

Introduced by

1 A bill for an Act to amend and reenact section 4-11-01, 4-11-02, 4-11-03, 4-11-04, 4-11-04.1,
2 4-11-06, 4-11-08, 4-11-09, 4-11-10, 4-11-12, 4-11-13, 4-11-14, 4-11-15, 4-11-15.1, 4-11-15.2,
3 4-11-16, 4-11-18, 4-11-19, 4-11-20, 4-11-22, 4-11-23, and 4-11-24, of the North Dakota
4 Century Code, relating to the regulation of wholesale potato dealers; and to repeal section
5 4-11-21 of the North Dakota Century Code, relating to a continuing appropriation.

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

7 **SECTION 1. AMENDMENT.** Section 4-11-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **4-11-01. Definitions.** In this chapter, unless the context otherwise requires:

- 10 1. "~~Commissioner~~ Commission" means the ~~state seed commissioner~~ public service
11 commission.
- 12 2. "Insolvency" means an unableness or unwillingness to provide payment for
13 potatoes purchased by the dealer.
- 14 3. "Potato" means a tuber commonly classed as white or Irish.
- 15 4. "Wholesale potato dealer" means any person who buys potatoes in wholesale lots
16 directly from a grower or grower cooperative, who sells or handles potatoes in
17 wholesale lots for the purpose of processing or resale, or who handles potatoes on
18 account of or as an agent for another.

19 **SECTION 2. AMENDMENT.** Section 4-11-02 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **4-11-02. Wholesale potato dealer license required.** Before a person may engage in
22 the business of a wholesale potato dealer, the person must be licensed by the ~~commissioner~~
23 commission.

1 **SECTION 3. AMENDMENT.** Section 4-11-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-11-03. Application for license - Contents.** To obtain a license as a wholesale
4 potato dealer, a person must complete an application and submit it to the ~~commissioner~~
5 commission. The application must be signed by the applicant under oath and must include:

- 6 1. The location in which the applicant intends to operate as a wholesale potato
7 dealer.
- 8 2. The estimated amount of business to be done monthly.
- 9 3. The amount of business done the preceding year, if any.
- 10 4. The greatest volume of potatoes, by hundredweight, purchased during any one
11 month in the preceding calendar year.
- 12 5. The greatest value of potatoes purchased during any one month in the preceding
13 calendar year.
- 14 6. The name of each partner if the applicant is a partnership.
- 15 7. The name of each corporate officer and the state of incorporation if the applicant is
16 a corporation.
- 17 8. The name of each manager and the state of organization if the applicant is a
18 limited liability company.
- 19 9. The name of every agent employed by the applicant on the date of the application.
- 20 10. A financial statement prepared in accordance with generally accepted accounting
21 principles and showing the assets and liabilities of the applicant.
- 22 11. A list of similar licenses issued to the applicant in other states.
- 23 12. The name of every state that has:
 - 24 a. Denied the applicant's request for similar licensure;
 - 25 b. Denied a request for similar licensure submitted by an agent employed by the
26 applicant;
 - 27 c. Issued to the applicant a similar license and thereafter suspended or revoked
28 the license; or
 - 29 d. Issued to an agent of the applicant a similar license and thereafter suspended
30 or revoked the agent's license.

1 **SECTION 4. AMENDMENT.** Section 4-11-04 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-11-04. Form of security to accompany application for license.** The ~~commissioner~~
4 commission may require the applicant to file a current financial statement prepared in
5 accordance with generally accepted accounting principles, a cash bond or a surety bond in an
6 amount and form determined by the ~~commissioner~~ commission, or an irrevocable letter of
7 credit. The form of security required by the ~~commissioner~~ commission must be conditioned for
8 the faithful performance of the applicant's duties as a wholesale potato dealer, for compliance
9 with all laws and rules relating to the purchase of potatoes by the dealer, for prompt payment in
10 the case of insolvency, and for the protection and benefit of any potato producer in this state
11 during the period the license is in effect.

12 **SECTION 5. AMENDMENT.** Section 4-11-04.1 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **4-11-04.1. Termination of bond - Notice to ~~commissioner~~ commission.** The surety
15 may terminate its liability under a bond by giving the ~~commissioner~~ commission at least ninety
16 days notice of intent to terminate. The surety on a bond is released from all future liability
17 accruing on the bond after the expiration of ninety days from the date the ~~commissioner~~
18 commission received the notice or on a later date specified by the surety. This section does not
19 relieve, release, or discharge the surety from any liability incurred before the expiration of the
20 ninety-day period. Unless the wholesale potato dealer files a new bond at least thirty days
21 before the surety's liability ceases, the ~~commissioner~~ commission, without hearing, shall
22 suspend the wholesale potato dealer's license. The ~~commissioner~~ commission may not
23 remove the suspension until a new bond or other form of surety has been filed and approved by
24 the ~~commissioner~~ commission.

25 **SECTION 6. AMENDMENT.** Section 4-11-06 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **4-11-06. License - Fee - Expiration.** The ~~commissioner~~ commission shall establish
28 the fee for a wholesale potato dealer's license. The license expires on June thirtieth of each
29 year.

30 **SECTION 7. AMENDMENT.** Section 4-11-08 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **4-11-08. Refusal, cancellation, or suspension of license - Grounds.**

- 2 1. The ~~commissioner~~ commission may refuse to issue a license to operate as a
3 wholesale potato dealer if:
- 4 a. The applicant was refused a wholesale potato dealer's license in another
5 state;
- 6 b. The applicant had a wholesale potato dealer's license suspended or revoked
7 in another state; or
- 8 c. The applicant employs in a position of responsibility an individual who had a
9 wholesale potato dealer's license suspended or revoked in another state.
- 10 2. The ~~commissioner~~ commission may suspend or revoke a license to operate as a
11 wholesale potato dealer if:
- 12 a. The dealer was the subject of a license suspension or revocation in another
13 state;
- 14 b. The dealer had a wholesale potato dealer's license suspended or revoked in
15 another state; or
- 16 c. The dealer employs in a position of responsibility an individual who had a
17 wholesale potato dealer's license suspended or revoked in another state.

18 **SECTION 8. AMENDMENT.** Section 4-11-09 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **4-11-09. Agent of licensee - Ineligibility.** The ~~commissioner~~ commission may
21 determine that an individual may not act as an authorized agent for a licensee if the individual
22 was refused a wholesale potato dealer's license in another state or if the individual had a
23 wholesale potato dealer's license suspended or revoked in another state.

24 **SECTION 9. AMENDMENT.** Section 4-11-10 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **4-11-10. Identification cards required.** A licensed wholesale potato dealer shall
27 obtain from the ~~commissioner~~ commission an identification card for each agent and for each
28 individual licensee operating as an agent. Each agent shall carry the identification card
29 whenever the agent is soliciting or transacting potato business for the licensee. The
30 ~~commissioner~~ commission shall charge a fee for each identification card.

1 **SECTION 10. AMENDMENT.** Section 4-11-12 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-11-12. Accounts and records.** A wholesale potato dealer shall keep accurate
4 accounts and records of all transactions as a dealer and shall retain the records for eighteen
5 months. The ~~commissioner~~ commission is entitled access to the records at all times.

6 **SECTION 11. AMENDMENT.** Section 4-11-13 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **4-11-13. Discontinuation of business - Duty of dealer.** If a wholesale potato dealer
9 sells, disposes of, or discontinues the business for which the dealer obtained a license, during
10 the period covered by the license, the dealer shall notify the ~~commissioner~~ commission in
11 writing and, at the request of the ~~commissioner~~ commission, shall produce a statement of
12 assets and liabilities as of the date the business was sold, disposed of, or discontinued.

13 **SECTION 12. AMENDMENT.** Section 4-11-14 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **4-11-14. Bonds - Additional required.** The ~~commissioner~~ commission may at any
16 time require an increase in the amount of the wholesale potato dealer's bond. The
17 ~~commissioner~~ commission may at any time require verified financial statements from a dealer.
18 If a dealer fails to furnish the information or fails to furnish a new or higher bond when directed
19 by the ~~commissioner~~ commission, the ~~commissioner~~ commission shall suspend the dealer's
20 license. After providing the dealer with at least ten days' notice and a hearing, the
21 ~~commissioner~~ commission may revoke the dealer's license.

22 **SECTION 13. AMENDMENT.** Section 4-11-15 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **4-11-15. Damage claims - Hearing - Procedure.**

- 25 1. If a person notifies the ~~commissioner~~ commission that a wholesale potato dealer
26 has breached any of the conditions for which security was given under this chapter,
27 the ~~commissioner~~ commission shall investigate the allegation.
- 28 2. The ~~commissioner~~ commission may hold a hearing to obtain additional testimony
29 and documentary evidence. If the ~~commissioner~~ commission determines that the
30 allegation is supportable, the ~~commissioner~~ commission shall apply to the district

- 1 court of the county in which the claim is alleged to have occurred for appointment
2 as trustee.
- 3 3. Upon notice to the wholesale potato dealer as the court may prescribe or upon
4 waiver of notice by the dealer, the court shall hear the matter in a summary
5 manner. If the court determines that the dealer has breached any condition for
6 which security was given under section 4-11-04, and if the court determines that it
7 would be in the best interest of all persons holding claims against the dealer that
8 the ~~commissioner~~ commission execute the trust, the court shall issue an order
9 appointing the ~~commissioner~~ commission as a trustee, without bond. The
10 ~~commissioner~~ commission shall proceed in the manner provided for in this chapter.
- 11 4. The ~~commissioner~~ commission, as trustee, shall notify all persons having claims
12 against the dealer by certified mail that the claims must be filed with the
13 ~~commissioner~~ commission by a date certain. Any person who fails to file a claim
14 within the time allotted is barred from participation in any fund marshalled by the
15 ~~commissioner~~ commission under this chapter.
- 16 5. All moneys collected and received by the ~~commissioner~~ commission as trustee
17 must be deposited in the Bank of North Dakota pending the marshalling of the
18 fund.

19 **SECTION 14. AMENDMENT.** Section 4-11-15.1 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **4-11-15.1. Recovery of trust fund - Report - Notice to claimants.** Upon recovery of
22 the trust fund, or so much of the fund as is possible to recover or as is necessary to pay all
23 outstanding claims, the ~~commissioner~~ commission shall file the report in court showing the
24 amount payable on each claim. If the fund is insufficient to pay all claims in full, the
25 ~~commissioner~~ commission shall prorate the fund among the claimants. The court shall notify
26 the claimants by mail regarding the proposed distribution and direct that the claimants show
27 cause why the report should not be approved and distribution made in accordance with the
28 report. After holding a hearing on the matter, the court shall approve or modify the report, issue
29 an order directing the distribution of the fund, and discharge the ~~commissioner~~ commission
30 from all duties as trustee.

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

3 **4-11-15.2. Representation of ~~commissioner~~ commission by attorney general.** The
4 attorney general shall represent the ~~commissioner~~ commission in any action or proceeding
5 brought under this chapter and may employ legal assistance when necessary. Any expenses
6 incurred by the attorney general in providing representation to the ~~commissioner~~ commission
7 may be deducted from the trust fund.

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

10 **4-11-16. Inspection of potatoes - Right to demand - Certificate of inspection.**

11 1. Whenever potatoes are ready for sale or are on their way to market, the owner,
12 conveyor, prospective buyer, or any other interested party may demand and is
13 entitled to inspection of the potatoes and to an inspection certificate as provided for
14 by law.

15 2. Whenever potatoes are shipped to or received by a wholesale potato dealer for
16 handling, purchase, or sale in this state and the dealer at wholesale finds the
17 potatoes to be spoiled, damaged, unmarketable, in unsatisfactory condition,
18 mislabeled, or misrepresented in any way, unless both parties waive inspection
19 before sale or other disposition, the wholesale potato dealer shall cause the
20 potatoes to be examined by an inspector assigned by the ~~commissioner~~
21 commission for that purpose. The inspector shall execute and deliver a certificate
22 to the dealer, stating the day, the time, and the place of inspection and the
23 condition of the potatoes. The dealer shall mail or deliver a copy of the certificate
24 to the shipper of the inspected potatoes.

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

27 **4-11-18. Sales reports unsatisfactory - Remedy of shipper.** Whenever a shipper,
28 after demand, receives no remittance or report of sale of potatoes, or is dissatisfied with the
29 remittance, sale, or report, the shipper may file a complaint with the ~~commissioner~~ commission.
30 Upon receipt of a complaint, the ~~commissioner~~ commission shall initiate an investigation.

1 **SECTION 18. AMENDMENT.** Section 4-11-19 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-11-19. Rules.** The ~~commissioner~~ commission may adopt rules to implement this
4 chapter, to govern the rates charged by wholesale potato dealers, and the buying, selling,
5 advertising, and trading practices of wholesale potato dealers.

6 **SECTION 19. AMENDMENT.** Section 4-11-20 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **4-11-20. Investigation - Hearing - Action on license.** If the ~~commissioner~~
9 commission receives a complaint against any person dealing in, shipping, transporting, storing,
10 or selling potatoes, the ~~commissioner~~ commission may initiate an investigation. The
11 ~~commissioner~~ commission and the ~~commissioner's~~ commission's agents have access, at all
12 times, to all buildings, yards, warehouses, storage, and transportation facilities, and railway cars
13 in which any potatoes are kept, stored, handled, or transported, and may take any necessary
14 samples. After an investigation, the ~~commissioner~~ commission may suspend the license of any
15 wholesale potato dealer. The ~~commissioner~~ commission shall schedule, provide notice of, and
16 hold a hearing on the suspension within ten days of the action. After receiving both testimony
17 and documentary evidence, the ~~commissioner~~ commission may reverse the suspension,
18 continue the suspension, or revoke the wholesale potato dealer's license. If appropriate, the
19 ~~commissioner~~ commission may demand the return of any agent's identification card issued by
20 the ~~commissioner~~ commission. Any hearing held under this section must be conducted in
21 accordance with chapter 28-32. Any aggrieved party may appeal a decision of the
22 ~~commissioner~~ commission under this section to the district court in accordance with chapter
23 28-32.

24 **SECTION 20. AMENDMENT.** Section 4-11-22 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **4-11-22. Enforcement of chapter.** The ~~commissioner~~ commission is charged with the
27 enforcement of this chapter and all rules adopted to implement this chapter. The attorney
28 general or the state's attorney in the county where a case arises shall prosecute violations of
29 this chapter and the rules.

30 **SECTION 21. AMENDMENT.** Section 4-11-23 of the North Dakota Century Code is
31 amended and reenacted as follows:

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

1 a wholesale potato dealer, the ~~commissioner~~ commission shall provide at least ten
2 days' notice and hold a hearing to determine whether the wholesale potato dealer's
3 license should be suspended or revoked.

4 **SECTION 22. AMENDMENT.** Section 4-11-24 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **4-11-24. Cooperation with governmental agencies.** The ~~commissioner~~ commission
7 may cooperate with federal entities, and with state and local entities, of this and other states,
8 and may do all things necessary to carry out this chapter.

9 **SECTION 23. REPEAL.** Section 4-11-21 of the North Dakota Century Code is
10 repealed.