

Introduced by

1 A BILL for an Act

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

3 **SECTION 1. AMENDMENT.** Section 4-10-01 of the North Dakota Century Code is amended  
4 and reenacted as follows:

5 **4-10-01. Definitions.**

6 In this chapter, unless the context otherwise requires:

- 7 1. ~~"Agent" or "agents", when used to indicate or refer to the commissioner's agent or~~  
8 ~~agents, means the commissioner's deputies, inspectors, representatives, agents, or~~  
9 ~~other assistants as the case requires.~~

**NOTE:** Title 3 deals with agents and agency. It is not terminology that needs an additional definition. Therefore, it is recommended that this definition be deleted.

- 10 "Certification" means a process that includes the random inspection of potato plants  
11 growing in the field, the random inspection of potatoes after they have been harvested,  
12 and a determination that the potatoes are within acceptable disease tolerance levels.

**NOTE:** At the suggestion of Seed Department personnel, a definition of "certification" was included.

- 13 2. "Certified" means a designation, the use of which is authorized by the seed  
14 commissioner, to indicate that the potatoes were randomly inspected and found to  
15 meet the rules of the seed department at the time of inspection have met the  
16 requirements for certification.

**NOTE:** This language parallels the definition of "certified" used in Section 4.1-53-01(5).

- 17 3. "Closed container", ~~or its plural form,~~ means any a container which shall be sewed that  
18 is sewn, tied, sealed, glued, nailed, or otherwise closed ~~in a practical or secure~~  
19 ~~manner~~ secured for handling.
- 20 4. "Commissioner" means ~~the state seed commissioner.~~

**NOTE:** In order to remain consistent with previously rewritten chapters, it is recommended that the definition of "commissioner" be removed and that the phrase "seed commissioner" be used when there is a statutory reference to that position.

- 1        5. "Inspection" means the examination of a random sample of potato plants or potato  
2        tubers ~~were examined according to their~~ accordance with rules of the seed  
3        department or ~~according to the instructions~~ requirements<sup>1</sup> of the United States  
4        department of agriculture, food safety and ~~quality~~ inspection service.<sup>2</sup>

**NOTE:**

<sup>1</sup>Could we simply reference United States Department of Agriculture rules or are there various policies and letters of guidance that must be adhered to as well?

<sup>2</sup>On June 17, 1981, The Food Safety and Quality Services was renamed the Food Safety and Inspection Service.

- 5        ~~6.5.~~ "Label", and its various grammatical forms, when used as a noun means any tag,  
6        label, brand, or device attached to, ~~or written~~ a container, stamped, ~~or printed,~~ ~~or~~  
7        stenciled information on, any a container and carrying a term or terms setting, and  
8        documentation accompanying a container, which sets forth the grade, condition,  
9        quality, weight, variety, or class<sup>1</sup> of the container's potatoes ~~or other produce~~<sup>2</sup> therein  
10       contained, and when used as a verb means the act or the fact of the use of the  
11       aforesaid labeling items and methods in connection with potatoes or other produce,  
12       and when used as an adjective, its descriptive meaning must be interpreted from its  
13       use and meaning as a noun and verb as herein prescribed.

**NOTE:**

<sup>1</sup>The committee is asked to review the six items that are listed with respect to the definition of a label. Are all six items still appropriate? Might there be a need to include other information?

<sup>2</sup>It is recommended that this chapter reference only potatoes. If there is a need to provide for the inspection of other produce or perishable commodities, that content should be placed in a separate chapter. (Throughout this bill draft, the references to produce have been removed.)

- 14       7. "Other produce" means ~~natural products of the farm, garden, and orchard, exclusive of~~  
15       grain, true seeds, livestock, and livestock products.
- 16       ~~8.6.~~ "Potatoes""Potato" means ~~what is commonly called and known as white or an~~ Irish  
17       potatoespotato.

**NOTE:** The reference to "white potatoes" was removed in the interest of consistency. Chapter 4.1-53 refers only to "Irish potatoes," as do Seed Department rules.

1     ~~9-7.~~ "Selection" means a subgroup of a potato variety of potato and is commonly referred-  
2           to as line selection, clonal selection, or strain selection and includes clones, lines,  
3           strains, and sports.

**NOTE:** This definition parallels that found in Chapter 4.1-53, with the addition of "sports," which are variations in clones due to genetic changes (mutations).

4     ~~10.~~ "State seed department" means the seed department of the state of North Dakota.

**NOTE:** It is recommended that this definition be deleted because the reference is self-evident. The laws of North Dakota do not extend to the seed departments of any other states.

5     ~~11-8.~~ "Variety" means a plant group that:

- 6           a. Is found within a single botanical taxon of the lowest-known rank ~~which, without~~  
7           ~~regard to whether the conditions for plant variety protection are met, can;~~  
8           b. Can be defined by the expression of the characteristics resulting from a given  
9           genotype or combination of genotypes;  
10          c. Can be distinguished from any other plant grouping by the expression of at least  
11          one characteristic; and  
12          d. Can be considered as a unit with regard to the suitability of the plant grouping for  
13          being propagated unchanged. ~~A variety may be represented by seed, transplants,~~  
14          ~~plants, tubers, tissue culture, plantlets, and other matter.~~

**NOTE:** Section 4.1-53-01(24) defines a variety as "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."

Is there any opportunity to reconcile the two definitions?

15     **SECTION 2. AMENDMENT.** Section 4-10-01.1 of the North Dakota Century Code is  
16     amended and reenacted as follows:

17     ~~**4-10-01.1. Responsibilities of state seed department.**~~

18     ~~The certification of seed potatoes, establishing of grades for potatoes and other produce,~~  
19     ~~and the licensing of wholesale potato dealers are the responsibility of the state seed~~  
20     ~~department.~~

**NOTE:** If sections of the Century Code clearly state the duties of the seed commissioner and the Seed Department, it is not necessary to include a broad statement of responsibility. Therefore, it is recommended that this section be deleted.

1       **SECTION 3. AMENDMENT.** Section 4-10-02 of the North Dakota Century Code is amended  
2 and reenacted as follows:

3       **4-10-02. ~~Commissioner~~Seed commissioner - Duties - Fees.**

4       1.    The seed commissioner ~~or the commissioner's designee~~ shall provide the means and  
5           direct the inspection, ~~for the~~ certification, and promotion of quality and assist in the  
6           promotion and advertising<sup>1</sup> of seed potatoes.

**NOTE:**

<sup>1</sup>If the seed commissioner is to promote "quality and assist in the promotion and advertising of seed potatoes," it would be helpful to know who is he to assist, in what manner, and whether expenditures are permitted to achieve this directive.

7       2.    The seed commissioner shall establish potato and other produce grades<sup>1</sup> for the  
8           purpose of<sup>2</sup> making inspection and otherwise providing for the proper handling and  
9           marketing of the agricultural commodities defined in this chapter under the  
10          classifications of "potatoes" and "other produce", and shall promulgate rules and  
11          regulations prohibiting or otherwise regulating the importation or dissemination within  
12          the state of particular and shall do all things necessary and proper to control the spread  
13          of detrimental insects and diseases.<sup>3</sup>

**NOTE:**

<sup>1</sup>If potato grades are established by the United States Department of Agriculture, what is the intended role of the seed commissioner?

<sup>2</sup>The "purpose" for establishing grades is in fact testimony and therefore does not need to be included within the statute.

<sup>3</sup>It appears that the latter part of this sentence was intended to direct the seed commissioner to do that which he legally may, in order to control the spread of insects and disease, e.g., impose quarantines. Because the seed commissioner has the authority under Chapter 28-32 to adopt rules, that authority does not need to be reiterated.

If there are specific programs that the seed commissioner should implement, or be prepared to implement, it would be preferable to articulate those measures statutorily, so there is no concern about an unlawful delegation of power.

14       3.    The seed commissioner shall ~~appoint agents, inspectors, assistants, and clerical~~  
15          aides<sup>1</sup> as the commissioner finds necessary to assist, represent, and act for the  
16          commissioner in enforcing the provisions of this chapter and shall fix the salaries of  
17          said employees and provide for operating expenses with the approval of the seed  
18          commission<sup>2</sup> within legislative appropriations<sup>3</sup> therefore employ and compensate  
19          necessary personnel.<sup>4</sup>

**NOTE:**

Sixty-third  
Legislative Assembly

<sup>1</sup>It is not necessary to list the various positions for which the seed commissioner may hire individuals.

<sup>2</sup>Current law states that the seed commissioner shall "provide for operating expenses with the approval of the seed commission." Chapter 4.1-53 already directs the seed commissioner to:

- Establish and charge fees for services, subject to the approval of the seed commission;
- Provide periodic reports to the seed commission regarding the management and operation of the Seed Department;
- Recommend to the seed commission the biennial budget and annual salary schedules for the Seed Department;
- Submit the Seed Department's biennial budget, as approved by the seed commission, to the Office of Management and Budget;
- Do all things necessary to enforce this chapter and rules implementing this chapter; and
- Perform any other duties as directed by the seed commission.

Are there other duties that are specific to this chapter?

<sup>3</sup>It is not necessary to statutorily provide that employee salaries and expenses must be "within legislative appropriations." All agency expenditures are legislatively appropriated - even continuing appropriations.

<sup>4</sup>Essentially, this section is authorizing the seed commissioner to employ and compensate necessary personnel. Because that authority is already provided to the seed commissioner within his general duties (Section 4.1-53-11(3)), it will be necessary to determine whether the authority needs to be restated in this chapter.

- 1     4. Fees for the cost of performance of these duties must be established by the seed  
2             commission<sup>1</sup> with the approval of the directors of the North Dakota seed potato  
3             growers association.<sup>2,3</sup>

**NOTE:**

<sup>1</sup>Because Section 4.1-53-11, which sets forth the duties of the seed commissioner, already authorizes the seed commissioner to "[e]stablish and charge fees for services, subject to the approval of the seed commission", it will be necessary to determine whether the authority needs to be restated in this chapter.

<sup>2</sup>Under Section 4.1-53-11, the seed **commissioner** is authorized to "establish and charge fees for services, subject to the approval of the seed commission . . . ." In this case, the seed **commission** is directed to establish fees, subject to the approval of a private organization. The authority to establish fees needs to be reconciled.

<sup>3</sup>In addition, the cost of performing the statutory duties is a quantifiable amount. What then is the intended role of the "directors of the North Dakota seed potato growers association"?

- 4     **SECTION 4. AMENDMENT.** Section 4-10-03 of the North Dakota Century Code is amended  
5 and reenacted as follows:

6     ~~**4-10-03. Rules – Commissioner to adopt.**~~<sup>1</sup>

- 7     ~~The commissioner, from time to time, with the approval of the seed commission, shall~~  
8     ~~adopt, publish, and amend uniform rules and definitions not inconsistent with the provisions of~~

1 ~~this chapter, and shall alter or suspend such rules and definitions whenever necessary in~~  
2 ~~accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32. Rules~~  
3 ~~and definitions for seed potato certification must be published in bulletin number 49.<sup>2</sup>~~

**NOTE:** It is recommended that this section be deleted.

<sup>1</sup>The authority granted to the seed commissioner by this section is already provided under Chapter 28-32 and does not need to be reiterated.

<sup>2</sup>In rewriting other Century Code chapters pertaining to the seed commissioner, the requirement that specific information be published in certain bulletins was removed. Nothing precludes the seed commissioner from publishing the information in whatever form or format he deems appropriate. Furthermore, with the growing availability of and reliance on electronic dissemination, it was deemed prudent not to statutorily name a specific printed format.

4 **SECTION 5. AMENDMENT.** Section 4-10-04 of the North Dakota Century Code is amended  
5 and reenacted as follows:

6 **4-10-04. Grades for potatoes and other produce.**

7 ~~The following grades for potatoes are designated as official and standard grades for North~~  
8 ~~Dakota, namely: "U.S. Extra No. 1", "U.S. No. 1", "U.S. Commercial", "U.S. No. 2", "North~~  
9 ~~Dakota Certified Seed", and "Unclassified" or such grades as the commissioner shall designate.~~

10 1. Potatoes may be graded:

11 a. (1) U.S. No. 1;

12 (2) U.S. No. 2; or

13 (3) North Dakota Certified Seed; or

14 b. As otherwise designated by the seed commissioner.

**NOTE:** At the recommendation of Seed Department personnel, grades that are not used were eliminated.

15 2. The U.S. grades must conform in all respects to meet all of the requirements and  
16 standards specified established by the United States department of agriculture, but the  
17 grade names may be used with appropriate size designations when specified in  
18 regulations by the commissioner, who shall be guided by the regulations and  
19 recommendations of the United States department of agriculture; provided, however,  
20 that the seed commissioner may authorize an exception based on size. The U.S.  
21 grades and standards herein designated are subject to change only if the United  
22 States department of agriculture promulgates any new and definite changes, and such  
23 changes shall be adopted by the commissioner for use in North Dakota.

**NOTE:** This is self-explanatory and therefore does not need to be reiterated in statute.

1           ~~The North Dakota certified seed grade must conform in all respects to the provisions~~  
2           ~~of the seed laws of this state and the regulations made thereunder, and must be~~  
3           ~~labeled in accordance therewith.~~

**NOTE:** This is self-explanatory and therefore does not need to be reiterated in statute.

4           3.   Unclassified lots shall include all potatoes not meeting the requirements of any of the  
5           foregoing grades. It is optional, however, to use the unclassified labeling on any lot of  
6           potatoes.

**NOTE:** This appears to be providing that if a potato does not meet the standards of any designated grade, it must be placed in the "other" category. Given the directive to remove the reference to "unclassified" lots, it would be helpful to discuss the intent of this subsection.

7           ~~For other produce, the grades which heretofore may have been or hereafter are fixed~~  
8           ~~by the department of agriculture of the United States for such produce are designated~~  
9           ~~as the official standard grades for North Dakota. Inspections of incoming produce may~~  
10          ~~be made and certificates issued on the basis of other applicable states' grades or in~~  
11          ~~accordance with sales contracts.~~

12          **SECTION 6. AMENDMENT.** Section 4-10-05 of the North Dakota Century Code is amended  
13          and reenacted as follows:

14          **4-10-05. Labeling, branding, tagging potatoes in closed containers**  
15          **Label requirements.**

- 16          1.   a.   ~~Every~~Except as otherwise provided in this subsection, every container packed  
17          ~~with~~of potatoes grown in North Dakota, ~~being~~must be labeled if the potatoes:
- 18                 (1) Were grown in this state;
- 19                 (2) Are transported, or shipped into this state; or
- 20                 (3) Are offered for sale or consignment must bear either by brand, tag, or label,  
21                 ~~in plain letters and figures, the net weight when packed and correct grade~~  
22                 ~~designation. Potatoes~~in this state.<sup>1,2</sup>
- 23          b.   ~~Subdivision a does not apply to potatoes that are being~~ transported or shipped<sup>3</sup>  
24          ~~for processing or repacking are exempt of this requirement.~~

**NOTE:**

<sup>1</sup>It is important that the circumstances under which potatoes must be labeled are described accurately. If potatoes that are grown in this state have to be labeled, and if potatoes that are transported or shipped into this state have to be labeled, why is it necessary to reference the third category, i.e., potatoes that are offered for sale or consignment in this state? Would those potatoes not have come under one of the first two provisions?

<sup>2</sup>This appears to include smaller growers such as those selling at local farmers' markets. Is that the intent?

<sup>3</sup>Under current law (see subdivision b), the word "shipped" is used. Under current law, (see subdivision a), the word "transported" is used. For purposes of discussion, the bill draft uses the phrase "transported or shipped." The owner of potatoes might contract with a commercial carrier to ship potatoes. If, however, the owner is personally delivering the potatoes, (i.e., driving the semi,) the owner is "transporting" the potatoes. Perhaps one could consider referring to potatoes that are "brought into" this state or that "enter" this state.

- 1       2. The label must:
- 2           a. Be plainly printed in English;
- 3           b. Indicate the net weight when packed;
- 4           c. Indicate the correct grade designation<sup>1</sup>; and
- 5           d. Meet any other criteria established by the seed commissioner.<sup>2</sup>

**NOTE:**

<sup>1</sup>Seed Department personnel had indicated concern about the requirement that the label must indicate the correct grade designation. The source of this language is Section 4-10-05(1).

<sup>2</sup>Section 4-10-05(3) provides that the "commissioner shall, by regulation, prescribe the general location of the labeling on the container and the minimum and maximum size of the letters and figures used in the labeling of the potatoes as herein provided."

This section needs to be compared with the definition of a label, as found in Section 1. This section requires the weight **and** grade. The definition appears to require that a label include the grade, condition, quality, weight, variety, **or** class.

- 6           ~~When an individual shipment is made from such towns or stations at which regular~~
- 7           ~~inspection service is not maintained, and when such shipments cannot be so routed~~
- 8           ~~as to be stopped in transit for inspection at a town or station at which inspection~~
- 9           ~~service can be provided, or when due to unforeseen circumstances which make it~~
- 10          ~~physically impossible for an inspector to perform such inspection, then the~~
- 11          3. The seed commissioner, or the commissioner's agent, may waive the inspection and
- 12          labeling requirements provided inof this section for such individualif:
- 13           a. The shipment originates in a town or station<sup>1</sup> at which regular inspection service
- 14           is not maintained and cannot be rerouted to a town or station at which regular
- 15           inspection service is maintained; or
- 16           b. Unforeseen circumstances make inspection impossible.

**NOTE:** Even as revised, Seed Department personnel recommended that this subsection be deleted.

<sup>1</sup>The proper reference in the Century Code is to a "municipality" rather than to a "town." Although "station" may be a term of art in the industry, the Century Code needs to be more prescriptive.

- 1       3. ~~The commissioner shall, by regulation, prescribe the general location of the labeling~~  
2           on the container and the minimum and maximum size of the letters and figures used in  
3           the labeling of the potatoes as herein provided.

**NOTE:** See comments following the proposed subsection 2.

- 4       4. ~~After the grade inspection of the potatoes has been completed, if the official~~If an  
5           inspector finds that they are labeled properly according to the provisions of this  
6           chapter, the inspector shall furnish to the shipper or owner of the potatoes a signed  
7           certificate indicating that the shipment of potatoes is correctly labeleddetermines that  
8           the potatoes are properly graded and labeled, the inspector shall provide a signed  
9           certificate to the shipper or owner.

**NOTE:** Even as revised, Seed Department personnel recommended that this subsection be deleted.

- 10      5. A vendor of seed may not alter the label or certificate furnished by the inspector under  
11          subsection 4.

**NOTE:** Please explain.

- 12      6. A person ~~in this state~~ may not sell, offer for sale, transport for sale, or store with intent  
13          to sell ~~within this state~~ certified potato seed potatoes that ~~is~~are not labeled in  
14          accordance with this chapter.

**NOTE:** Chapter 4.1-53 references seed that is "offered for sale or sold in this state." Is it appropriate to include transportation? How does one determine storage "with the intent to sell"?

Although both "certified potato seed" and "certified seed potato" are used in this chapter, seed department personnel indicated that the phrase "certified seed potato" is preferred.

- 15      **SECTION 7. AMENDMENT.** Section 4-10-06 of the North Dakota Century Code is amended  
16      and reenacted as follows:

17      **4-10-06. Commissioner's duty to make examination.**

- 18      1. The seed commissioner and ~~the commissioner's agent~~<sup>1</sup> shall make sufficient<sup>2</sup>  
19          investigations and grade inspections to determine whether the provisions of this  
20          chapter are complied with properly.

**NOTE:** Even as revised, Seed Department personnel recommended that this subsection be deleted.

<sup>1</sup>The duties of the seed commissioner are delegable. Therefore, it is not necessary to include a reference to the commissioner's agents.

<sup>2</sup>Is it the intent of this section to require that the seed commissioner make "random" inspections?

- 1        2.    ~~The seed commissioner and the commissioner's agents shall have free access to any~~  
2        ~~private or public premises or structures and the vehicles of any public or private~~  
3        ~~carriers, including sealed or unsealed freight cars, to make examinations or~~  
4        ~~inspections of any potatoes or other produce which are being graded, handled,~~  
5        ~~packed, stored, offered for sale or consignment, exposed for sale, shipped or~~  
6        ~~delivered for shipment, whether the commodities are upon the premises or in~~  
7        ~~possession or custody of the owner thereof or of any person other than the shipper or~~  
8        ~~owner thereof, and may take samples of the aforesaid commodities of sufficient~~  
9        ~~quantity for testing or inspecting~~may enter upon real property and access any  
10       structure and personal property, at any time, to:  
11       a.    Inspect, sample, and test potatoes for compliance with this chapter<sup>1</sup> ; and  
12       b.    Inspect records<sup>2</sup> for compliance with this chapter.

**NOTE:**

<sup>1</sup>The proposed language parallels the authority provided to the seed commissioner under Section 4.1-53-10(3).

<sup>2</sup>Generally, if authority is granted to enter upon and access property, there is mention of also being authorized to inspect records. This has been included, subject to approval by the committee.

13       **SECTION 8. AMENDMENT.** Section 4-10-06.1 of the North Dakota Century Code is  
14       amended and reenacted as follows:

15       **4-10-06.1. Seed potatoes - Certification requirement.**

- 16       1.    A person may not plant seed potatoes in lots of one acre [.405 hectare] or more, for  
17       the purpose<sup>1</sup> of selling the crop to be harvested, unless the seed potatoes:  
18       a.    Have been certified by the seed commissioner as meeting the standards of this  
19       ~~chapter~~state;  
20       b.    Have been certified by another state or province having a similar seed potato  
21       ~~quality assurance program~~standards that are determined by the seed  
22       commissioner to meet or exceed the standards of this state; or  
23       c.    Have been field inspected<sup>2</sup> and approved by the seed commissioner.

**NOTE:**

<sup>1</sup>This requires that the person's intent at the time of planting be established. A more preferable alternative might be to prohibit the planting of all seed potatoes that have not been certified and provide an exception for "personal use."

<sup>2</sup>Field inspection and approval is a requirement of certification. Is something else intended?

- 1        2.    The seed commissioner shall<sup>1</sup> permit a North Dakota grower<sup>2</sup> to plant uncertified  
2            potatoes grown by the grower, if the grower is within twelve months of having the  
3            grower's own certified parent seed potatoes.

**NOTE:**

<sup>1</sup>Is "shall" appropriate - versus "may"?

<sup>2</sup>Must a "North Dakota grower" be a resident of this state? Is a nonresident who plants potatoes in this state a "North Dakota grower"?

- 4        3.    The seed commissioner shall<sup>1</sup> permit a North Dakota potato grower to sell or  
5            otherwise transfer certified seed potatoes to another North Dakota potato grower. The  
6            recipient grower may plant the seed potatoes only for commercial production. The  
7            seed potatoes may not be recertified or retained for use in the following production  
8            cycle.

**NOTE:**

<sup>1</sup>Is "shall" appropriate - versus "may"?

Please explain this subsection.

- 9        4.    If the seed commissioner ~~has reason to believe~~determines that seed potatoes meeting  
10           the requirements of this section are not available in sufficient quantities to fulfill  
11           planting needs, the seed commissioner may permit the planting of seed potatoes with  
12           a higher disease content, provided that bacterial ring rot is not present and that a  
13           serious disease threat is not posed.

**NOTE:** Is this responsibility correctly placed within the seed commissioner's purview, as opposed to the seed commission? At what point does a disease threat become "serious"?

- 14       **SECTION 9. AMENDMENT.** Section 4-10-06.2 of the North Dakota Century Code is  
15       amended and reenacted as follows:

16       **4-10-06.2. Records.**

- 17       ~~Every person~~Any producer who plants ~~potatoes on~~ more than one acre [.405 hectare] of  
18       seed potatoes shall maintain records indicating the acreage [hectarage], varieties, and source  
19       of all seed potatoes planted. The producer shall retain the records ~~must be for a period of two~~  
20       years from the completion of planting and make the records available for inspection by the  
21       seed commissioner for a period of two years upon request.

**NOTE:** If we are going to require that records be maintained for a period of two years, we need a starting date. The rewrite proposes "two years from the completion of planting." Is there another date that would be preferable?

The note following Section 4-10-06.1(1) proposes an alternative to the "one acre" reference. If the proposal is accepted, the language of this section needs to be reconciled.

1       **SECTION 10. AMENDMENT.** Section 4-10-06.3 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **4-10-06.3. Imported seed potatoes - Certification requirement.**

4       All seed potatoes ~~imported~~<sup>1</sup> ~~into~~entering this state for planting purposes<sup>2</sup> by any person  
5 from any state, territory, or country must be accompanied by:

6       1.   a.   An ~~official~~A grade certificate describing the grade of the potatoes; ~~or~~<sup>3</sup>

7       b.

8       2.   A health certificate ~~to certify~~indicating that the ~~lot of~~ seed potatoes ~~was~~were field  
9 inspected by an official certifying agency and is ~~similar to the~~meet standards that are  
10 determined by the seed commissioner to be similar to those established by this  
11 chapter ~~for seed potatoes~~; and

12       ~~2.3.~~ Any other ~~document or certificate~~documentation required by the jurisdiction of origin  
13 for the ~~importation of seed potatoes by the state, province, territory, or country of~~  
14 ~~origin, including test results issued by a laboratory approved by the United States~~  
15 ~~department of agriculture's animal and plant health inspection service~~<sup>4</sup>seed potatoes  
16 entering that jurisdiction.

**NOTE:**

<sup>1</sup>Because "importation" involves shipment from a foreign country, the wording was changed to also accommodate potatoes entering from another state.

<sup>2</sup>Is it necessary to reference seed potatoes that enter this state for "planting purposes"?

<sup>3</sup>Current law calls for either a grade certificate or a health certificate. Seed Department personnel indicated that the statute should require both. This change has been incorporated in the rewrite, subject to approval by the committee.

<sup>4</sup>Because the requirement references "any" other document, it is not necessary to specify that the phrase "includes" test results from APHIS-approved laboratories.

17       **SECTION 11. AMENDMENT.** Section 4-10-06.4 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19       **4-10-06.4. Exported seed potatoes - Certification requirement.**

20       All seed potatoes ~~exported from~~leaving this state must be accompanied by ~~an official~~:

21       1.   A grade certificate describing the grade of the potatoes ~~or a~~; and<sup>1</sup>

22       2.   If required by the receiving jurisdiction, a health certificate to certifyindicating that the  
23 ~~lot of~~ seed potatoes ~~was~~were field inspected by the state seed department.<sup>2</sup>

**NOTE:**

<sup>1</sup>Current law calls for either a grade certificate or a health certificate. Seed Department personnel indicated that the statute should require both. This change has been incorporated in the rewrite, subject to approval by the committee.

<sup>2</sup>Subsection 2 is not yet in an acceptable form. The purpose of a health certificate is not to certify or indicate that the seed potatoes were field inspected, it is to certify that a field inspection has been conducted and that the seed potatoes have been found to be disease-free or within acceptable tolerance levels.

1       **SECTION 12. AMENDMENT.** Section 4-10-06.5 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       ~~**4-10-06.5. Records.**~~

4       ~~Every person who plants imported seed potatoes on more than one acre [405 hectare] of~~  
5 ~~land shall maintain records indicating the acreage [hectarage], varieties, and sources of all seed~~  
6 ~~potatoes planted. The records must be available for inspection by the commissioner for a period~~  
7 ~~of two years.~~

**NOTE:** Section 4-10-06.2 encompasses this concept by placing the requirement for record retention on every person who plants "potatoes" (regardless of origin) on more than one acre. Therefore, it is recommended that this section be deleted.

8       **SECTION 13. AMENDMENT.** Section 4-10-07 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10       **4-10-07. Official inspection points designated by seed commissioner.**

- 11       1. ~~The seed commissioner mayshall designate by regulation,<sup>1</sup> asthe official potato~~  
12 ~~shipment inspection points or areas, any or all points or stations within a county or~~  
13 ~~specified subdivision. Thewithin this state. In determining the official potato shipment~~  
14 ~~inspection points, the seed commissioner may refuse to designate any point as an~~  
15 ~~official potato shipment inspection point ifshall consider the volume of shipments for~~  
16 ~~inspection will not warrantand the expense of maintaining the inspection thereatpoint.<sup>2</sup>~~  
17       2. ~~Upon request, the seed commissioner may provide inspection services at points other~~  
18 ~~than those designated in subsection 1. The seed commissioner shall charge a fee<sup>3</sup> for~~  
19 ~~conducting any inspections requested under this subsection.~~

**NOTE:**

<sup>1</sup>It appears that the intent of this section is to require the seed commissioner to designate the location of official potato shipment inspection points. Is this correct? Is it necessary that this be done by rule?

<sup>2</sup>Under current law, the first sentence gives the seed commissioner broad authority to designate the inspection points. The second sentence authorizes, but does not require, the

seed commissioner to refuse a designation based on volume and expense. Are these intended to be the only reasons for a nondesignation? The section is rewritten to require that the commissioner consider volume and expense in determining the location of all inspection points.

<sup>3</sup>Would a fee under this provision be only for mileage? If so, would that be calculated from the nearest designated inspection point or from the Seed Department?

1       **SECTION 14. AMENDMENT.** Section 4-10-09 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       ~~**4-10-09. Shipment of potatoes from undesignated points.**~~

4       ~~Inspection of potatoes may be made at points not designated by the commissioner as~~  
5 ~~official potato shipment inspection points or areas on application of any person, or at the~~  
6 ~~commissioner's option for regulatory purposes, but shipments of potatoes from such points may~~  
7 ~~be made without an inspection.~~

**NOTE:** Because the intent of this section appears to have been addressed in the preceding section, Seed Department personnel recommended that the language be deleted.

8       **SECTION 15. AMENDMENT.** Section 4-10-10 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10       **4-10-10. Potatoes shipped into state - Labeling required - Exception.**

11       ~~Whenever~~if potatoes are shipped into ~~the~~this state from any point outside of the state, the  
12 ~~purchaser, vendor,~~<sup>1</sup> and the person receiving suchthe potatoes shall have the ~~same~~ensure that  
13 the potatoes are labeled in accordance with and conforming to the requirements of this chapter:

- 14       1. In the same manner as required for potatoes grown or originating in North Dakota,  
15       ~~except that the standardized grades and labeling of potatoes in use at the point of~~  
16       ~~shipment may be~~this state; or
- 17       2. In accordance with the requirements of the state or country of origin, if permitted by  
18       the seed commissioner.

**NOTE:** Even as rewritten, this section is a concern in that it appears to conflict with Section 4-10-05. Both sections require potatoes to be labeled. Section 4-10-05 makes an exception for potatoes that are to be processed or repackaged and Section 4-10-10 provides that the potatoes may be labeled in accordance with the laws of this state or those of the originating jurisdiction.

<sup>1</sup>It did not seem necessary to list the purchaser and the vendor, in addition to the person receiving the potatoes. If it is necessary to place that responsibility on numerous people, a different wording can be proposed.

19       **SECTION 16. AMENDMENT.** Section 4-10-12 of the North Dakota Century Code is  
20 amended and reenacted as follows:

1       **4-10-12. Certificate of inspection evidence of contents.**

2       ~~An official~~A certificate of inspection<sup>1</sup>, ~~when signed~~ issued by the seed commissioner ~~or the~~  
3 ~~commissioner's authorized agent~~, is prima facie evidence that, based on the random sample  
4 inspected,<sup>2</sup> the potatoes ~~or other produce~~ described in the certificate ~~are~~were of the grade,  
5 quality, ~~or~~and condition indicated on the certificate at the time of inspection ~~was made~~.

**NOTE:**

<sup>1</sup>The chapter has already referenced grade certificates and health certificates. This section adds inspection certificates. Are there multiple certificates or varying ways of referring to the same certificate?

<sup>2</sup>Seed Department personnel suggested that the section make reference to the fact that their determination is based on a random sample and not an inspection of the entire lot.

6       **SECTION 17. AMENDMENT.** Section 4-10-12.1 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8       **4-10-12.1. Liability - Potato crop quantity and quality.**

9       ~~The state~~A warranty of any kind, either expressed or implied, including a warranty of  
10 merchantability, fitness for a particular purpose, absence of disease, varietal identity, or  
11 selection identity,<sup>1</sup> ~~is not made by the~~ seed commission, ~~statethe~~ seed department, the seed  
12 commissioner and the commissioner's employees, certified seed potato producers, ~~and~~or  
13 wholesale potato dealers<sup>2</sup> licensed under chapter 4.1-57 ~~make no expressed or implied~~  
14 ~~warranty of any kind~~, as to the quantity or quality of the crop produced from the seed potatoes  
15 ~~or through other produce~~that were inspected and certified, ~~including merchantability, fitness for~~  
16 ~~a particular purpose, or absence of disease. The only representation. The sole warranty~~ is that  
17 the potatoes ~~or other produce~~ were inspected under the rules of the state seed department or  
18 the United States department of agriculture. The seed commissioner ~~and the commissioner's~~  
19 ~~employees function and serve~~functions and serves only in an official regulatory manner.

**NOTE:**

<sup>1</sup>The language changes parallel the liability language found in Section 4.1-53-59, with the following exception: This section specifically references that there is no warranty with respect to varietal identity or selection identity.

<sup>2</sup>Perhaps the reference to wholesale potato dealers would be more appropriately placed in Chapter 4.1-57.

20       **SECTION 18. AMENDMENT.** Section 4-10-14 of the North Dakota Century Code is  
21 amended and reenacted as follows:

1        **4-10-14. Misbranding potatoes and other produce Prohibitions.**

2        No ~~A~~ person, either while acting in that person's own behalf or while acting as agent or  
3        servant for any other person, shall may not sell, consign for sale, offer or expose for sale, have  
4        in possession or storage for sale, deliver within this state, or convey or cause to be  
5        conveyed transport or ship out of this state<sup>1</sup>, any potatoes or other produce which that are  
6        mislabeled within the meaning of this chapter or the regulations thereunder, or which are  
7        labeled, represented, or advertised falsely in any respect, ~~whether they are in closed~~  
8        containers, open containers, or in bulk regardless of the quantity.<sup>2</sup>

**NOTE:**

<sup>1</sup>It is recommended that the listed activities be reviewed to determine whether there are redundancies that could or should be eliminated.

<sup>2</sup>Because the prohibition covers all potatoes, it is not necessary to provide that the section applies regardless of whether the potatoes are in closed containers, open containers, etc.

As an alternative, the rewrite could parallel Section 4.1-53-51 and provide that:

A person may not offer for sale, sell, transport, or ship any potatoes that:

1. Are not labeled in accordance with the requirements of this chapter; or
2. Are labeled with information the person knows is false or misleading.

Current law arguably makes this a strict liability offense. The language proposed in this note provides that the person must "know" the information is false or misleading. This is subject to committee approval.

9        **SECTION 19. AMENDMENT.** Section 4-10-15 of the North Dakota Century Code is  
10        amended and reenacted as follows:

11        **4-10-15. Seizure of potatoes and other produce - Liability.**

- 12        1. The seed commissioner and the commissioner's agents may seize and hold any  
13        potatoes or other produce which, according to this chapter, if the seed commissioner  
14        believes that the potatoes are labeled, branded, marked, or tagged wrongly as to  
15        grade, quality, condition, or in any other respect mislabeled<sup>1</sup>.
- 16        2. The seed commissioner may hold any potatoes or produce so seized may be  
17        held under this section until they the potatoes are graded:
  - 18        a. Graded or reconditioned to meet the requirements of the grade, or the labeling  
19        with which they are marked, their label; or
  - 20        b. until they are labeled or marked Labeled in accordance with the grade or  
21        essential details as indicated by the official report<sup>2</sup> or certificate of issued by the  
22        seed commissioner or the commissioner's agent. The seed commissioner and

1                   the commissioner's agents ~~are~~ is not liable for any loss or damage, or any other  
2                   costs due to seizure when acting in accordance with the provisions of this  
3                   chapter and the regulations ~~duly made thereunder~~ any applicable rules.

4           3.   A person aggrieved by a seizure under this section may request a hearing pursuant to  
5           chapter 28-32.<sup>3</sup>

**NOTE:**

<sup>1</sup>If the seizure may take place because potatoes are allegedly mislabeled, the statute does not have to specify that this pertains to grade, quality, condition, or anything else.

<sup>2</sup>This appears to be the first and only mention of an "official report." Is this a document other than the certificate?

<sup>3</sup>The provision for a hearing following a seizure was taken from Section 4-10-19.

6           **SECTION 20. AMENDMENT.** Section 4-10-17 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8           ~~**4-10-17. Cooperation with departments and bureaus.**~~

9           ~~The commissioner may cooperate with the United States department of agriculture or any~~  
10 ~~bureau or division thereof, and with similar state inspection service departments of the several~~  
11 ~~states, and with any person, with the intent and purpose that the seed certification and the~~  
12 ~~grade inspection service in this state, and any or all of the grade certificates issued on North~~  
13 ~~Dakota potatoes or other produce, must be recognized officially and accepted elsewhere in the~~  
14 ~~United States, and to protect and promote the interests of any and all persons having an~~  
15 ~~interest in the potatoes or other produce grown or handled in this state, and to provide for any~~  
16 ~~necessary joint arrangements therefor.~~

**NOTE:** Because nothing precludes the seed commissioner from cooperating with public and nonpublic entities, this section appears to be without purpose and its deletion is recommended.

17           **SECTION 21. AMENDMENT.** Section 4-10-18 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19           ~~**4-10-18. Fees and collections - Continuing appropriation - Disposition.**~~

20           ~~1.   AllThe commissioner shall forward all moneys arising from the collection of fees and~~  
21 ~~other charges received under the provisions of this chapter must be deposited by the~~  
22 ~~commissioner with to the state treasurer and credited to for deposit in a special fund~~  
23 ~~known as the seed department revolving fund, and shall be disbursed within the limits~~  
24 ~~of legislative appropriations therefrom, upon order of the commissioner, with the~~  
25 ~~approval of the seed commission<sup>1</sup>. All moneys in the seed department fund are~~

1           appropriated on a continuing basis to the seed department to carry out statutory  
2           directives.

3           2. The seed commissioner shall approve all expenditures made pursuant to this chapter  
4           and shall document the expenditures at the time and in the manner required by the  
5           office of management and budget.<sup>2</sup>

**NOTE:**

<sup>1</sup>Section 4.1-53-62 contains similar language but does not contain the requirement that the disbursal is to be upon the order of the seed commissioner, "with the approval of the seed commission."

<sup>2</sup>Subsection 2 parallels language inserted in Section 4.1-53-62 (Seed department fund - Continuing appropriation.).

6           **SECTION 22. AMENDMENT.** Section 4-10-19 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8           **4-10-19. Enforcement - Hearing by seed commissioner - Application of chapter 28-32.**

9           1. The seed commissioner shall enforce this chapter and the rules adopted under to  
10           implement this chapter.

11           2. ~~Except as provided in section 4-10-14, whenever~~ If the seed commissioner is of the  
12           ~~opinion~~ believes ~~that a violation of this chapter or of the rules adopted under this~~  
13           ~~chapter exists,~~ may have occurred the seed commissioner shall<sup>1</sup> hold a hearing as  
14           ~~provided in chapter 28-32.~~ <sup>2</sup> A person aggrieved by a seizure pursuant to section  
15           ~~4-10-14 may request a hearing pursuant to chapter 28-32.~~<sup>3</sup>

16           3. ~~If after the hearing, or without hearing if the person involved fails or refuses~~ based on  
17           the testimony and evidence presented at the hearing the seed commissioner  
18           ~~determines that a violation has occurred or if the person involved fails to appear, the~~  
19           ~~commissioner decides that there has been a violation of this chapter or the rules and~~  
20           ~~regulations derived therefrom, the seed commissioner may impose the civil penalty~~  
21           ~~provided~~ authorized in section 4-10-22 this chapter, or if the commissioner decides that  
22           ~~the evidence warrants prosecution, the commissioner shall proceed as provided in this~~  
23           ~~chapter~~ consult with the attorney general regarding the institution of further legal  
24           proceedings.<sup>4</sup>

**NOTE:**

<sup>1</sup>The committee is asked to review the appropriateness of the word "shall" and determine whether a mandated hearing is the intent.

Section 28-32-22 authorizes an administrative agency to informally dispose of any adjudicative proceeding.

<sup>2</sup>Because all administrative hearings must be held in accordance with Chapter 28-32, it is not necessary to reiterate that fact.

<sup>3</sup>The sentence providing that a person who is aggrieved by a seizure may request a hearing has been moved to Section 4-10-15, which pertains to the seizure of potatoes.

<sup>4</sup>See comments pertaining to the following section.

1       **SECTION 23. AMENDMENT.** Section 4-10-20 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       ~~**4-10-20. Prosecution for violations -- Duty of attorney general and state's attorney.**~~

4       ~~Upon a complaint made by the commissioner, after a hearing as provided in section~~  
5 ~~4-10-19, alleging a violation of this chapter or of any rule duly adopted under this chapter, the~~  
6 ~~attorney general, or the state's attorney of the county wherein the case arises, immediately shall~~  
7 ~~cause appropriate legal proceedings to be commenced and prosecuted for the enforcement of~~  
8 ~~the penalties provided in this chapter. No prosecution may be instituted under this section~~  
9 ~~unless the commissioner has held a hearing as provided in section 4-10-19.~~

**NOTE:** Whether or not it is appropriate to commence legal proceedings and prosecute a person for an alleged violation of this chapter is a matter of prosecutorial discretion. It should not be a statutory mandate. During the 2011 legislative session, the Attorney General sought removal of language in Chapter 4.1-57 which would have "required" that he or a state's attorney prosecute violations of that chapter. Therefore, it is recommended that this section be deleted.

10       **SECTION 24. AMENDMENT.** Section 4-10-21 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12       ~~**4-10-21. Assistance to commissioner.**~~

13       ~~Any person involved in any way with the handling, transportation, storage, buying, or selling~~  
14 ~~of potatoes and other produce shall cooperate with the commissioner and the commissioner's~~  
15 ~~agents and shall render all possible assistance to them in the enforcement of the provisions of~~  
16 ~~this chapter and the regulations duly made thereunder.~~

**NOTE:** This section first appeared in 1931. Mandated cooperation with a governmental authority, given judicial interpretations of *Miranda*, are at the very least troubling. (The fifth amendment of the United States Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself . . . ." Therefore, it is recommended that this section be deleted.

17       **SECTION 25. AMENDMENT.** Section 4-10-22 of the North Dakota Century Code is  
18 amended and reenacted as follows:

1       **4-10-22. Penalties for violation of chapter.**

2       1. Any person ~~who violates any of the provisions of~~willfully<sup>1</sup> ~~violating~~ this chapter<sup>2</sup> is guilty  
3       of a class A misdemeanor.

4       2. Any person ~~who violates any of the provisions of~~found guilty of violating this chapter<sup>3</sup>  
5       is subject to a civil penalty ~~not to exceed~~in an amount not exceeding five thousand  
6       dollars for each violation. ~~Such~~The civil penalty may be adjudicated by the  
7       ~~courts~~imposed by a court in a civil proceeding or by the ~~state seed department through~~  
8       ~~an administrative hearing pursuant to chapter 28-32~~seed commissioner.

9       3. ~~The department may, in accordance with the laws of this state governing injunctions~~  
10      ~~and other process, maintain an action in the name of the state against any person~~  
11      ~~violating any provision of this chapter.~~<sup>4</sup>

**NOTE:**

<sup>1</sup>The rewrite suggests that there be some level of intent on the part of the violator. This is subject to committee approval.

<sup>2</sup>The current law provides for imposition of a criminal penalty only if there is a violation of the statutes, and not if there is a violation of the rules. Is this the intent?

<sup>3</sup>Current law provides for imposition of a civil penalty only if there is a violation of the statutes, and not if there is a violation of the rules. Is this the intent?

<sup>4</sup> Section 54-12-01, which sets forth the duties of the attorney general, specifies that the attorney general shall "[i]nstitute and prosecute all actions and proceedings in favor or for the use of the state which may be necessary in the execution of the duties of any state officer." Therefore, this sentence is unnecessary and should be deleted.