

§ 5. ISSUING ANNUAL LICENSES.] The Secretary-Treasurer of the Board of Medical Examiners, upon payment of the fee required, shall issue a certificate of annual license, which shall be posted in a conspicuous place in the office of the holder thereof.

§ 6. PAYMENT OF DELINQUENT REGISTRATION FEES: REINSTATEMENT.] Any practitioner of medicine and surgery who has been duly licensed to practice in this state by the Board of Medical Examiners, and who is subject to suspension from practice and the revocation of his license by reason of his failure to pay the license fee as herein required, may be reinstated, his suspension revoked and his license renewed by his paying to the said Secretary-Treasurer, the amount of such registration fee in which he is then in default, and upon payment of such fee, not to exceed Nine Dollars (\$9.00) shall be again licensed and registered for the practice of medicine and surgery within this state. Practitioners newly licensed to practice by the Board of Medical Examiners may pay the registration fee required pro rata for the part of the year remaining after the issuance of the license.

§ 7. COVERAGE OF FEES.] All fees received under the provisions of this Act shall be paid to and held by the said Secretary-Treasurer and shall be subject to disbursement by said Board of Medical Examiners in performing their duties as provided by law.

§ 8. AN ANNUAL REPORT.] The Board of Medical Examiners shall annually, on January 1st, file with the Governor of this State a report of all fees received and disbursements made and a list of all the practitioners of medicine and surgery who have complied with the provisions of this Act, together with their respective addresses.

Approved March 4, 1931.

POTATOES

CHAPTER 214

(S. B. No. 69—Brunsdale and Brostuen.)

INSPECTION, GRADING, ETC., POTATOES AND OTHER PRODUCE

An Act to establish a standardized and uniform system of grading, labeling and inspecting potatoes and certain other produce, and to regulate the sale and distribution of potatoes in closed containers, and making an appropriation therefor.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. STATE SEED COMMISSIONER TO ESTABLISH GRADE INSPECTION SERVICE AND APPOINT NECESSARY AGENTS AND INSPECTORS.] In order to develop and protect the industries in this State engaged in the growing and marketing of potatoes and other produce

and to conserve and promote the welfare of the citizens of the State, the State Seed Commissioner, hereinafter referred to as the "Commissioner", is hereby authorized and empowered to establish potato and other produce grades and inspection service for the purpose of making inspections on, and otherwise providing for proper handling and marketing of the agricultural commodities defined in Section 2 of this Act, under the classifications of "Potatoes" and "Other Produce"; to appoint a Chief Inspector and such other agents, inspectors, assistants and clerical aids as the Commissioner finds necessary to assist, represent and act for him in enforcing and otherwise carrying out the provisions of this act, and to fix salaries of said employees and provide for operating expenses.

§ 2. DEFINITION OF TERMS.] In this Act, unless otherwise specified or implied, the following terms shall be construed to have a meaning as respectively ascribed to them in this section, viz:

(a) The term "Potatoes" shall mean and include what is commonly called and known as white or Irish potatoes.

(b) The term "Other Produce" shall mean and include such natural products of the farm, garden and orchard, exclusive of grain, true seeds, livestock and livestock products.

(c) The term "Closed Container", or its plural form, shall mean any container which shall be either sewed, tied, sealed, glued, nailed or otherwise closed in a practical or secure way for handling.

(d) The term "person" shall be construed to mean both the singular and plural, as the case requires, and shall mean and include individuals, co-partnerships, companies, societies, association, firms or corporations.

(3) The term "Agent" or "Agents", when used to indicate or refer to the Commissioner's agent or agents, shall mean and include the Commissioner's deputies, inspectors, representatives, agents, or other assistants as the case requires.

(f) The term "Label" and its various grammatical forms, when used as a noun, shall mean and include any tag, label, brand, or device attached to, or written, stamped, printed or stenciled on any container and carrying a term or terms setting forth the grade, condition, quality, weight, variety or class of the potatoes or other produce therein contained, and when used as a verb shall mean the Act or the fact of the use of the aforesaid labeling items and methods in connection with potatoes or other produce, and when used as an adjective, its descriptive meaning shall be interpreted from its use and meaning as a noun and verb as here prescribed.

§ 3. NORTH DAKOTA GRADES FOR POTATOES AND OTHER PRODUCE.] The following grades for potatoes are hereby designated as official and standard grades for North Dakota; namely, "U. S.

Fancy", "U. S. No. 1", "U. S. No. 2", "North Dakota Certified Seed", "North Dakota Extra No. 1", and "Unclassified."

The U. S. Grades shall conform in all respects to the requirements and standards specified by the U. S. Department of Agriculture, but the grade names may be used with appropriate size designations when specified in regulations by the Commissioner who shall be guided by the regulations and recommendations of the U. S. Department of Agriculture: The U. S. grades and standards herein designated shall be subject to change only, provided the said U. S. Department promulgates any new and definite changes, and such changes shall thereupon be adopted by the Commissioner for use in North Dakota.

The "North Dakota Certified Seed" grade shall conform in all respects to the provisions of the seed laws of this state and the regulations made thereunder, and shall be labeled in accordance therewith.

The "North Dakota Extra No. 1" grade shall be one which growers, shippers, dealers and the Commissioner and his agents may use on officially inspected lots and which shall consist of potatoes of similar varietal characteristics, which are packed in new sacks or other new containers, are mature, are at least fairly bright to bright, average medium or larger in size, are free from dirt or other foreign matter, contain no soft rot, and which otherwise conform to U. S. Grade No. 1 except that grade defects other than mentioned herein shall not exceed approximately one-half of the tolerance permitted in the said U. S. Grade.

"Unclassified" lots shall include all potatoes not meeting the requirements of any of the foregoing grades. It shall be optional, however, to use the "Unclassified" labeling on any lot of potatoes.

For "Other Produce" the grades which may have been heretofore or shall be hereafter fixed by the Department of Agriculture of the United States, for such produce, are hereby adopted and designated as the official standard grades for North Dakota. Inspections on incoming produce may be made and certificates issued on the basis of other applicable state grades or in accordance with sales contracts.

§ 4. LABELING OF POTATOES IN CLOSED CONTAINERS.] Potatoes grown in North Dakota, when packed for carload shipments or offered for sale or consignment in carload lots, shall be labeled with one of the grade designations specified in Section 3 of this Act. Potatoes grown in North Dakota, when packed for truck load shipments or offered for sale or consignment in truck load lots other than by the producer or grower, shall also be labeled with one of the grade designations specified in Section 3 of this Act.

Every closed container containing potatoes grown in the State of North Dakota and sold, offered or exposed for sale or consignment in carload lots; also closed containers containing potatoes grown

in the State of North Dakota and sold, offered or exposed for sale in truck load lots by a person other than the grower thereof, shall bear upon the outside either by brand, tag, or label, in plain letters and figures, the grade of the potatoes therein contained, as specified in this Act, the minimum weight thereof when packed and the variety or class name of said potatoes.

The labeling prescribed in this Act may be accompanied by additional marks or brands which are not inconsistent with or in the same location more conspicuous than, or which do not in any way obscure the labeling described in this Act. The Commissioner shall, by regulation, prescribe the general location of the labeling on the container and the minimum size of the letters and figures used in the labeling of the potatoes as herein provided.

§ 5. COMMISSIONER'S PRIVILEGE OF EXAMINATION.] It shall be the duty and privilege of the Commissioner and his agents to make sufficient investigations and grade inspections to determine whether the provisions of this Act are properly complied with.

The Commissioner and his agents shall have the authority to enter and have free access upon and into any private or public premises or structures and the vehicles of any public or private carriers, including sealed or unsealed freight cars, to make examinations or inspections of any potatoes or other produce that is being graded, handled, packed, stored, offered for sale or consignment, exposed for sale, shipped or delivered for shipment, whether the said commodities are upon the premises or in possession or custody of any person other than the shipper or owner thereof and shall have the privilege to take samples of the aforesaid commodities of sufficient quantity for testing or inspecting.

It shall be the duty of any and all persons involved in any way with the handling, transportation, storage, buying or selling of potatoes and other produce to cooperate with the Commissioner and his agents and render all possible assistance to aid them in the carrying out and enforcement of the provisions of this Act, and the regulation duly made thereunder.

§ 6. COMMISSIONER'S CERTIFICATE.] The official certificates of inspection, when signed by the Commissioner or his authorized agent, shall be prima facie evidence that the potatoes or other produce therein described are of the grade, quality or condition indicated on the certificate at the time inspection was made.

§ 7. FEES AND OTHER CHARGES FOR GRADE INSPECTION.] The Commissioner shall by regulation fix the fees that shall be charged for making grade inspections, and said fees shall be uniform throughout the state for periods of time as shall be specified, and the maximum fee per carload or truck load or any other lot unit not in excess of a standard freight carlot quantity, is hereby set at \$4.00 for potatoes and \$5.00 for other produce. Any person soliciting an

inspection or inspections at points other than those at which inspectors are located, or at which itinerant inspectors may be at the time inspection is requested, may obtain inspection service on payment of necessary traveling expenses, in addition to the regular inspection fee. The Commissioner shall have authority to collect all fees and charges.

§ 8. DESIGNATING OFFICIAL INSPECTION POINTS.] The Commissioner may designate by regulation, as official potato shipment inspection points or areas any point or stations, or all points or stations within a county or specified subdivision thereof, at or in which the majority of the potato shippers at a public hearing shall declare themselves in favor thereof; provided, however, that upon written request for a hearing made by a bona fide shipper of potatoes, the Commissioner shall cause public notice for said hearing to be published once during the week preceding the date of such hearing, in a newspaper of general circulation in the area affected, or in the official county newspaper if there shall be a county-wide hearing. The Commissioner or his authorized agent shall witness such hearing and verify as to proper procedure, attendance and voting at said hearing.

When such points or specified areas are so designated, proper notice shall be filed with the railway companies or their agents at each point so affected, at which point or points all shipments of potatoes shall be officially inspected from and after date as published by the Commissioner. No person shall ship or offer for shipment, and no railway company's agent shall accept for shipment, after said published date, any carload or lot of potatoes at or from any point or area which has been properly designated as an official potato shipment inspection point, unless said carload or lot of potatoes has been officially inspected and found to be correctly labeled as herein provided, or unless inspection is waived by the Commissioner or his agent, or unless the potatoes in a carload or other lot are labeled "Unclassified". After such inspection, and provided the official inspector finds that such potatoes are properly labeled according to the provisions of this Act, said inspector shall furnish to the shipper or owner of the potatoes, or file with the railway company's agent at billing point, a signed memorandum indicating that the shipment of potatoes is correctly labeled. The owner and the consignor or shipper of the potatoes shall be held responsible for the payment of the inspection fees when they are not otherwise paid.

At all points not designated by the Commissioner as official potato shipment inspection points or areas, and railway companies or their agents have not been notified as provided in this section, inspections may be made on application of any person as provided in Section 7, of this Act, or at the Commissioner's option for regulatory purposes, but shipments may be made when potatoes have not been officially inspected.

The Commissioner may, in his descretion, refrain from designating certain points as official potato shipment inspection points if the volume of shipments for inspection will not warrant the expense of maintaining inspection at any such points.

§ 9. MISBRANDING OF POTATOES OR OTHER PRODUCE.] It shall be unlawful for any person either for himself or while acting as agent or servant for any other person to sell, consign for sale, offer or expose for sale, have in possession or storage with intent for sale, or to deliver within the State of North Dakota or to convey or cause to be conveyed out of the State of North Dakota, any potatoes or other produce which are mislabeled within the meaning of this Act or the regulations thereunder, or which are falsely labeled, represented or advertised in any respect, whether they are in closed containers or in open containers or in bulk and regardless of the quantity. In the event of the shipment into this state from any point outside thereof of any potatoes, it shall be the duty of the purchaser, the vendor and the person receiving such potatoes to have the same labeled in accordance with and conforming to the requirements of this Act for potatoes grown or originating in North Dakota; provided, however, that certain standardized grades and labeling of potatoes in use elsewhere may be permitted by the Commissioner in connection with shipments of potatoes into this state from any point outside thereof, in lieu of the labeling provided for in this Act.

§ 10. POWER OF SEIZURE.] The Commissioner and his agents are hereby given authority to seize and hold any potatoes or other produce, which are wrongly labeled, branded, marked or tagged as to grade, quality, condition, or any other respect, according to this Act, until such potatoes or other produce are so graded or reconditioned that they meet the requirements of the grade, or the labeling with which they are marked, or until such potatoes or other produce are labeled or marked with the grade or essential details as indicated by the official report or certificate of the Commissioner or his agent.

The Commissioner and his agents are hereby vindicated of any guilt or charge for loss, damage, or any other costs due to seizure or litigation in which they are involved as complainant, arbiter, respondent, inspector or investigator when acting in accordance with the provisions of this Act, and the regulations duly made thereunder.

§ 11. REFUSAL OF SHIPMENT.] Refusal to accept on agreed terms any shipment of potatoes or other produce which has been contracted for, unless such refusal is based upon the showing of an official inspection certificate secured with reasonable promptness after the receipt of such shipment indicating that the kind, grade, condition or quality of the potatoes or other produce is other than that purchased or ordered, or unless both parties to the transaction agree to waive official inspection, shall constitute a violation of this Act.

§ 12. PENALTY FOR VIOLATION.] Any person who violates any of the provisions of, or who fails or refuses to comply with any of the requirements of this Act, or of the regulations duly made thereunder, or who wilfully interferes with the Commissioner or any of his agents in the execution or on account of the execution of his or their duties under this Act, shall on conviction be fined not more than \$100.00 and cost of prosecution for the first offense, nor more than \$500.00 and costs of prosecution for each subsequent offense.

§ 13. COMMISSIONER'S AUTHORITY TO MAKE RULES AND REGULATIONS.] It shall be the duty of the Commissioner, and he shall have the authority to from time to time adopt, publish, and amend uniform rules, regulations and definitions not inconsistent with the provisions of this Act, and to alter or to suspend such rules, regulations, and definitions from time to time as he finds such actions necessary. Such rules, regulations, and definitions of terms and conditions shall be approved by the Attorney General of the State as to form and legality and shall be filed in the office of the Commissioner, and shall be published once in a newspaper of general circulation, to be designated by the Commissioner, in the city where the Commissioner's main office is located, and such rules, regulations, and definitions shall have the force and effect of law. An affidavit of such publication, setting forth the rules, regulations, definitions or amendments thereto as published, shall be made by the publisher of such newspaper or by his agent or the newspaper manager, and shall be filed in the office of the Commissioner. Such affidavits, or copies thereof, certified by the Commissioner, shall be prima facie evidence of the facts therein contained and of the due adoption and publication of such rules, regulations, definitions or amendments.

§ 14. ENFORCEMENT AND PROSECUTION.] The Commissioner shall be charged with the enforcement of the provisions of this Act and of the regulations duly made thereunder. Upon complaint made by the Commissioner alleging violation of this Act, or of the regulations duly made thereunder, it shall be the duty of the Attorney General and of the State's Attorney in the county where the case arises to cause appropriate legal proceedings to be commenced and prosecuted in the proper courts without delay for the enforcement of the penalties as provided in this Act; Provided, however, that no prosecution under this Act shall be instituted except in the manner following: When the Commissioner is of the opinion that a violation of this Act or the regulations duly made thereunder exists, he shall give notice to the person involved, designating a time and place for a hearing. Said hearing shall be private and the person so involved shall have the right to introduce evidence in person, by agent or attorney. If, after said hearing, or without such hearing in the event said person fails or refuses to appear in any manner, the Commissioner decides that the evidence warrants prosecution, he shall proceed as herein provided.

The Commissioner and his agents are hereby authorized and empowered to administer oaths and to take testimony for any purpose relating to the carrying out of the provisions of this Act.

§ 15. COOPERATIVE FUNCTIONS.] The Commissioner may and he is hereby authorized to cooperate with the United States Department of Agriculture or any bureau or division thereof, and with similar state inspection service departments in the United States and with any person to the intent and purpose that the grade inspection service in this State and any or all of the grade certificates issued on North Dakota potatoes or other produce shall be officially recognized and accepted elsewhere in the United States outside of North Dakota, so as to protect and promote the interests of any and all persons having an interest in the potatoes or other produce grown or handled in this state, and to provide for any necessary joint arrangements therefor.

§ 16. EFFECT OF PARTIAL INVALIDITY.] If any provision in any clause or section of this Act, or the application thereof to any person or circumstances, is held invalid, the validity of the remaining portions of the clause or section and of the applications of such provisions to other persons or circumstances shall not be affected thereby.

§ 17. APPROPRIATION.] For the purposes of carrying out and administering the provisions of this Act and the regulations duly made thereunder, and to pay the salaries and wages each month of the appointees and employees under this Act, and other expenses and costs, there is hereby appropriated out of any moneys in the State Treasury not otherwise appropriated, the sum of \$10,000.00, or as much thereof as may be necessary, for the biennial period beginning July 1, A. D. 1931. This appropriation shall be held and retained in the custody of the State Treasurer and placed in and to the credit of the Seed Department Fund, and shall be disbursed upon order of the Commissioner by the use of itemized and duly verified vouchers and with the approval of the Board of Administration.

§ 18. DISPOSITION OF FEES AND OTHER COLLECTIONS.] All moneys arising from the collection of fees and other charges under the provisions of this Act shall be placed by the Commissioner, with the State Treasurer and be credited to the Seed Department revolving fund, and shall be disbursed upon order of the Commissioner and with the approval of the Board of Administration.

§ 19. REPEAL.] All Acts or parts of Acts in conflict herewith are hereby repealed.

Approved March 10, 1931.

CHAPTER 215

(S. B. No. 68—Brunsdale and Brostuen.)

REGULATION SALE OF POTATOES

An Act licensing, bonding, regulating and defining wholesale potato dealers, defining certain duties and conferring certain powers upon the State Seed Commissioner in connection therewith and prescribing penalties for violation thereof.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. WHOLESALE POTATO DEALER DEFINED.] For the purpose of this Act any person who shall buy or sell or contract to buy or sell or who shall handle in wholesale lots for the purpose of resale, or who shall handle on account of or as an agent for another, any potatoes as defined herein, shall be deemed a wholesale potato dealer.

§ 2. DEFINITION OF TERMS.] In this Act, unless otherwise specified:

(a) The term "Potatoes" shall mean and include what is commonly classed as white or Irish Potatoes.

(b) The term "Person" shall mean an individual, firm, co-partnership, corporation, company, society, or association, and shall be construed to imply both the singular and the plural as the case requires.

§ 3. LICENSE REQUIRED, AND LICENSING OFFICER DESIGNATED.] No person shall engage in or purport to be engaged in the business of a wholesale potato dealer, or advertise as such, unless he shall be licensed to carry on such business by the State Seed Commissioner, hereinafter referred to as the "Commissioner".

§ 4. CONDITIONS FOR LICENSE.] License to engage in the business of a wholesale potato dealer within the State of North Dakota shall be issued by the Commissioner to such reputable persons as shall apply therefor, pay the prescribed fee and comply with the conditions herein specified, to-wit:

(a) The application shall be made to the Commissioner in writing, accompanied by the prescribed fee and under oath, and shall set forth the place or places where the applicant intends to carry on the business for which the license is desired, the estimated amount of business to be done monthly, the amount of business done the preceding year, if any, the full name of the persons constituting the firm, in case the applicant is a co-partnership, the name of the officers of the corporation and where incorporated if a corporation, a financial statement showing the value and character in a general way of the assets and the amount of liabilities of the applicant, and statements showing eligibility and standing for a similar license in other states in which he may have operated or is now operating.

(b) The applicant shall execute and file with the Commissioner a bond issued in favor of the Commissioner with sureties to be approved by the Commissioner, the amount and form thereof to be fixed by the Commissioner, conditioned for the faithful performance of his duties as a wholesale potato dealer, for the observance of all laws relating to the carrying on of the business of a wholesale potato dealer, for the payment when due of the purchase price of potatoes purchased by him, for the prompt settlement and payment of all claims and charges due the State of North Dakota for services rendered or otherwise, for the prompt reporting of sales, to all persons consigning potatoes to the licensee for sale on commission and the prompt payment to the persons entitled thereto of the proceeds of such sales, less lawful charges, disbursements and commissions. Such bond shall cover all wholesale potato business transacted in whole or in part within the State of North Dakota, and the license, or a certified copy thereof, shall be kept posted in the office of the licensee at each place within the State where he transacts business. Such bond shall only be liable for acts by such dealer while the license issued as provided by this Act to such dealer is in force, and the Surety may at any time terminate its liability under such bond by giving the Commissioner notice in writing of its desire to terminate its liability. Such notice shall specify that the Surety desires to terminate its liability under said bond and such liability shall be terminated thirty days after the receipt of such notice by the Commissioner. The Commissioner shall notify immediately the licensee to furnish a new bond, and if the licensee shall fail to furnish bond satisfactory to the Commissioner, the Commissioner shall suspend or cancel the license of such licensee. In no event shall the Surety be liable for any acts performed by the licensee after the expiration of the aforesaid thirty day period, but the Surety shall be liable as provided by the terms of the said bond for any acts performed by such licensee prior to the effective date of such cancellation. The fee for each license shall be \$5.00 and for each certified copy thereof it shall be \$1.00. All licenses shall expire on June 30 of each year.

(c) Whenever the licensee shall sell, dispose of or discontinue his business during the period covered by his license, he shall at the time such action is taken, notify the Commissioner in writing and shall upon demand produce before the Commissioner a full statement of all assets and liabilities as of the date of transfer or discontinuance of said business.

(d) To safeguard the public and acquaint persons with the fact that those soliciting potatoes from farm to farm or place to place within this State are working as agents of a licensed dealer, the principal shall be required to secure an identification card for each and every one of his agents and for an individual licensee while so

operating, from the Commissioner. Said agents of a licensee and an individual licensee must have and carry such identification card with them before and while soliciting or transacting potato business for the licensee. The fee for each such identification card shall be one dollar.

(e) The applicant shall file with the Commissioner a schedule of his commissions and charges for services in connection with potatoes handled on account of or as agent for another.

(f) It shall be the duty of the licensee to keep accurate accounts and records of all transactions as a wholesale potato dealer and retain them, subject to the examination of the Commissioner, for a period of eighteen months after their respective events.

(g) The refusal, cancellation or suspension of a license to operate as a wholesale potato dealer in another state may, at the discretion of the Commissioner, constitute grounds for the same respective actions in this State.

(h) In the event any individual or person was a responsible party under a license to operate as a wholesaie potato dealer in this or any other state when such license was suspended or cancelled, and the said individual or person is also a responsible party to a licensee or an applicant for a license, such condition may at the discretion of the Commissioner, constitute grounds for refusal, suspension or cancellation of a license while the aforesaid cancellation or suspension is effective.

(i) The ineligibility of an individual to act as an agent for a potato dealer in another state and the conditions in subsections (g) and (h) of this section applying to a licensee or an applicant for a license may in the discretion of the Commissioner, be made disqualifications to the eligibility of an individual to act as an authorized agent for a licensee.

§ 5. REQUIRING ADDITIONAL BONDS.] The Commissioner, whenever he is of the opinion that any bond theretofore given by a licensee is inadequate for the proper protection of the public, may require the licensee to give additional bonds in such amounts as from time to time the Commissioner may determine and direct with sureties to be approved by the Commissioner and conditioned as heretofore set forth. For the purpose of fixing or changing the amount of such bonds, the Commissioner may require from a licensee verified statements of his business, and if the licensee fails to furnish such information or to furnish a new bond when directed by the Commissioner so to do, the Commissioner may forthwith suspend and after ten days' notice and opportunity to be heard revoke his license.

§ 6. DAMAGE CLAIMS AGAINST BONDS.] Any person claiming himself to be damaged by any breach of the conditions of a bond given by a licensee as herein provided, may enter complaint thereof to the Commissioner, which complaint shall be a verified statement of the fact or facts constituting said complaint. Upon filing such complaint in the manner herein provided, the Commissioner shall investigate the charges made, and at his discretion order a hearing before himself or his duly authorized agent, giving the person complained of, notice of the filing of such complaint and the time and place of such hearing. At the conclusion of said hearing the Commissioner or his agent conducting the hearing, shall report his findings and render his conclusion upon the matter complained of, to the complainant and respondent in each case, who shall have fifteen days following in which to make effective and satisfy such conclusions. If such settlement is not effected within the time aforesaid, either party, if aggrieved by any condition of the bond may, upon first obtaining the approval of the Commissioner, commence and maintain an action against the principal and sureties on the bond of the party complained of as in any civil action, provided no action against the bondsmen of a licensee shall in any instance be maintained without the written approval of the Commissioner, which shall be attached to and made a part of the original complaint in such action. Upon commencing such action, a copy thereof shall be filed in the office of the Commissioner. The record of the hearing before the Commissioner or his agent, when properly certified to, shall be competent evidence in any court having jurisdiction. If such licensee has become liable to more than one person by reason of breaches of the conditions of the bond and the amount of the bond is insufficient to pay the entire liability to all persons entitled to the protection of the bond, the penalty of the bond as against the sureties shall be apportioned among the several claimants. In all cases where the liability of the licensee exceeds the amount of his bond, the Commissioner shall commence an action for the recovery of the full amount of said bond and when recovered such amount shall be deposited with the Commissioner who shall in the same action, subject to the approval of the court, pass upon and allow or disallow all claims which may be presented to him, within sixty days after recovery of the bond, for payment or apportioned thereunder and, to effect the purposes herein, may employ counsel, the expenses thereof to be paid out of the amount recovered on such bond.

§ 7. REJECTIONS OF POTATO SHIPMENTS.] Whenever potatoes are ready for sale, or are on their way to market, the owner thereof or the conveyor or the prospective buyer or any other interested party may call for and shall be entitled to inspection of said potatoes and to an inspection certificate as otherwise provided for by law.

Whenever potatoes are shipped to or received by a wholesale potato dealer for handling, purchase or sale in this state and said dealer at wholesale finds the same to be in a spoiled, damaged, unmarketable or unsatisfactory condition, or mislabeled or misrepresented in any way, unless both parties shall waive inspection before sale or other disposition thereof, he shall cause the same to be examined by an inspector assigned by the Commissioner for that purpose, and said inspector shall execute and deliver a certificate to the applicant thereof stating the day and the time and place of such inspection and the condition of such potatoes, who shall mail or deliver a copy of such certificate to the shipper thereof.

§ 8. CONSIGNED POTATOES.] Whenever any wholesale dealer of potatoes to whom potatoes have been shipped or consigned for sale on a commission basis or on consignment or under any circumstances wherein the title to said potatoes remains with the shipper, has received the same, he shall within a reasonable time thereafter make a written report to the shipper, which report shall include the exact time of arrival, quantity, quality and price per unit of the potatoes, and at the same time he shall pay the shipper the net amount due him.

§ 9. UNSATISFACTORY SALES REPORTS.] Whenever a shipper after demand therefor, shall have received no remittance or report of sale of potatoes, or shall be dissatisfied with the remittance, sale or report thereof, he may complain in writing to the Commissioner, who shall investigate the matter complained of.

§ 10. COMMISSIONER'S AUTHORITY TO CONDUCT HEARINGS AND CANCEL LICENSES.] The Commissioner is authorized to receive complaints against any person dealing in, shipping, transporting, storing or selling potatoes, and shall have authority to make any and all necessary investigations relative to the handling of or storing, shipping, or dealing in potatoes at wholesale, and he and his agents shall at all times have access to all buildings, yards, warehouses, storage and transportation facilities, and railway cars, in which any potatoes are kept, stored, handled or transported and take any samples which are necessary. For the purpose of enforcing the provisions of this Act, the Commissioner shall have the authority, upon complaint being filed with him for any alleged violation of the provisions of this Act, or the regulations issued thereunder, or upon information furnished by an agent of the Commissioner or by any other person, to forthwith suspend and upon ten days' notice and opportunity to be heard, revoke and cancel any license or agent's identification card issued by him, and the Commissioner shall have the power to revoke or cancel the license of any dealer or the identification card of any dealer's agent, who shall violate any of the provisions of this Act or the regulations made thereunder. He shall have and is hereby granted full authority to issue

subpoenas requiring the attendance of witnesses before him or his agent, of books, papers, and other documents, articles or instruments, and compel the disclosure by such witnesses of all facts known to them relative to the matter under investigation, and he or his duly authorized agent shall have full authority to administer oaths, and to take testimony for the purposes of this Act; and the Commissioner or his agent shall thereafter give the complainant a written report of the investigation. Such report shall be prima facie evidence of the matters therein contained. All parties disobeying the orders or subpoenas of the Commissioner or his duly authorized agents shall be guilty of contempt as in proceedings in district courts of the State and may be punished in like manner.

§ 11. COMMISSIONER'S AUTHORITY TO MAKE RULES AND REGULATIONS.] The Commissioner shall have power and it shall be his duty from time to time to make and publish and amend uniform rules and regulations, not inconsistent with the provisions of this Act, for carrying out and enforcing the provisions of this Act, and governing the rates charged by, and the buying, selling, advertising and trading practices of potato dealers at wholesale, and to make and publish necessary definitions of terms and conditions relative to this Act, and to alter or suspend such rules, regulations and definitions from time to time as he finds such actions necessary. Such rules, regulations and definitions of terms and conditions shall be approved by the Attorney General as to form and legality, and shall be filed in the office of the Commissioner, and published once in a newspaper of general circulation, designated by the Commissioner, in the city where the Commissioner's main office is located, and such rules and regulations shall have the force and effect of law. An affidavit of such publication, setting forth the contents of the same, made by the publisher or manager of such newspaper, shall be kept on file in the office of the Commissioner. Such affidavits, or copies thereof, certified by the Commissioner, shall be prima facie evidence of the facts therein contained, and of the due adoption and publication of such rules and regulations.

§ 12. COOPERATION WITH FEDERAL AND OTHER STATE AUTHORITIES.] The Commissioner may co-operate with the United States Department of Agriculture and with other Federal authorities, and, with the State and municipal authorities of this and other states, and do and perform such acts and things as may be necessary and proper in carrying out the purposes of this Act.

§ 13. VIOLATIONS DEFINED.] Any person subject to the provisions of this Act who shall:

(a) Make any false statement or report as to the grade, condition, markings, quality or quantity of potatoes received or delivered, or act in any manner so as to deceive the consignor or purchaser thereof; or

(b) Refuse to accept, on agreed terms, any shipment contracted for by him, unless such refusal is based upon the showing of a state inspection certificate secured with reasonable promptness after the receipt of such shipment showing that the kind or quality of potatoes is other than that purchased or ordered by him; or

(c) Fail to account for potatoes or to make settlement therefore within the time herein limited; or who shall violate or fail to comply with the terms or conditions of any contract entered into by him for the purchase or sale of potatoes; or

(d) Purchase for his own account any potatoes received on consignment, either directly or indirectly, without the consent of the consignor; or

(e) Issue any false or misleading market quotations, or who shall cancel any quotations during the period advertised by him; or

(f) Make or collect any commission or charge in excess of that shown in his schedule which he may have filed with the Commissioner; or

(g) Increase the sales charges on potatoes shipped to him by means of "dummy" or fictitious sales; or

(h) Fail to keep accurate records and financial accounts of all transactions as a wholesale potato dealer; or

(i) Receive potatoes from foreign states or countries for sale or resale, either within or without the State, and give the purchaser the impression through any method of advertising or description that the said potatoes are of other than true origin; or

(j) Make or collect any commission or charge in excess of that shown in his schedule filed with the Commissioner; or

(k) Violate any of the provisions of this Act or any rule or regulation made or published thereunder by the Commissioner, shall be guilty of a misdemeanor, and his license may be forthwith suspended, revoked or cancelled by the Commissioner upon ten days' notice and opportunity to be heard; but upon conviction of such offense, or upon conviction of any Federal court for violation of the Federal statutes relative to the fraudulent use of the mails, or of other criminal acts pertaining to the conduct of his business, it shall be the duty of the Commissioner forthwith to revoke and cancel the license of the person so convicted.

§ 14. ENFORCEMENT AND PROSECUTION.] The Commissioner shall be charged with the enforcement of the provisions of this Act and of the rules and regulations made and published thereunder. Upon complaint made by the Commissioner or any other person, it

shall be the duty of the Attorney General and of the State's Attorney in the county where the case arises, to prosecute all violations of this Act or of the Rules and regulations made and published thereunder.

§ 15. EFFECT OF PARTIAL INVALIDITY.] If any provisions in a clause or section of this Act, or the application thereof to any person or circumstances, is held invalid, the validity of the remaining portions of the clause or section and of the Act, and of the application of such provisions to other persons or circumstances shall not be affected thereby.

§ 16. DISPOSITION OF FEES AND OTHER COLLECTIONS.] All monies arising from the collection of fees and other charges under the provisions of this Act shall be placed by the Commissioner, with the State Treasurer and be credited to the Seed Department revolving fund, and shall be disbursed upon order of the Commissioner and with the approval of the Board of Administration.

§ 17. SUPERSEDEANCE OF THIS ACT.] All Acts or parts of Acts in conflict with the provisions of this Act are superseded by the provisions hereof.

Approved March 4, 1931.

PROCEDURE

CHAPTER 216

(S. B. No. 75—Sathre.)

ACTIONS BY AND AGAINST PARTNERSHIPS AND ASSOCIATIONS

An Act to amend and re-enact Chapter 193 of the Laws of North Dakota for the year 1929.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That Chapter 193 of the Laws of North Dakota for the year 1929, be, and the same is, hereby amended and re-enacted to read as follows:

§ 1. When two or more persons have heretofore done or transacted, or are doing or transacting, or shall hereafter do or transact business as partners or associates under a common name, whether such name comprises the name of such persons or not, they may sue and be sued by such common name and in case such partners or associates are defendants, the Summons may be served on one or more of them; provided, that, if the business of such partners or associates is in charge of a manager or agent, the Summons must be served on such manager or agent, but in case the Sheriff of the County in which the business of such persons is