Sixty-second
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1462

Introduced by

Representatives Froseth, Anderson, Conklin, Onstad

Senators Wanzek, Triplett

A BILL for an Act to create and enact a new section to chapter 6-09.10 of the North Dakota Century Code, relating to compensation for members of the credit review board; to amend and reenact sections 4-24-13, 6-08.1-02, 6-08.1-03, 6-09.10-01, 6-09.10-02, 6-09.10-02.1, 6-09.10-03, 6-09.10-04, 6-09.10-04.1, 6-09.10-06, 6-09.10-10, 6-09.10-11, and 6-09.11-04 of the North Dakota Century Code, relating to the agricultural mediation service; to repeal sections 6-09.10-05, 6-09.10-07, 6-09.10-08, and 6-09.11-10 of the North Dakota Century Code, relating to the home-quarter fund; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-24-13 of the North Dakota Century Code is amended and reenacted as follows:

4-24-13. Genetically modified seed - Patent infringement - Sampling - Mediation.

1. For purposes of this section, farmer means the person responsible for planting a crop on, managing the crop, and harvesting the crop from land on which a patent infringement is alleged to have occurred.
2. a. Before a person holding a patent on a genetically modified seed may enter upon any land farmed by another for the purpose of obtaining crop samples to determine whether patent infringement has occurred, the person holding the patent:
   (1) Shall notify the agriculture commissioner in writing of the person's belief that a patent infringement has occurred and include facts from the allegation;
   (2) Shall notify the farmer in writing of the allegation that a patent infringement has occurred and request written permission to enter upon the farmer's land; and
   (3) Must obtain the written permission of the farmer.

b. If the farmer withholds written permission, the person holding a patent may petition the state district court for an order granting permission to enter upon the farmer's land.

3. The farmer may accompany the person holding the patent at the time any samples are taken.

4. If requested by the farmer or the person holding the patent, the state seed commissioner shall accompany the person holding the patent at the time any sample is taken. The state seed commissioner may impose a fee for providing that service. The patent holder and the farmer shall each pay one-half of the fee charged by the commissioner.

5. If the person holding a patent believes that the crop from which samples are to be taken may be subject to intentional damage or destruction, the person may seek a protection order from the state district court. The protection order may not interrupt or interfere with normal farming practices, including harvest and tillage.

6. The person holding the patent may take samples from a standing crop, from representative standing plants in the field, or from crops remaining in the field after harvest.

7. The person holding the patent may obtain no more samples than those reasonably necessary to make a determination regarding patent infringement. An equal number of samples must remain in the custody of the state seed commissioner or the farmer for future comparison and verification purposes. All samples taken must be placed in containers, labeled as to the date, time, and location from which they were taken, and the labels must be signed by the farmer, the person who took the samples, and the state seed commissioner if the commissioner was present at the time the samples were taken. The patent holder and the farmer shall share equally the cost of the containers needed for the second set of samples which are retained by the state seed commissioner or the farmer. The farmer and the person holding the patent shall share equally the cost of the containers and the cost of obtaining the samples.

8. Within sixty days from the date the samples are taken, an independent laboratory shall conduct all tests to determine whether patent infringement has occurred. The person holding the patent shall notify the farmer of the test results, by certified mail or by any

other method of delivery for which a signature is required, within twenty-one days from the date the results were reported to the person holding the patent.

9. The parties may participate in mediation at any time. The mediation must be conducted by a mediator jointly selected by the farmer and the person holding the patent. If the farmer and the person holding the patent are unable to select a mediator, the mediation must be conducted by an independent ~~agricultural~~ mediation service.

10. If the case is not settled after mediation, either party may file a claim for relief with the federal district court having jurisdiction over the claim. Unless otherwise specified in a contract between the farmer and the person holding the patent, the appropriate state district court is the one that has jurisdiction over that portion of this state in which the farmer's land is located.

SECTION 2. AMENDMENT. Section 6-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

6-08.1-02. Exemptions.

This chapter does not apply to any of the following:

1. The disclosure of necessary customer information in the preparation, examination, handling, or maintenance of any customer information by any officer, employee, or agent of a financial institution having custody of such information or in the examination of such necessary information by an accountant engaged by the financial institution to perform an audit.

2. The disclosure of necessary customer information in the examination of any customer information by or the furnishing of customer information to any officer, employee, or agent of a financial institution regulatory agency solely for use in the exercise of that person's duties.

3. The publication of data derived from customer information if the data cannot be identified to any particular customer or account.

4. Any acts required of the financial institution by the Internal Revenue Code.

5. Disclosures permitted under the Uniform Commercial Code concerning the dishonor of any negotiable instrument.

6. The exchange in the regular course of business of necessary customer credit information between a financial institution and other financial institutions or commercial entities, directly or through a customer reporting agency.
7. The release by the industrial commission, in its capacity as the managing body of the Bank of North Dakota, of the following:
   a. The name of any person who has obtained approval for direct or indirect financing or security, including a loan guarantee or a letter of credit, through the Bank of North Dakota primarily for purposes other than personal, family, or household purposes.
   b. The amount of any financing or security referenced in subdivision a.
   c. The amount of any net writeoff or loan forgiveness associated with the financing or security referenced in subdivision a which the industrial commission determines is uncollectible.
   d. The program under which any financing or security referenced in subdivision a was made.
   e. Recipient reports and grantor reports as required under chapter 54-60.1.
8. The disclosure of customer information in the examination, handling, or maintenance of any customer information by any governmental agency or law enforcement agency for purposes of verifying information necessary in the licensing process, provided prior consent is obtained from the licensee and customer.
9. Disclosure of customer information to a law enforcement agency or governmental agency pursuant to a search warrant or subpoena duces tecum issued in accordance with applicable statutes or the North Dakota Rules of Criminal Procedure.
10. Disclosure by a financial institution to the agriculture commissioner that it has given a customer notice of the availability of the North Dakota ~~agricultural~~ mediation service.
11. The disclosure by a financial institution to any financial institution or other entity that controls, is controlled by, or is under common control with the financial institution if the financial institution or other entity receiving the information complies with section 6-08.1-03.
12. A disclosure of customer information under section 502(e) of the federal Financial Services Modernization Act of 1999 [Pub. L. 106-102; 113 Stat. 1436; 15 U.S.C.

6802(e)]. A disclosure under this subsection must comply with the rules adopted under section 6-08.1-10.

13. A disclosure made to the disciplinary board of the North Dakota supreme court or another state's authority with responsibility for enforcing rules of professional conduct for lawyers regarding dishonor of an instrument issued against any trust account maintained by an attorney or law firm, as these terms are defined in section 6-08-16.2.

SECTION 3. AMENDMENT. Section 6-08.1-03 of the North Dakota Century Code is amended and reenacted as follows:

6-08.1-03. Duty of confidentiality.

A financial institution may not disclose customer information to any person, governmental agency, or law enforcement agency unless the disclosure is made in accordance with any of the following:

1. Pursuant to consent granted by the customer in accordance with this chapter.
2. To a person other than a governmental agency or law enforcement agency pursuant to valid legal process.
3. To a governmental agency or law enforcement agency pursuant to valid legal process in accordance with this chapter.
4. For the purpose of reporting a suspected violation of the law in accordance with this chapter.
5. For the purpose of notifying the agriculture commissioner that a financial institution has notified a customer of the availability of the North Dakota ~~agricultural~~ mediation service.
6. As part of the disclosure made of deposits of public corporations with financial institutions in the security pledge schedule verified by the custodian of securities pursuant to section 21-04-09.
7. For purposes of reporting suspected exploitation of a disabled adult or vulnerable elderly adult as defined by section 12.1-31-07. Nothing in this subsection may be construed to impose upon a financial institution a duty to investigate an alleged or suspected exploitation of a disabled adult or vulnerable elderly adult or to make any report to a governmental agency or law enforcement agency.

SECTION 4. AMENDMENT. Section 6-09.10-01 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-01. Definitions.

As used in this chapter, unless the context requires otherwise:

1. "Board" means the credit review board, or its authorized agent when applicable.
2. "Farmer" means a person who is or was involved in the production of an agricultural commodity or livestock.
3. ~~"Fund" means the home-quarter purchase fund.~~
4. ~~"Home-quarter" means a single contiguous tract of not more than one hundred sixty acres [64.75 hectares] which serves as the base unit of a farm and upon which the farm residence and buildings are located.~~
5. ~~"Person" means an individual, corporation, limited liability company, partnership, or other legal entity.~~

SECTION 5. AMENDMENT. Section 6-09.10-02 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-02. Credit review board.

1. The board consists of ~~six members. The governor, the attorney general, and the agriculture commissioner shall each appoint two members to the board. The governor and attorney general shall each appoint one member with~~:
   a. One individual who has experience as a director or officer of a financial institution ~~and one member~~, appointed by the governor;
   b. One individual who has experience as a director or officer of a financial institution, appointed by the attorney general;
   c. One individual actively engaged in farming in the state~~. The agriculture commissioner shall appoint two members who are~~, appointed by the governor;
   d. One individual actively engaged in farming in the state, appointed by the attorney general; and
   e. Two individuals actively engaged in farming in the state~~. No member of the board may hold state office or serve in state office or serve in state government in any capacity at any time of appointment or during service on the board~~, appointed by the agriculture commissioner.

2. A board member may not be an employee or official of the state during the member's term of office.

3. The ~~credit review~~term of office for members of the board ~~members shall serve terms of~~is two years. An individual may serve consecutive terms.

4. a. Annually, the board shall elect one member to serve as the chairman.

   b. The chairman shall call all meetings of the board.

SECTION 6. AMENDMENT. Section 6-09.10-02.1 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-02.1. Additional duties of board.

In addition to other powers and duties enumerated in this chapter, the board shall:

1. Establish policy for the North Dakota ~~agricultural~~ mediation service.
2. Recommend policies and procedures to the industrial commission regarding farm loan programs of the Bank of North Dakota.

SECTION 7. AMENDMENT. Section 6-09.10-03 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-03. North Dakota ~~agricultural~~ mediation service - ~~Powers - Compensation and expenses~~Establishment - Administration - Fees.

~~The board shall meet at the call of the chair, as is necessary to fulfill its duties under this chapter. The agriculture commissioner shall administer the agricultural mediation service.~~

1. The agriculture commissioner shall establish ~~an agricultural~~and administer a mediation service ~~to disseminate information to farmers concerning farm credit problems and to provide assistance to seek to resolve farm credit problems~~.

2. The commissioner shall appoint ~~an~~the administrator of the ~~agricultural~~ mediation service~~. The commissioner~~ and shall hire ~~staff,~~ negotiators, ~~and~~ mediators ~~who may mediate disputes involving farmers or other persons eligible for mediation with an agency of the United States department of agriculture~~, and other necessary personnel.

3. The board may ~~charge the farmer and others a reasonable fee for any assistance, provided the fees are used to continue the service. Fees charged to mediation participants are limited to~~establish the fees to be paid by those using the North Dakota mediation service. The fees, which must be used to support continuation of the

service, may not exceed twenty-five dollars per hour~~, each, for the time spent in mediation sessions~~.

4. The board shall adopt policies governing the North Dakota mediation service's negotiators, ~~staff, and~~ mediators ~~hired under this section. Board members are entitled to receive one hundred thirty-five dollars for each day of official service, as directed by the board. The board members are entitled to expenses as provided in sections 44-08-04 and 54-06-09. The expenses provided under this section may be paid from any funds available in the home-quarter purchase fund~~, and other personnel, as well as the nature and scope of all mediation efforts.

SECTION 8. A new section to chapter 6-09.10 of the North Dakota Century Code is created and enacted as follows:

Board compensation.

Each member of the board is entitled to receive compensation in the amount of one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the board.

SECTION 9. AMENDMENT. Section 6-09.10-04 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-04. Request for assistance - Negotiation - Mediation.

~~Any~~A farmer, creditor, person dealing with a farmer, ~~or other~~ person eligible for mediation with an agency of the United States department of agriculture, a landowner, or an owner, lessee, or lessor of mineral interests may request assistance from the ~~administrator~~North Dakota mediation service. Upon receipt of the request, and upon consent of all parties to mediation, the ~~negotiator or mediator shall encourage and~~administrator of the North Dakota mediation service may assign a negotiator or mediator to assist the parties in reaching a voluntary settlement.

SECTION 10. AMENDMENT. Section 6-09.10-04.1 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-04.1. Liability.

The board, commissioner, administrator, ~~staff,~~ negotiators, ~~and~~ mediators, and other personnel are not subject to any liability arising from any actions ~~undertaken regarding a farmer, creditor, or other person~~or omissions in attempting to reach a settlement.

SECTION 11. AMENDMENT. Section 6-09.10-06 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-06. Fund - Appropriation.

1. ~~A revolving fund must be maintained at the Bank of North Dakota for the subsidy of interest rates on home-quarter purchases and coordination and operation of a farm management delivery system as provided in this chapter. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund are hereby~~On July 1, 2011, the state treasurer shall transfer any moneys remaining in the home-quarter fund to the agriculture commissioner.

2. Any moneys transferred, as required by subsection 1, are appropriated to the agriculture commissioner, for the purposes of this chapter. ~~Any moneys generated by the farm management delivery system must be transferred to the state board for career and technical education and allocated by the state board for career and technical education to the adult farm management program, the agricultural mediation services, and North Dakota state university for expenses related to the jointly developed and implemented farm management delivery system.~~

~~2.~~3. ~~The board~~If it appears to the board that the moneys appropriated to the agriculture commissioner for the North Dakota mediation service are insufficient, the agriculture commissioner may petition the emergency commission for a transfer from the state contingency fund ~~whenever it appears to the board that the moneys remaining in the fund are not sufficient to meet demands on the fund~~. The emergency commission may grant the transfer request, or so much ~~thereof~~of the request as may be necessary, if it finds that an emergency situation exists ~~in the industry of farming~~, due to increasing ~~numbers of farm foreclosures~~requests for mediation.

~~3. The board and the Bank of North Dakota shall enter into an agreement through which the Bank shall supervise and monitor the payment and repayment of interest subsidies approved by the board.~~

SECTION 12. AMENDMENT. Section 6-09.10-10 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-10. Mediation - Open records and meetings exception.

Information created, collected, and maintained by the ~~agricultural~~North Dakota mediation service in the course of any formal or informal mediation is confidential and ~~is~~ not subject to the open records requirements of section 44-04-18. ~~Such~~The information may be released only upon the written consent of all parties to the mediation or pursuant to an order issued by the court upon a showing of good cause. All mediation meetings and meetings involving the board, ~~staff,~~ negotiators, ~~or~~ mediators ~~wherein the finances of specific farmers, creditors, and others are discussed~~, or other personnel~~,~~ are confidential, closed meetings and are not subject to the open meetings requirements of section 44-04-19, if the finances of specific farmers, creditors, or others are discussed.

SECTION 13. AMENDMENT. Section 6-09.10-11 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-11. Agriculture commissioner - Authorization to receive and expend moneys.

The agriculture commissioner ~~is authorized to~~may receive and expend any ~~federal, private, or other funds~~public or nonpublic moneys that become available for the purpose of defraying the expenses of the ~~agricultural~~North Dakota mediation service.

SECTION 14. AMENDMENT. Section 6-09.11-04 of the North Dakota Century Code is amended and reenacted as follows:

6-09.11-04. Loans to farmers - Purposes.

The following purposes are eligible to be funded by bond proceeds or loan participations under this chapter:

1. Purchasing agricultural real estate~~.~~;
2. Constructing, repairing, altering, or adding to any farm buildings on agricultural real estate owned or purchased by the farmer~~.~~;
3. Making permanent improvements to agricultural real estate owned or purchased by the farmer for the purpose of increasing the productive value of the land or promoting conservation of the soil~~.~~;
4. Purchasing farm equipment~~.~~;
5. Purchasing livestock~~.~~;

6. Paying off and discharging mortgages, encumbrances, and other charges or liens against or on the agricultural real or personal property owned or purchased by the farmer~~.~~; and

7. ~~Purchasing the farmer's home-quarter pursuant to chapter 6-09.10.~~

~~8.~~ Restructuring operating debt carryover.

SECTION 15. REPEAL. Sections 6-09.10-05, 6-09.10-07, 6-09.10-08, and 6-09.11-10 of the North Dakota Century Code are repealed.