines is proprietary information or a trade secret.

4.1-53-61. Applicability of chapter.

This chapter does not apply to:

1. Seed that is not intended for planting purposes; and
2. Seed grown by a producer and sold by that producer without advertising and without using a third party as an agent or broker to effect the sale, provided this exemption is not applicable if the seed is a variety protected by the Plant Variety Protection Act [7 U.S.C. 2321 et seq.], as amended through July 31, 2011.

4.1-53-62. Seed department fund - Continuing appropriation.

1. The seed commissioner shall forward all moneys received under this chapter to the state treasurer for deposit in a special fund known as the seed department fund. All moneys in the seed department fund are appropriated on a continuing basis to the seed department to carry out this chapter.
2. The seed commissioner shall approve all expenditures made pursuant to this chapter and shall document the expenditures at the time and in the manner required by the office of management and budget.
3. The seed commissioner shall provide a report to the house and senate appropriations committees, at the time and in the manner directed by the chairmen of the committees. The report must contain a summary of the department's activities during the current biennium and a statement of revenues and expenditures for the ensuing biennium.
4. At the direction of the seed commission, the state treasurer shall invest all available moneys in the seed department fund. The state treasurer shall credit twenty percent of the investment income to the general fund and the remaining eighty percent of the investment income to the seed department fund.

SECTION 4. Chapter 4.1-54 of the North Dakota Century Code is created and enacted as follows:

4.1-54-01. Seed arbitration board - Membership.

The seed arbitration board consists of the following members:

1. The agriculture commissioner;
2. The seed commissioner;
3. The director of the North Dakota state university extension service;
4. The director of the North Dakota agricultural experiment station;
5. The chairman of the seed trade division of the North Dakota agriculture association; and
6. A producer appointed by the agriculture commissioner.

4.1-54-02. Seed arbitration board - Compensation.

The chairman of the seed division of the North Dakota agriculture association and the producer are entitled to receive compensation in the amount of one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for

state officials, if the individual is attending meetings or performing duties directed by the board. The compensation and reimbursement for expenses required by this section must be paid by the agriculture commissioner.

4.1-54-03. Seed arbitration board - Rules of operation and procedure.

The seed arbitration board shall adopt rules of operation and procedure for arbitration hearings, including a formula for reimbursement by the parties of the expenses of the arbitration process.

4.1-54-04. Seed arbitration board - Petition - Hearing - Recommendation.

1. A seed labeler, seed dealer, or seed customer may file with the agriculture commissioner a petition for a hearing to settle a dispute involving a seed transaction.
2. The agriculture commissioner shall forward the petition to the seed arbitration board.
3. The seed arbitration board shall hold a hearing and within thirty days issue a nonbinding recommendation for a resolution of the dispute.

4.1-54-05. Seed arbitration board - Hearing - Use of evidence.

Any evidence and testimony presented at a seed arbitration hearing and any findings or recommendations by the seed arbitration board are admissible in any subsequent proceeding.

¹⁶ **SECTION 5.** Chapter 4.1-57 of the North Dakota Century Code is created and enacted 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. "Wholesale potato dealer" means any person who:

¹⁶ Section 4.1-57-01 was amended by section 13 of House Bill No. 1399, chapter 70; section 4.1-57-03 was amended by section 14 of House Bill No. 1399, chapter 70; section 4.1-57-04 was amended by section 15 of House Bill No. 1399, chapter 70; section 4.1-57-05 was amended by section 16 of House Bill No. 1399, chapter 70; section 4.1-57-12 was amended by section 17 of House Bill No. 1399, chapter 70; section 4.1-57-15 was amended by section 18 of House Bill No. 1399, chapter 70; section 4.1-57-17 was repealed by section 23 of House Bill No. 1399, chapter 70; section 4.1-57-18 was repealed by section 23 of House Bill No. 1399, chapter 70; section 4.1-57-19 was amended by section 19 of House Bill No. 1399, chapter 70; section 4.1-57-21 was amended by section 20 of House Bill No. 1399, chapter 70; section 4.1-57-22 was amended by section 21 of House Bill No. 1399, chapter 70.

- 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.

4.1-57-02. 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 seed commissioner.

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 must include:

1. The location in which the applicant intends to operate as a wholesale potato dealer;
2. The estimated amount of business to be done monthly;
3. The 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.

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 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;
 - c. 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.

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' 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.

4.1-57-06. License - Fee - Expiration.

The seed commissioner shall establish the fee for a wholesale potato dealer's license, subject to approval by the seed commission. A license issued under this chapter expires on June thirtieth of each year.

4.1-57-07. License - Posting.

The wholesale potato dealer shall post the license or a certified copy of the license in the office at each location where the dealer transacts business.

4.1-57-08. License - Refusal - Suspension - Cancellation - Grounds.

1. The seed commissioner may refuse to issue a license to operate as a wholesale potato dealer if:
 - a. The applicant was refused a wholesale potato dealer's license by another state;
 - b. The applicant had a wholesale potato dealer's license suspended or revoked by another state; or
 - c. The applicant employs in a position of responsibility an individual who had a wholesale potato dealer's license suspended or revoked by another state.
2. The seed commissioner may suspend or revoke a license to operate as a wholesale potato dealer if:
 - a. The dealer had a wholesale potato dealer's license suspended or revoked by another state;
 - b. The dealer employs in a position of responsibility an individual who had a wholesale potato dealer's license suspended or revoked by another state;
or
 - c. The dealer has been convicted of:
 - (1) An offense under section 4.1-57-22;
 - (2) An offense involving fraudulent use of the mails; or
 - (3) Any other offense pertaining to the conduct of the person as a wholesale potato dealer.

4.1-57-09. Agent of licensee - Ineligibility.

The seed commissioner may determine that an individual may not act as an authorized agent for a licensee if the individual was refused a wholesale potato dealer's license by another state or if the individual had a wholesale potato dealer's license suspended or revoked by another state.

4.1-57-10. Accounts and records.

A wholesale potato dealer shall keep accurate accounts and retain records of all transactions as a dealer for eighteen months. The dealer shall make the records available to the seed commissioner upon request.

4.1-57-11. Discontinuation of business - Duty of dealer.

If a wholesale potato dealer sells, disposes of, or discontinues the business for which the dealer obtained a license during the period covered by the license, the dealer shall notify the seed commissioner in writing and, at the request of the seed commissioner, produce a statement of assets and liabilities as of the date the business was sold, disposed of, or discontinued.

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

The seed commissioner may at any time require an increase in the amount of a wholesale potato dealer's bond. The seed commissioner may at any time require verified financial statements from a dealer. If a dealer fails to furnish the information or fails to furnish a new or higher bond 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.

4.1-57-13. Seed commissioner - Appointment as trustee.

1. If a person notifies the seed commissioner that a wholesale potato dealer has breached any of the conditions for which security was given under this chapter, the seed commissioner shall investigate the allegation.
2. The seed commissioner may hold a hearing to obtain additional testimony and documentary evidence. If the seed commissioner determines that the allegation is supportable, the seed commissioner 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 this chapter and if the court determines that it would be in the best interest of all persons holding claims against the dealer that the seed commissioner execute the trust, the court shall issue an order appointing the seed commissioner as a trustee, without bond. The seed commissioner shall proceed in the manner provided for in this chapter.
4. The seed commissioner, as trustee, shall notify by certified mail all persons having claims against the dealer that the claims must be filed with the seed commissioner 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 seed commissioner under this chapter.
5. All moneys collected and received by the seed commissioner as trustee must be deposited in the Bank of North Dakota pending the marshalling of the fund.

4.1-57-14. Report - Notice to claimants - Payment of claims.

Upon recovery of the trust fund, or so much of the fund as is possible to recover or necessary to pay all outstanding claims, the seed commissioner shall file a report in court showing the amount payable on each claim. If the fund is insufficient to pay all claims in full, the seed commissioner 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 seed commissioner from all duties as trustee.

4.1-57-15. Representation of seed commissioner.

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 may be deducted from the trust fund.

4.1-57-16. Inspection of potatoes - Rights to demand certificate of inspection.

1. When 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 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 wholesale potato dealer 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 seed commissioner for that purpose. The inspector shall execute and deliver a certificate to the wholesale potato dealer stating the day, the time, and the place of inspection and the condition of the potatoes. The wholesale potato dealer shall mail or deliver a copy of the certificate to the shipper of the inspected potatoes.

4.1-57-17. Report by wholesale potato dealer - Payment.

A wholesale potato dealer to whom potatoes have been shipped or consigned for sale and to whom title has not yet passed shall provide to the person who shipped or consigned the potatoes, 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 person who shipped or consigned the potatoes the net amount due for the potatoes.

4.1-57-18. Sales reports unsatisfactory - Remedy of shipper.

If a person who shipped or consigned the potatoes, after demand, receives no payment or report of sale of potatoes, or is dissatisfied with the remittance, sale, or report, the shipper may file a complaint with the seed commissioner. Upon receipt of a complaint, the seed commissioner shall initiate an investigation.

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. 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. 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. Any aggrieved party may appeal a decision of the seed commissioner under this section to the district court.

4.1-57-20. Fees and collections - Continuing appropriation.

The seed commissioner shall forward all moneys received from the collection of fees and other charges under this chapter to the state treasurer for deposit in a special fund known as the seed department fund. All moneys in the seed department fund are appropriated on a continuing basis to the state seed department to carry out statutory directives.

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.

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

A person is guilty of a class A misdemeanor 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 6.** A new section to chapter 11-11 of the North Dakota Century Code is created and enacted as follows:

Limitation on authority - Seed.

Notwithstanding any other law, a county may not impose any requirements or restrictions pertaining to the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of seed.

SECTION 7. A new section to chapter 40-05 of the North Dakota Century Code is created and enacted as follows:

Limitation on authority - Seed.

Notwithstanding any other law, a city may not impose any requirements or restrictions pertaining to the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of seed. This section does not apply to city zoning ordinances.

SECTION 8. A new section to chapter 58-03 of the North Dakota Century Code is created and enacted as follows:

Limitation on authority - Seed.

Notwithstanding any other law, a township may not impose any requirements or restrictions pertaining to the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of seed.

SECTION 9. AMENDMENT. Section 60-02-01 of the North Dakota Century Code is amended and reenacted as follows:

60-02-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the public service commission.
2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02-19.1. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
3. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" as defined in this chapter shall not include grain or grass seeds owned by or in the possession of the warehouseman that have been cleaned,

processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.

4. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
5. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility not licensed under the United States Warehouse Act [7 U.S.C. 241-273] in which grain is received for storing, buying, selling, shipping, or processing for compensation. Provided, however, that nothing in this chapter shall be construed to require a processor to receive, store, or purchase any lot or kind of grain at said facility.
6. "Public warehouseman" means the person operating a public warehouse that is located or doing business within this state, whether or not such owner or operator resides within this state. The term does not include a person who is permitted to sell seed under chapter ~~4-094.1-53~~, if that person does not store grain for the public and buys grain only for processing and subsequent resale as seed, or an authorized dealer or agent of a seed company holding a permit in accordance with section ~~4-09-14.44.1-53-38~~.
7. "Receipts" means grain warehouse receipts, scale tickets, checks, or other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain except when such memoranda was received as a result of a credit-sale contract.
8. "Receiving station" means any facility other than an individually licensed warehouse that is used by a licensed public warehouseman to receive and temporarily store grain prior to transferring the grain to the warehouseman's primary licensed warehouse location or delivering it directly to market.

SECTION 10. AMENDMENT. Section 60-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the public service commission.
2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
3. "Facility" means a structure in which grain purchased by a grain buyer is received or held.
4. "Facility-based grain buyer" means a grain buyer who operates a facility licensed under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.

5. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" does not include grain or grass seeds owned by or in the possession of the grain buyer which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.
6. "Grain buyer" means any person, other than a public warehouseman as defined in chapter 60-02, who purchases or otherwise merchandises grain for compensation. The term does not include:
 - a. A producer of grain who purchases grain from other producers to complete a carload or truckload in which the greater portion of the load is grain grown by the producer or on-farm feedlot operations in which at least fifty percent of the livestock is owned by the owner of the farm.
 - b. A person who is permitted to sell seed under chapter ~~4-09.1-53~~, if that person buys grain only for processing and subsequent resale as seed.
 - c. A person who is an authorized dealer or agent of a seed company holding a permit in accordance with section ~~4-09-14.44.1-53-38~~.
7. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
8. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract.
9. "Roving grain buyer" means a grain buyer who does not operate a facility where grain is received.

SECTION 11. REPEAL. Chapters 4-09, 4-09.1, 4-11, 4-25, and 4-42 of the North Dakota Century Code are repealed.

Approved March 28, 2011
Filed March 28, 2011

* Section 6 was codified as section 11-11-68 of House Bill No. 1027.

CHAPTER 70

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 unablensess 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. ~~Bonds~~Security - 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 bond~~dealer. 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.

¹⁷ **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

¹⁷ Section 4.1-53-10 was created by section 3 of House Bill No. 1027, chapter 69.

- 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.

¹⁸ **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.

¹⁹ **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;

¹⁸ Section 4.1-53-35 was created by section 3 of House Bill No. 1027, chapter 69.

¹⁹ Section 4.1-57-01 was created by section 5 of House Bill No. 1027, chapter 69.

- 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.

²⁰ **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

²⁰ Section 4.1-57-03 was created by section 5 of House Bill No. 1027, chapter 69.

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

²¹ **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;~~
 - c. ~~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.

²² **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.

²¹ Section 4.1-57-04 was created by section 5 of House Bill No. 1027, chapter 69.

²² Section 4.1-57-05 was created by section 5 of House Bill No. 1027, chapter 69.

²³ **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 a new~~ 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.

²⁴ **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.~~

²⁵ **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.~~ 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.~~ 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

²³ Section 4.1-57-12 was created by section 5 of House Bill No. 1027, chapter 69.

²⁴ Section 4.1-57-15 was created by section 5 of House Bill No. 1027, chapter 69.

²⁵ Section 4.1-57-19 was created by section 5 of House Bill No. 1027, chapter 69.

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.

²⁶ **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.~~

²⁷ **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

²⁶ Section 4.1-57-21 was created by section 5 of House Bill No. 1027, chapter 69.

²⁷ Section 4.1-57-22 was created by section 5 of House Bill No. 1027, chapter 69.

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.

²⁸ **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.

Approved April 8, 2011

Filed April 11, 2011

²⁸ Section 4.1-53-56 was created by section 3 of House Bill No. 1027, chapter 69; section 4.1-57-17 was created by section 5 of House Bill No. 1027, chapter 69; section 4.1-57-18 was created by section 5 of House Bill No. 1027, chapter 69.