

AGRICULTURE

CHAPTER 56

HOUSE BILL NO. 1094

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

USDA FUR PROCEEDS DISPOSITION

AN ACT to amend and reenact section 4-01-17.3 of the North Dakota Century Code, relating to the disposition of furs taken by the United States department of agriculture wildlife services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-01-17.3 of the North Dakota Century Code is amended and reenacted as follows:

4-01-17.3. Disposition of proceeds of furs, skins, and specimens taken.

All furs, skins, and specimens taken by hunters and trappers paid out of funds appropriated to carry out section 4-01-17.1 must be disposed of in a manner the agriculture commissioner determines is in the state's best interests. If furs, skins, or specimens are sold, the net proceeds of the sales, up to fifteen thousand dollars per biennium, must be deposited with the state treasurer to be credited to the general fund used by United States department of agriculture wildlife services to fund its program activities that benefit the state's livestock producers.

Approved April 8, 2005

Filed April 12, 2005

CHAPTER 57**SENATE BILL NO. 2147**

(Senators Taylor, Bowman)
(Representatives Nicholas, S. Meyer, Onstad)
(At the request of the Department of Agriculture)

CERTIFIED BEEF AND LIVESTOCK LOAN PROGRAMS

AN ACT to create and enact a new section to chapter 4-01 and a new section to chapter 6-09 of the North Dakota Century Code, relating to the establishment of a certified beef program and a livestock loan guarantee program; to amend and reenact section 4-14.1-03.1 of the North Dakota Century Code, relating to agricultural grants; to provide for a report; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Certified beef program. The agriculture commissioner may collaborate with the state board of animal health, the North Dakota stockmen's association, North Dakota state university beef systems, and the United States secretary of agriculture to develop a source-verified and process-verified beef marketing program known as the certified beef program.

⁴¹ **SECTION 2. AMENDMENT.** Section 4-14.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

4-14.1-03.1. Agricultural products utilization commission - Authority.

1. The North Dakota agricultural products utilization commission may apply for, accept, and expend any appropriation, grant, gift, or service made available from public or private sources consistent with the purpose of this chapter.
2. The commission may administer grant programs consistent with the purpose of this chapter including a.
 - a. A basic and applied research grant program;ⁱ
 - b. A utilization and marketing grant program;ⁱ
 - c. A cooperative marketing grant program;ⁱ
 - d. A nature-based tourism grant program;

⁴¹ Section 4-14.1-03.1 was also amended by section 2 of House Bill No. 1519, chapter 66.

- e. A technical assistance grant program for value-added businesses;
 - f. A farm diversification grant program;
 - g. An agricultural prototype development grant program; and a
 - h. A North American marketing grant program. ~~The~~
3. As a condition of the grant, the commission may require, by contract, repayment of a grant, in whole or in part, that the recipient repay some or all of the grant if the grant recipient does not fulfill the conditions under which the grant was awarded of the grant. Repayment may be monetary or may be of any other type or method determined by the commission to be in the public interest.

SECTION 3. A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

Livestock loan guarantee program - Establishment - Rules.

- 1. The Bank of North Dakota shall establish and administer a livestock loan guarantee program that is designed to expand livestock feeding in this state.
- 2. Under the program, the Bank may guarantee a loan made by a bank, a credit union, a savings and loan association, or any other lending institution in this state to the owner of a commercial feedlot that backgrounds or feeds cattle to harvest-ready weight. In the event of a default, the Bank shall pay to the lender the amount agreed upon, provided that the amount may not exceed eighty-five percent of the principal due the lender at the time the claim is approved.
- 3. The Bank shall adopt rules governing additional terms, conditions, and procedures necessary to meet the requirements of this section. The rules must include an administrative fee payable to the Bank and must provide that equity requirements may not exceed fifteen percent.

SECTION 4. REPORT TO COMMITTEES. Between the first and tenth legislative days of the regular session of the sixtieth legislative assembly as selected by the legislative council, the agriculture commissioner, the Bank of North Dakota, and the North Dakota stockmen's association shall provide a joint report regarding the livestock loan guarantee program to the standing agriculture committee of each house of the legislative assembly.

SECTION 5. EXPIRATION DATE. Section 3 of this Act is effective through June 30, 2009, and after that date is ineffective.

Approved April 7, 2005
Filed April 12, 2005

CHAPTER 58**HOUSE BILL NO. 1492**

(Representatives Monson, S. Kelsh, Nelson, Skarphol)
(Senators Erbele, Heitkamp)

FERAL HEMP SEED

AN ACT to amend and reenact section 4-05.1-05 of the North Dakota Century Code, relating to feral hemp seed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-05.1-05 of the North Dakota Century Code is amended and reenacted as follows:

4-05.1-05. North Dakota state university main research center. The North Dakota state university main research center must be located on the campus of North Dakota state university of agriculture and applied science. The center is the administrative location of the agricultural experiment station. The center shall conduct research and coordinate all research activities of the agricultural experiment station. ~~The center may, if allowed under federal law, conduct baseline research, including production and processing in conjunction with the research and extension centers of the state, regarding industrial hemp and other alternative industrial use crops.~~ The research must have, as a purpose, the development and dissemination of technology important to the production and utilization of food, feed, fiber, and fuel from crop and livestock enterprises. The research must provide for an enhancement of the quality of life, sustainability of production, and protection of the environment. The center may conduct baseline research, including production and processing in conjunction with the research and extension centers of the state, regarding industrial hemp and other alternative industrial use crops. The center may collect feral hemp seed stock and develop appropriate adapted strains of industrial hemp which contain less than three-tenths of one percent tetrahydrocannabinol in the dried flowering tops. The agriculture commissioner shall monitor the collection of feral hemp seed stock and industrial hemp strain development and shall certify appropriate stocks for licensed commercial cultivation.

Approved March 9, 2005

Filed March 9, 2005

CHAPTER 59**HOUSE BILL NO. 1264**

(Representatives Aarsvold, Kingsbury, Nicholas)
(Senators Christmann, Flakoll, Taylor)

**AGRICULTURAL RESEARCH AND EDUCATION
BOARD MEMBERS**

AN ACT to amend and reenact section 4-05.1-16 of the North Dakota Century Code, relating to the state board of agricultural research and education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-05.1-16 of the North Dakota Century Code is amended and reenacted as follows:

4-05.1-16. State board of agricultural research and education - Membership - Terms.

1. The state board of agricultural research and education consists of:
 - a. The president of North Dakota state university or the president's designee;
 - b. The vice president of agricultural affairs at North Dakota state university, who serves in an ex officio nonvoting capacity;
 - c. The administrator of the agricultural experiment station, who serves in an ex officio nonvoting capacity;
 - d. The five persons appointed to the agricultural consultation board by the ag coalition ~~and serving in that capacity on July 1, 1997;~~
 - e. The five persons appointed to the agricultural consultation board by the extension service's multicounty program units ~~and serving in that capacity on July 1, 1997;~~
 - f. ~~The two persons appointed to the agricultural consultation board by the president of North Dakota state university as representatives of the state's research extension centers and serving in that capacity on July 1, 1997;~~
 - ~~g.~~ The agriculture commissioner, who serves in an ex officio nonvoting capacity;
 - ~~h.~~ g. The director of the North Dakota state university extension service, who serves in an ex officio nonvoting capacity; and
 - ~~i.~~ h. Two members of the legislative assembly appointed by the chairman of the legislative council. The chairman shall appoint one member from each political faction. The terms of members are for two years, and members may be reappointed. The legislative

council shall pay the compensation and expense reimbursement for the legislative members.

2. a. The initial five members appointed by the ag coalition shall select their terms by lot so that one member serves for one year, one member serves for two years, one member serves for three years, one member serves for four years, and one member serves for five years.
 - b. The initial five members appointed by the extension service's multicounty program units shall select their terms by lot so that one member serves for one year, one member serves for two years, one member serves for three years, one member serves for four years, and one member serves for five years.
 - e. ~~The two persons appointed as representatives of the state's research extension centers shall serve only through June 30, 1998.~~
3. At the completion of each initial term, the term of office for each member is ~~five~~ four years, beginning on July first. ~~No person~~ An individual may be ~~appointed~~ reappointed to a second ~~five-year~~ four-year term.
 4. a. At least ninety days before the ~~conclusion of the initial~~ term of each a member appointed by the ag coalition ~~expires~~, the ag coalition shall provide to the state board of higher education a list of one or more names from which the state board of higher education shall appoint a successor. ~~Future appointments to these five positions must be made in the same manner.~~ The state board of higher education shall ensure that four out of the five seats are held by agricultural producers.
 - b. At least ninety days before the ~~conclusion of the initial~~ term of each a member appointed by the extension service's multicounty program units ~~expires~~, the units through their advisory groups shall provide to the state board of higher education a list of one or more names from which the state board of higher education shall appoint a successor. ~~Future appointments to these five positions must be made in the same manner.~~ The state board of higher education shall ensure that four out of the five seats are held by agricultural producers.
5. If an appointed position becomes vacant, the vacancy must be filled for the unexpired portion of the term in the same manner as the initial appointment except that the ninety-day requirement is waived. An individual appointed under this subsection is eligible to serve two full terms after completing the unexpired term for which the individual was appointed.

Approved March 7, 2005
Filed March 8, 2005

CHAPTER 60**SENATE BILL NO. 2044**

(Legislative Council)
(Public Services Committee)

**SEED DEPARTMENT, LABELING, AND
CERTIFICATION**

AN ACT to amend and reenact sections 4-09-01, 4-09-02, 4-09-03, 4-09-04, 4-09-05, 4-09-06, 4-09-06.1, 4-09-07, 4-09-08, 4-09-10, 4-09-11, 4-09-11.1, 4-09-11.2, 4-09-12, 4-09-13, 4-09-14, 4-09-14.1, 4-09-14.4, 4-09-15, 4-09-16, 4-09-17.1, 4-09-18, 4-09-20.1, 4-09-20.2, 4-09.1-02, 4-09.1-04, 4-25-01, 4-25-02, 4-25-03, and 4-25-04 of the North Dakota Century Code, relating to the state seed department, seed labeling, and certified seed; and to repeal sections 4-09-03.1, 4-09-10.1, and 4-09-14.3 of the North Dakota Century Code, relating to the state seed arbitration board and labeling requirements for seed labeling permit fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-01 of the North Dakota Century Code is amended and reenacted as follows:

4-09-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Advertisement" means any representation, other than representations made on labels, which relates to seed.
2. "Agent", when used in connection with the ~~state seed~~ commissioner, means the commissioner's ~~deputies~~ deputy, ~~inspectors~~ inspector, ~~analysts~~ analyst, ~~specialists~~ specialist, and any other ~~aides~~ aide, ~~agents~~ agent, and employees of the commissioner and the ~~seed department~~ employee, when they are each is acting officially for the commissioner or performing any duty or duties as provided in this chapter or in the rules ~~duly~~ adopted under to implement this chapter.
3. "Agricultural ~~seeds~~ seed" means the ~~seeds~~ seed of grass, forage, cereal, fiber, oil crops, Irish potato seed tubers, and any other kind of seeds commonly recognized within this state as agricultural ~~seeds~~ seed, lawn ~~seeds~~ seed, and mixture of ~~such~~ these seeds.
4. "Blend" means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.
5. "Brand" means a word, name, or symbol, number, or design used to identify seed of one person to distinguish that seed from seed of another person.
6. "Commission" means the state seed commission.
7. "Commissioner" means the state seed commissioner.

8. "Conditioning" means drying, cleaning, scarifying, and other operations that may change the purity or germination of the seed.
9. "Department" means the seed department of this state.
10. "Flower seed" includes a seed of a herbaceous plant grown for the bloom, ornamental foliage, or other ornamental part, and commonly known and sold under the name of flower or wildflower seed in this state.
- 5- 11. "Foundation seed", "registered seed", and "certified seed" means seed that has been produced and labeled in accordance with the procedures and in compliance with the rules of an officially recognized seed-certifying agency.
- 6- 12. "Germination" means the percentage of seed capable of producing normal seedlings under ordinarily favorable conditions as determined by methods prescribed under the rules established by the association of official seed analysts, but not including. The percentage does not include seed which that produces weak, malformed, or obviously abnormal sprouts.
- 7- 13. "Hard seed" means the percentage of seed which, because of hardness or impermeability, does not absorb moisture or germinate under prescribed test but remains hard during the period prescribed for germination of the kind of seed concerned as determined by methods prescribed under the rule established by the association of official seed analysts a seed that remains hard at the end of the prescribed test period because the seed has not absorbed water due to an impermeable seed coat.
8. "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining:
- a. Two or more inbred lines;
 - b. One inbred or a single cross with an open pollinated variety; or
 - c. Two varieties or species, except open pollinated varieties of corn (*Zea mays*).
- The second generation or subsequent generations from such crosses must not be regarded as hybrids. Hybrid designations must be treated as variety names.
14. "Inert matter" means all matter not seed and includes the broken seed, a sterile floret, chaff, a fungus body, and a stone.
- 9- 15. "Kind" means one or more related species or subspecies which singly or collectively is known by one common name, such as corn, oats, alfalfa, or timothy.
- 40- 16. "Labeler" means the person who furnishes the information required in sections 4-09-10, 4-09-11, 4-09-11.1, and 4-09-11.2.

44. 17. "Labeling" means all labels and other written, printed, or graphic representation in any form accompanying or pertaining to any seed, whether in bulk or in containers, including representations on invoices means a tag or other device attached to or information written, stamped, or printed on any container or accompanying a lot of bulk seed that contains information required by this chapter.
42. 18. "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform, within permitted tolerances, for the factors which appear in the labeling.
19. "Mixture" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.
43. 20. "Noxious weed seeds seed" means the seeds of either of the following classifications is divided into three classes defined as:
- a. "Prohibited noxious weed seeds seed" means the seeds of perennial weeds which reproduce by seed or spread by underground roots, stems, and other reproductive parts and which, when established, are highly destructive and difficult to control by ordinary good cultural practice including the seeds a weed seed that is prohibited from being present in agricultural, vegetable, flower, tree, or shrub seed and is highly destructive and difficult to control by good cultural practices and the use of herbicides and includes a seed of leafy spurge (*euphorbia esula* L.), field bindweed (*convolvulus arvensis* L.), Canada thistle (*circium arvense* L.), perennial sow thistle (*sonchus arvensis* L.), Russian knapweed (*centaurea repens* L.), absinth wormwood (*artemisia absinthium* L.), hemp (*cannabis sativa* L.) having more than three-tenths of one percent tetrahydrocannabinol, musk thistle (*carduus nutans* L.), spotted knapweed (*centaurea maculosa* Lam.), hoary cress (*cardaria draba* (L.) Desv.), and yellow starthistle (*centaurea solstitialis* L.).
 - b. "Restricted noxious weed seeds seed" means the seeds of weeds which are highly objectionable in fields, lawns, and gardens, but which can be controlled by good cultural practices or other means, including the seeds a seed that is objectionable in agricultural crops, lawns, and gardens in this state and can be controlled by good cultural practices or the use of herbicides and includes the seed of dodder (*cuscuta* species), hedge bindweed (*convolvulus sepium* L.), wild oats (*avena fatua* L.), and quackgrass (*agropyron repens* (L.) Beauv.).
 - c. "Undesirable grass seed" means a seed of grass species declared by the commissioner to be a restricted noxious weed seed when found in lawn or turf seed.
44. 21. "Official seed-certifying agency" means:
- a. An agency authorized under the laws of a state, territory, or possession to officially certify seed which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or

- b. An agency of a foreign country determined by the United States secretary of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed-certifying agencies under subdivision a.
15. ~~"Person" means any individual, partnership, corporation, limited liability company, company, society, or association.~~
46. 22. "Pest" means any invertebrate animal, pathogen, parasitic plant, or similar organism causing or capable of causing injury or damage to any plant or part of a plant or any processed, manufactured, or other product of a plant.
47. 23. "Phytosanitary certificate" means a document issued or authorized by the commissioner indicating that the seed or tubers were inspected and considered to be free from quarantine pests and practically free from injurious pests according to the sanitary requirements of the importing country.
48. 24. "Pure seed" means agricultural and vegetable seed, exclusive of inert matter, and all other seed not of the kind or variety being considered.
49. 25. "Record" means all information relating to lot identification, source, origin, variety, amount, processing, testing, labeling, distribution, and file sample of the seed.
20. ~~"Seed department" means the seed department of this state.~~
21. ~~"Seizure" means the legal process carried out by court order against a definite amount of seed.~~
22. 26. "Stop-sale" means an administrative order provided by law restraining the sale, use, disposition, and movement of a definite amount of seed.
23. 27. ~~"Treated" means that the a seed has received an application of a seed protectant pesticide which is designed to reduce, control, or repel certain disease organisms, insects, or other pests attacking such seeds or seedlings growing therefrom substance, or a claim has been made that the seed has been subjected to a process.~~
28. "Tree and shrub seed" includes seed of woody plants commonly known and sold as tree and shrub seed in this state.
29. "Type" means a group of variety so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.
24. 30. "Variety" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristic by which it can be differentiated from other plants of the same kind that is distinct, uniform, and stable. "Distinct" means the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all varieties of public knowledge. "Uniform" means the variations in essential and distinctive characteristics are describable. "Stable" means the variety will remain unchanged in its essential and distinctive

characteristics and uniformity when reproduced or reconstituted as required by the different categories of varieties.

- 25- 31. "Vegetable ~~seeds seed~~" means the seeds a seed of those crops which are a crop that is grown in gardens and a garden or on a truck farms farm, and which are is generally known and sold under the name of vegetable seeds seed within this state.
- 26- 32. "Weed ~~seeds seed~~" means the ~~seeds seed~~ of all plants a plant generally recognized as weeds a weed within this state, including noxious weed ~~seeds seed~~.

SECTION 2. AMENDMENT. Section 4-09-02 of the North Dakota Century Code is amended and reenacted as follows:

4-09-02. Seed department - Offices and laboratories.

1. There must be maintained a state seed department to be known as the seed department of the state of North Dakota. ~~It~~ The department's headquarters, main offices, and other principal operating facilities and equipment must be located at the North Dakota state university of agriculture and applied science. The commissioner, subject to the approval and supervision of the commission, shall provide and maintain necessary laboratories and facilities properly equipped to make analyses, tests, and variety and disease determinations of seeds and plants, and to do work and effect other results as may be necessary to carry out this chapter. For these purposes, the commissioner may utilize the premises, space, and equipment at North Dakota state university as may be assigned to the commissioner by the university. The commissioner shall permit the facilities and services of the official laboratories to be used by the university at convenient times.
2. The ~~state seed~~ commission may locate and establish branch offices and laboratories at other locations in this state as in the commissioner's judgment are necessary to carry out properly and effectively the provisions of this or other chapters in which the ~~seed~~ department is charged with duties and responsibilities.

SECTION 3. AMENDMENT. Section 4-09-03 of the North Dakota Century Code is amended and reenacted as follows:

4-09-03. State seed commission - Members - Meetings - Appointment and duties of commissioner.

1. The ~~state seed~~ commission is the governing board of the ~~seed department and shall adopt rules and regulations pursuant to chapter 28-32 to effectuate the purposes of this section.~~
2. The ~~state seed~~ commission consists of a representative of the North Dakota crop improvement association, a representative of the North Dakota certified seed potato growers association, a representative of the North Dakota dry edible bean seed growers association, a representative of the North Dakota agricultural association, an elected member of the North Dakota potato council selected by the North Dakota potato council, a representative of the Red River valley potato growers association who is a North Dakota resident, a representative of

the North Dakota grain dealers association selected by the association's board of directors who also operates a state-approved seed conditioning plant selected by the board of directors of the North Dakota grain dealers association, and the agriculture commissioner, or the commissioner's designee, who shall serve as chairman. The associate dean and director of the experiment station, or the director's designee, of the college of agriculture of the North Dakota state university of agriculture and applied science is a voting member of the commission.

3. The commission shall meet a minimum of two times each calendar year and may hold special meetings at the call of the chairman or by request of any two members of the commission. ~~Members of the commission must be reimbursed for mileage and travel as specified in section 54-06-09 and expenses as specified in section 44-08-04 for attendance at regular and special meetings.~~ Each member of the commission is entitled to receive compensation at the rate of seventy-five dollars per day and reimbursement for expenses, as provided by law for state officers, for attending commission meetings. Compensation under this section may not be paid to any member who receives compensation or salary as a regular state employee or official. A commission member unable to attend a meeting of the commission may be represented by a proxy who has written authorization from ~~such~~ the absent commission member.
4. The commission shall appoint a qualified manager of the ~~seed~~ department who must be known as the state seed commissioner. The commission shall fix the salary of the commissioner within legislative appropriation ~~therefor~~. The commissioner's appointment must be reviewed annually by the commission, and the commissioner is subject to removal for cause. In the event of a vacancy in the office of ~~seed~~ the commissioner, the commission may appoint a temporary ~~state seed~~ commissioner to serve until ~~such time as~~ the appointment of a permanent commissioner is appointed. The ~~state seed~~ commissioner has responsibility for preparing the biennial budget and annual salary schedules ~~which that~~ must be approved by the commission ~~prior to~~ before submission to the state budget director. The commissioner is directly responsible to the commission and shall make semiannual reports to the commission and ~~such~~ any other reports as requested by the commission.

SECTION 4. AMENDMENT. Section 4-09-04 of the North Dakota Century Code is amended and reenacted as follows:

4-09-04. Official seal. The official seal of the ~~seed~~ department as recorded in the office of the secretary of state must be used exclusively in connection with the affairs of the ~~seed~~ department. The use of ~~such~~ the seal contrary to ~~the provisions of~~ this chapter or the commissioner's regulations is punishable as provided in section 4-09-24.

SECTION 5. AMENDMENT. Section 4-09-05 of the North Dakota Century Code is amended and reenacted as follows:

4-09-05. Rules and regulations - Authority to make Rulemaking and delegating authority. The commissioner may adopt rules ~~in conformance with the provision of~~ as authorized by chapter 28-32. The commissioner may delegate any duty or power of the commissioner to an agent.

SECTION 6. AMENDMENT. Section 4-09-06 of the North Dakota Century Code is amended and reenacted as follows:

4-09-06. Examination of seed by commissioner - Right of access to premises - ~~Publication of reports~~ - "Stop-sale" order.

1. The commissioner, ~~or the commissioner's agents,~~ shall may inspect, examine, ~~make analysis of~~ analyze, and test any seed sold, offered, or exposed for sale, held, or distributed within this state for planting purposes, at ~~such a~~ a time and place, and to ~~such an~~ an extent, as determined by the commissioner ~~may determine~~. ~~The~~
2. At a reasonable time, the commissioner ~~and the commissioner's agents,~~ ~~at all reasonable times,~~ have has the right of free access to the premises or structures controlled, owned, or operated by any person who may be, or whose seed, or the seed the person may be holding or storing or transporting, may be, investigated or proceeded against, and to any premises or structures or any kind of vehicle or conveyance where any seed may be located or in the process of transportation within the state, ~~when not prohibited by interstate commerce laws and rules, for the purpose of inspecting to inspect,~~ examining examine, and ~~sampling sample~~ any seed or seed ~~plants~~ plant.
3. Any person involved in any way in the handling, transportation, storage, buying, or selling of seed shall cooperate with the commissioner ~~and the commissioner's agents~~ and shall render all possible assistance to aid the commissioner ~~and the commissioner's agents~~ in the carrying out and enforcement of this chapter ~~and the rules adopted under this chapter~~. ~~The commissioner may publish, or cause to be published, the results of the examination, analyses, and tests of any samples of seed or mixtures of seed, together with any information the commissioner may deem advisable.~~
4. The commissioner ~~or the commissioner's agent~~ may issue and enforce a written ~~or printed~~ "stop-sale" order to the owner or custodian of any lot of ~~agricultural or vegetable seed which~~ that the commissioner ~~or the commissioner's agent~~ finds to be in violation of this chapter, ~~which~~. ~~The order shall prohibit further sale, conditioning, and movement of such the seed until the commissioner or the commissioner's agent has evidence that the law has been complied with and has issued a release from such "stop-sale" order has been issued. Provided, that in respect to seeds which have.~~ As to seed that has been denied sale, conditioning, and movement as provided in this section, the owner or custodian of such seeds has the right to appeal from the order to a court of competent jurisdiction in the locality in which the ~~seeds are~~ seed is found, praying for a judgment as to the justification of the order and for the discharge of ~~the seed from the order prohibiting the sale, conditioning, and movement~~ in accordance with the findings of the court. ~~This section subsection~~ does not limit the right of the commissioner ~~or the commissioner's agent~~ to proceed as authorized by other sections of this chapter.

SECTION 7. AMENDMENT. Section 4-09-06.1 of the North Dakota Century Code is amended and reenacted as follows:

4-09-06.1. Inspection - Export certification - Fees. The commissioner ~~of the commissioner's authorized representative~~ may inspect agricultural seed, flower seed, vegetable seed, tree and shrub seed, and Irish potato tubers when the seed or tubers are offered for export. The commissioner may issue a phytosanitary certificate to plant quarantine officials and may make reasonable charges for this service. ~~Certificates~~ The commissioner may be withheld withhold the certificate if the product does not meet sanitary requirements and if all state licensing and bonding requirements ~~have not been met~~. The name and address of the consignee on the phytosanitary certificate is confidential.

SECTION 8. AMENDMENT. Section 4-09-07 of the North Dakota Century Code is amended and reenacted as follows:

4-09-07. Official laboratories - Location - Certificates and reports - Publication. ~~The commissioner, subject to the approval and supervision of the state seed commission, shall provide and maintain under the commissioner's direction necessary laboratories and facilities properly equipped to make analyses, tests, and variety and disease determinations of seeds and plants, and to effect such other results and work as may be necessary to carry out this chapter. For these purposes, the commissioner may utilize such premises, space, and equipment at the North Dakota state university of agriculture and applied science as may be assigned to the commissioner by the state board of higher education. The commissioner, subject to the approval of the state board of higher education, shall permit the facilities and services of the official laboratories to be used by the university at convenient times.~~

1. When a report or certificate relating to the findings and determinations made in a laboratory is issued and signed by the commissioner ~~or a duly authorized agent, it, the document~~ must be accepted as prima facie evidence of the statements ~~therein contained in the document~~, but the commissioner ~~or the commissioner's analysts are~~ is subject to court order for a review of findings as set forth ~~by such certificates or reports in the document.~~
2. The commissioner may publish reports or explanatory material concerning seed or inspections, tests, analyses, or other determinations made by the commissioner and may ~~enlarge expand~~ the same with material setting forth the value or condition of the seed stocks which are produced in this state or in which North Dakota persons are interested. The commissioner also may publish lists of certified seed.

SECTION 9. AMENDMENT. Section 4-09-08 of the North Dakota Century Code is amended and reenacted as follows:

4-09-08. Public laboratory service - Fees for tests. The commissioner shall accept samples submitted ~~to the state laboratory~~ for testing and shall determine the types of tests to be conducted on the samples. The commissioner, with the approval of the ~~seed~~ commission, shall establish and charge fees for laboratory tests and services.

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

4-09-10. Labeling requirements for agricultural seed.

1. Each container of agricultural seed which is sold, offered for sale, exposed for sale, transported for sale, or held in storage with the intent

to sell for planting purposes within this state must bear ~~thereon~~ or have attached ~~thereto~~ in a conspicuous place, or there must be properly delivered with bulk sales or movements of ~~said~~ agricultural seed; a conspicuous, plainly written or printed label or tag in the English language giving with the following information required by this section, which ~~statement~~ may not be modified or denied in the labeling or on another label attached to the container.

4. a. 2. In ~~seeds~~ seed of wheat, durum, barley, oats, rye, soybeans, field pea, dry beans, and flax, the label must contain the commonly accepted name of the kind and variety of each agricultural seed component in excess of five percent of the whole and the percentage by weight of each. Variety identification is not required for seeds labeled "for vegetative cover only". Seed listed in this subsection may be sold by brand if the true variety name or number is clearly stated on the label in a type size equal to or greater than the brand.
- b. 3. In ~~seeds~~ seed of canola, the label must contain a statement that the seed ~~must be~~ is certified by the commissioner as meeting the standards of this chapter or ~~have been~~ certified by another state or province having certification standards for canola which meet or exceed standards adopted by this chapter.
- c. 4. In all other ~~seeds~~ seed not named in ~~subdivisions~~ subsections 2 and 3, the label must contain the commonly accepted name of the kind or the kind and variety of each agricultural seed component in excess of five percent of the whole and the percentage of weight of each.
- d. 5. When more than ten percent of the whole consists of an aggregate of agricultural seed components, each present in an amount not exceeding five percent of the whole, the label must contain each component in excess of one percent of the whole ~~must be~~ named together with the percentage by weight of each. ~~All components~~ Each component must be listed in the order of ~~their~~ its predominance. ~~Where~~ When more than one component is named, the word "mix", "mixed", "mixture", or ~~the word "mixed", "blend"~~ must be ~~shown conspicuously on the label~~ appropriately stated with the name of the mixture or blend.
2. 6. For each container of agricultural seed, the label must contain:
 - a. Lot number or other lot identification.
 3. ~~Origin~~ The origin, state or foreign country, where grown. If the origin is unknown, that fact must be stated.
 4. ~~Percentage~~ The percentage by weight of all weed ~~seeds~~ seed.
 5. ~~d.~~ The name and rate of occurrence per pound [453.59 grams] of each kind of restricted noxious weed ~~seeds~~ seed present, if the restricted noxious weed ~~seeds~~ seed is present singly or collectively in amounts:
 - a. ~~In~~ in seeds of grasses and small seeded legumes; in excess of thirteen seeds per pound [453.59 grams]; ~~and, or~~

- b. ~~In~~ in other agricultural seeds, including the cereals, oil seed crops, millets, and seeds of similar size, in excess of five seeds per pound [453.59 grams].
6. e. ~~Percentage~~ The percentage by weight of agricultural seed ~~which that~~ may be designated as crop seed, other than those required to be named on the label.
7. f. ~~Percentage~~ The percentage by weight of inert matter.
8. ~~For each agricultural seed:~~
- a. g. ~~Percentage~~ The percentage of germination for each agricultural seed, exclusive of hard seed. ~~Total; the percentage of hard seed if present for each agricultural seed; and if desired the total germination and hard seed may be stated as such, if desired for each agricultural seed.~~
- b. ~~Percentage of hard seed, if present. Total germination and hard seed may be stated as such, if desired.~~
- e. ~~The~~ In addition, the calendar month and year the test was completed to determine ~~such these~~ percentages.
9. h. The full name and address of the person who labeled ~~said the~~ seed, or who sells, offers for sale, or exposes ~~said the~~ seed for sale within this state.
10. i. ~~For~~ If the seed is treated seeds as defined in this chapter, for which a separate label may be used:
- a. A, a word or statement indicating that the seed has been treated;
- b. ~~The~~ the commonly accepted, coined, chemical or abbreviated chemical (generic) name of the applied ~~seed protectant pesticide substance~~; and
- e. If if the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement ~~such as "Do not prohibiting use for food or, feed, or oil purposes".~~ The caution and for mercurials and similar toxic substances must be a poison statement or symbol. If the seed is treated with an inoculant, the label must contain the date beyond which the inoculant is not to be considered effective.
11. j. ~~That the~~ The seed container ~~itself~~ is a hermetically sealed container as defined by rules adopted by the commissioner.
12. k. A disease test result for seedborne diseases. ~~For the purpose of this subsection, the words "disease test result" have the meaning ascribed to them by rules adopted by the commissioner.~~

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

4-09-11. Labeling requirements for vegetable seed.

1. Each container of vegetable seed which is sold, offered for sale, exposed for sale, transported for sale, or held in storage with the intent to sell for sowing planting purposes within this state shall must bear thereon, or have attached thereto, in a conspicuous place a plainly written or printed label or tag in the English language with the information required by this section, which may not be modified or denied in the labeling.
4. 2. For vegetable seeds seed in containers of one pound [-45 kilograms] or less, such label or tag must give the following information packets as prepared for use in home gardens or household plantings or vegetable seed in preplanted containers, mats, tapes, or other planting devices:
 - a. The name of kind and variety of seed.
 - b. Lot identification by lot number or other means.
 - c. For seeds which germinate seed that germinates less than the standards as set forth in section 201.31 of the rules and regulations under the Federal Seed Act, "Service and Regulatory Announcement No. 156", and subsequent revisions:
 - (1) Percentage standard established by the commissioner, the percentage of germination, exclusive of hard seed.
 - (2) Percentage; the percentage of hard seed, if present.
 - (3) The calendar month and year the test was completed.
 - (4) The; and the words "below standard" in not less than eight point eight-point type.
 - e. d. The full name and address of the person who labeled said the seed, or who sells, offers for sale, or exposes said the seed for sale within this state.
 - d. For treated seed as defined in this chapter for which a separate label may be used:
 - (1) A word or statement indicating that the seed has been treated.
 - (2) The commonly accepted, coined, chemical or abbreviated chemical (generic) name of the applied substance.
 - (3) If the substance in the amount present with the seed is harmful to human or other vertebrate animals a caution statement such as "Do not use for feed or feed or oil purposes". The caution for mercurials and similar toxic substances must be a poison statement or symbol.
 - e. That the seed container itself is a hermetically sealed container. For the purposes of this subsection, the words "hermetically sealed container" have the meaning ascribed to them by regulation promulgated by the state seed commissioner. The calendar month and year the germination test was completed and a statement

stating the sell by date that may be no more than twelve months from the date of test, exclusive of the month of test, or the percentage germination and the calendar month and year the test was completed to determine the percentage if the germination test was completed within twelve months, exclusive of the month of test.

- f. For seeds placed in a germination medium, mat, tape, or other device in a way as to make it difficult to determine the quantity of seed without removing the seed, a statement to indicate the minimum number of seeds in the container.

2. 3. For vegetable seeds seed in containers of more than one pound [45 kilograms], such label or tag must give the following information other than packets prepared for use in home gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices:

- a. The name of each kind and variety of vegetable seed present in excess of five percent and the percentage by weight of each in order of its predominance.
- b. Lot number or other lot identification.
- c. Origin, meaning the state or foreign country where grown. If the origin is unknown, that fact must be stated.
- d. The name and rate of occurrence per pound [45 kilograms] of each kind of restricted noxious weed seeds present.
- e. For each named vegetable seed:
- (1) Percentage, the percentage of germination, exclusive of hard seed. Total, and the percentage of hard seed if present, and if desired, the total germination and hard seed may be stated as such, if desired.
 - (2) Percentage of hard seed, if present. Total germination and hard seed may be stated as such, if desired.
 - (3) The In addition, the calendar month and year the test was completed to determine such these percentages.
- f. d. The full name and address of the person who labeled said the seed, or who sells, offers for sale, or exposes said seed for sale within this state.
- e. The labeling requirements for vegetable seed in a container of more than one pound [45 kilogram] are satisfied if the seed is weighed from a properly labeled container in the presence of the purchaser.

g. 4. For vegetable seed in any size container, the label for treated seed as defined in this chapter, for which a separate label may be used:

- (1) ~~A,~~ must contain a word or statement indicating that the seed has been treated.
 - (2) ~~The;~~ the commonly accepted, coined, chemical or abbreviated chemical (~~generic~~) name of the applied substance.
 - (3) ~~If;~~ and if the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement such as "Do not prohibiting use for food or, feed, or oil purposes". ~~The caution~~ and for mercurials and similar toxic substances ~~shall be~~ a poison statement or symbol. If the seed is treated with an inoculant, the label must contain the date beyond which the inoculant is not to be considered effective.
- ~~h.~~ 5. The labeling requirements for vegetable ~~seeds~~ seed in containers of more than one pound [~~.45 kilograms~~ kilogram] are deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser.
- ~~i.~~ 6. ~~That~~ For vegetable seed in any size container, the label must state the seed container itself is a hermetically sealed container. For the purposes of this subsection, the words "hermetically sealed container" have the meaning ascribed to them by regulation promulgated by the state seed commissioner.

SECTION 12. AMENDMENT. Section 4-09-11.1 of the North Dakota Century Code is amended and reenacted as follows:

4-09-11.1. Labeling requirements for flower ~~seeds~~ seed.

- 1. Each container of flower ~~seeds~~ which seed that is sold, offered for sale, exposed for sale, or transported within this state for ~~sowing~~ planting purposes, ~~shall must~~ bear thereon or have attached thereto in a conspicuous place a, plainly written or printed label or tag in the English language, giving with the following information required by this section, which statement may not be modified or denied in the labeling or on another label attached to the container.
- ~~4.~~ 2. For all flower ~~seeds~~:
 - ~~a.~~ A seed, the label must contain a word or statement indicating whether the seed has been treated.
 - ~~b.~~ The; the commonly accepted coined, chemical, or abbreviated chemical (~~generic~~) name of the applied substance or description of the process used.
 - ~~c.~~ If; and if the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement such as "Do not prohibiting use for food, feed, or oil purposes". ~~The caution~~ and for mercurials and similarly toxic substances ~~must~~ be a poison statement and symbol.

- e. If the seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective (~~date of expiration~~).
2. 3. For flower ~~seeds~~ seed in packets prepared for use in home gardens or household plantings or flower ~~seeds~~ seed in preplanted containers, mats, tapes, or other planting devices, the label must contain:
- a. For all kinds of flower ~~seeds~~:
 - (1) ~~The seed,~~ the name of the kind and variety or a statement of type and performance characteristics as ~~prescribed in the rules and regulations promulgated under the provisions of this chapter.~~
 - (2) ~~The~~ required by the commissioner, the calendar month and year the seed was tested or the year for which the seed was packaged.
 - (3) ~~The,~~ and the name and address of the person who labeled ~~said the~~ seed; or who sells, offers, or exposes ~~said the~~ seed for sale within this state.
 - b. For ~~seeds~~ seed of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard last established under ~~the provisions of~~ this chapter:
 - (1) ~~Percentage,~~ the percentage of germination exclusive of hard seeds.
 - (2) ~~The and the~~ words "below standard" in not less than eight-point type.
 - c. For ~~seeds~~ seed placed in a germination medium, mat, tape, or other device ~~in such a way so~~ as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container.
3. 4. For flower ~~seeds~~ seed in containers other than packets prepared for use in home flower gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices the label must contain:
- a. The name of the kind and variety or a statement of type and performance characteristics as prescribed in rules and regulations promulgated under the provisions of this chapter.
 - b. The lot number or other lot identification.
 - c. The calendar month and year that the seed was tested or the year for which the seed was packaged.
 - d. The name and address of the person who labeled ~~said the~~ seed or who sells, offers, or exposes ~~said the~~ seed for sale within this state.

- e. For those kinds of seed for which standard testing procedures are prescribed:
 - (1) ~~Percentage~~, the percentage germination exclusive of hard seed-
 - (2) ~~Percentage~~ and the percentage of hard seed, if present.

SECTION 13. AMENDMENT. Section 4-09-11.2 of the North Dakota Century Code is amended and reenacted as follows:

4-09-11.2. Labeling requirements for tree and shrub seeds.

1. Each container of tree and shrub seed which is sold, offered for sale, or exposed for sale, or transported within this state for ~~sowing~~ planting purposes, must bear ~~thereon~~ or have attached ~~thereto~~ in a conspicuous ~~place a~~, plainly ~~written~~ or printed label ~~or tag~~ in the English language, giving the ~~following~~ information required by this section, which ~~statement must~~ may not be modified or denied in the labeling ~~or on another label attached to the container~~, except that labeling of seed supplied under a contractual agreement may be by invoice accompanying the shipment or by an analysis tag attached to ~~said~~ the invoice if each ~~bag or other~~ container is clearly identified by a lot number stenciled on the container or if the seed is in bulk. ~~Each bag or container that is not so identified must carry complete labeling:~~
4. 2. For all tree and shrub ~~seeds~~ seed, the label must contain:
 - a. A word or statement indicating whether the seed has been treated-
 - b. ~~The~~; the commonly accepted coined, chemical, or abbreviated chemical (~~generic~~) name of the applied substance or description of the process used-
 - e. ~~If~~; and if the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement ~~such as "Do not prohibiting~~ use for food or, feed, or oil purposes". ~~The caution~~ and for mercurials and similarly toxic substances ~~must be~~ a poison statement and symbol.
 - d. If the seed has been treated with an inoculant, the date beyond which the inoculant is not to be considered effective (~~date of expiration~~).
2. For all tree and shrub seeds subject to this chapter:
 - a. ~~b.~~ The common name of the species of seed (and subspecies, if appropriate).
 - b. c. The scientific name of the genus and species (and subspecies, if appropriate).
 - e. ~~d.~~ The lot number or other lot identification.
 - d. Origin:

- (1) ~~e.~~ e. ~~For The origin for~~ seed collected from a predominately indigenous stand; as identified by the area of collection the trees are growing and collected given by latitude and longitude, ~~or~~ geographic description, or political subdivision ~~such as state or county.~~
- (2) ~~For and for~~ seed collected from other than a predominantly indigenous stand; identify as identified by the area of collection and the origin of the stand place from which the seeds or plants were originally introduced or state "origin not indigenous".
- ~~e.~~ f. The elevation or the upper and lower limits of elevations within which ~~said~~ the seed was collected.
- ~~f.~~ g. ~~Purity~~ The purity as a percentage of pure seed by weight.
- ~~g.~~ h. For those species for which standard germination testing procedures are prescribed, the ~~following~~:
- (1) ~~Percentage~~ percentage germination exclusive of hard seed-
- (2) ~~Percentage~~; the percentage of hard seed, if present-
- (3) ~~The; and the~~ and the calendar month and year test was completed to determine ~~such~~ the percentages.
- ~~h.~~ In lieu of ~~paragraphs 1, 2, and 3 of this subdivision g,~~ the seed may be labeled "Test is in process, results will be supplied upon request".
- ~~i.~~ For those species for which standard germination testing procedures have not been prescribed, the calendar year in which the seed was collected.
- ~~j.~~ i. The name and address of the person who labeled ~~said~~ the seed or who sells, offers, or exposes ~~said~~ the seed for sale within this state.

SECTION 14. AMENDMENT. Section 4-09-12 of the North Dakota Century Code is amended and reenacted as follows:

4-09-12. Invoice and records. Each person whose name appears on the label ~~handling agricultural, vegetable, flower, or tree and shrub seeds subject to this chapter,~~ and handles seed shall keep for a period of ~~two~~ three years complete records of each lot of seed handled, and shall keep ~~for a period of one year~~ a file sample of each lot of seed for a period of one year after final disposition of ~~said~~ the lot. All records pertaining to the lot ~~or lots~~ involved must be accessible for inspection by the commissioner ~~or his agents~~ at any time during customary business hours.

SECTION 15. AMENDMENT. Section 4-09-13 of the North Dakota Century Code is amended and reenacted as follows:

4-09-13. Tolerances. The tolerances used in determining correctness and accuracy in labeling seed as described in this chapter must be those tolerances used under the Federal Seed Act of August 9, 1939 [53 Stat. 1275; 7 U.S.C. 1551 et seq.], and subsequent amendments as of ~~December 31~~ June 30, 2002 ~~2005~~, except that

the tolerance for yellow starthistle must be zero and the commissioner may, by rule, establish tolerances that are more strict than the Federal Seed Act tolerances.

SECTION 16. AMENDMENT. Section 4-09-14 of the North Dakota Century Code is amended and reenacted as follows:

4-09-14. Prohibitions.

1. ~~It is unlawful for any~~ A person to may not sell, offer for sale, expose for sale, transport for sale, or hold or store with the intent to sell, any agricultural, vegetable, flower, or tree and shrub seed within this state ~~if:~~
 - a. ~~The~~ Unless for agricultural seed, a test to determine the percentage of germination required under sections section 4-09-10, 4-09-11, 4-09-11.1, and 4-09-11.2 has not been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to the sale, offering for sale, or transportation, provided that seeds contained in a hermetically sealed container, as defined by regulation issued by the seed commissioner, may be sold, transported for sale, or held for sale unless the test provided in this subdivision has not been completed within a thirty-six-month period, exclusive of the calendar month in which the test was completed, immediately prior to the sale, offering for sale, or transportation for sale or the seed is offered for sale beyond the sell by date exclusive of the calendar month in which the seed was to have been sold;
 - b. Unless for flower, vegetable, native grass, or forb seed, a test to determine the percentage of germination required under sections 4-09-10, 4-09-11, and 4-09-11.1 has been completed within a twelve-month period, exclusive of the calendar month in which the test was completed;
 - c. Unless for cool season lawn and turf grasses, including Kentucky bluegrass, red fescue, chewings fescue, hard fescue, tall fescue, perennial rye grass, intermediate rye grass, annual rye grass, colonial bent grass, creeping bent grass, and mixtures or blends of those grasses, a test to determine the percentage of germination has been completed within a fifteen-month period, exclusive of the calendar month in which the test was completed;
 - d. Unless for tree, shrub, agricultural, flower, wildflower, or vegetable seed packaged in a hermetically sealed container under conditions as defined by the commissioner, a test to determine the percentage of germination has been completed within a thirty-six month period after the last day of the month that the seed was tested for germination before packaging. However, if seed in a hermetically sealed container is offered for sale more than thirty-six months after the last day of the month in which the seed was tested before packaging, the seed must be retested within a twelve-month period, exclusive of the calendar month in which the retest was completed;
 - b. e. ~~The~~ If the seed is not labeled in accordance with the provisions of this chapter or bears false or misleading labeling;

- e. ~~f.~~ ~~There~~ If there has been false or misleading advertising in connection with the seed;
 - ~~d.~~ ~~g.~~ ~~The~~ If the seed contains prohibited noxious weed seeds;
 - e. ~~h.~~ ~~With regard to~~ Unless for agricultural or vegetable seed, the seed is ~~not~~ labeled to show the rate of occurrence of restricted noxious weed seeds, as required under sections 4-09-10 and 4-09-11;
 - f. ~~i.~~ ~~The~~ If the seed is designated, offered, represented, or advertised under any name or identification other than ~~that~~ the name by which ~~#~~ the seed was known originally;
 - ~~g.~~ ~~j.~~ ~~The~~ If the seed contains restricted noxious weed seeds in excess of twenty-five seeds per pound [453.59 grams]; or
 - ~~h.~~ ~~k.~~ ~~The~~ If the percentage by weight of all weed seeds in the seed exceeds one percent.
2. Any person, ~~under rules adopted by the commissioner,~~ may submit to the commissioner a sample of any seed which the person claims to be a new variety, distinct from any commonly known variety of the seed, together with a proposed, distinctive name. The commissioner, within one year, shall make any ~~tests~~ test the commissioner considers necessary, and if the commissioner finds as a result of the ~~tests~~ test that the seed or plant is of a new variety, distinct from any known variety of the seed and that the proposed name will properly distinguish the seed from any and all other varieties, the commissioner shall issue to the applicant a permit to designate the seed by the proposed name.
3. The purchaser, vendor, or any person receiving any seed shipped into this state from without the state, shall have the same labeled in accordance with this chapter. Certain standardized grades and labeling of seed in use elsewhere may be permitted by the commissioner in connection with shipments of seed into this state from points outside this state in lieu of the labeling provided for in this chapter.
- ~~2.~~ 4. ~~It is unlawful for any~~ A person in this state ~~to~~ may not:
- a. Detach, alter, deface, or destroy any label provided for in this chapter or to alter or substitute seed in any manner with the intent to defeat the purpose of this chapter;
 - b. Disseminate any false or misleading advertisement concerning agriculture or vegetable seed in any manner or by any means;
 - c. Hinder or obstruct in any way any authorized person in the performance of the person's duties under this chapter;
 - d. Fail to comply with a "stop-sale" order;
 - e. Use on seed labels or tags, or to use or attach to literature, or to state in any manner or form of wording designed as a "disclaimer" or "nonwarranty" clause with the intent to disclaim responsibility of the vendor of the seed for the data on the label required by law;

- f. Use the words "type" or "trace" on any labeling in connection with the name and description of any agricultural and vegetable seed;
- g. Move or otherwise handle or dispose of any lot of seed held under a "stop-sale" order, except with the written permission of the commissioner ~~or the commissioner's agent~~, and only for the purpose specified in ~~such~~ this written permission;
- h. Use the name of the ~~state seed~~ department or the name of the official laboratory for advertising purposes in connection with seed analyzed or tested by the department or official laboratory, except in the case of registered or certified seed; or
- i. Plant any seed labeled "for vegetative cover only" with the intent to harvest for seed or grain.

SECTION 17. AMENDMENT. Section 4-09-14.1 of the North Dakota Century Code is amended and reenacted as follows:

4-09-14.1. Seed sales - Seed labeling fee permit - Exception. ~~No~~ A person may not label agricultural, vegetable, flower, or tree or shrub seed within, or for delivery within, this state unless a seed labeling fee permit has been obtained from the ~~seed department~~ commissioner and has been issued to the labeler pursuant to section 4-09-14.4.

SECTION 18. AMENDMENT. Section 4-09-14.4 of the North Dakota Century Code is amended and reenacted as follows:

4-09-14.4. Permit. ~~The commissioner is authorized at the commissioner's discretion, under such rules as may be promulgated, to~~ may issue a permit to any person to label agricultural, vegetable, flower, and tree and shrub seeds in North Dakota. The person shall apply to the commissioner for a permit and shall furnish the ~~seed department~~ commissioner with an annual statement of all seeds sold in ~~North Dakota~~ this state when requested by the ~~seed~~ commissioner. Statements that must be furnished for each reporting period; must be delivered to the commissioner not later than thirty-one days after the end of each reporting period; and must be accompanied by the appropriate fee. A penalty fee of ten dollars, or five percent of the total amount due, whichever is greater, will be assessed for reports that are not postmarked within thirty-one days after the end of the reporting period. Any person to whom a permit is granted shall show ~~such~~ any information in connection ~~therewith~~ with the permit as the commissioner may require as part of the label on all seed sold. ~~The commissioner or the commissioner's authorized agent~~ has the right at all reasonable times to examine the records of any permitholder to verify the correctness of its statements.

SECTION 19. AMENDMENT. Section 4-09-15 of the North Dakota Century Code is amended and reenacted as follows:

4-09-15. Exemptions. ~~Sections 4-09-10, 4-09-11, 4-09-11.1, 4-09-11.2, 4-09-14.1, 4-09-14.2, 4-09-14.3, and 4-09-14.4 shall~~

1. This chapter does not apply to:
 - ~~4.~~ a. Potatoes, whether sold or intended for food, manufacturing, or planting purposes.

- 2- b. Seed or grain that is not intended for planting purposes.
- a- The seller shall indicate on a form provided by the seller the purpose for which the seed or grain is purchased. The form must be available for inspection by the ~~seed department~~ commissioner.
- b- It is unlawful for the seller or buyer to make a false representation as to the use of the seed or grain.
- e- A farmer selling the farmer's own seed or grain to a commercial establishment is exempt from the recordkeeping requirements of this subsection.
- 3- c. Seed stored by or consigned to a seed cleaning or conditioning plant for the purpose of cleaning or conditioning; ~~provided that,~~ However, any labeling or other representation ~~which may be made~~ with respect to uncleaned or unconditioned seed is subject to the requirements of this chapter.
- 4- d. A common carrier with respect to any seed transported or delivered for transportation in the ordinary course of business.
- 5- e. A farmer who grows ~~his~~ the farmer's own seed and sells only ~~his~~ the farmer's own seed and does not advertise or use a third party as an agent or broker to bring buyer and seller together. ~~No~~ However, a variety for which a certificate plant variety protection has been applied for or issued is not exempt from this chapter.
2. A person ~~shall be~~ is not subject to the penalties of this chapter for having sold, exposed for sale, or transported for sale in this state any agricultural, vegetable, flower, or tree and shrub ~~seeds which were~~ seed that was incorrectly labeled or incorrectly represented as to kind, variety, or origin and which could not be identified ~~by~~ through examination ~~thereof,~~ unless ~~such~~ the person has failed to obtain an invoice or grower's declaration stating the kind, or kind and variety, and origin, if required, or has failed to take ~~such~~ other precautions as may have been necessary to ensure that the seed was properly identified.

SECTION 20. AMENDMENT. Section 4-09-16 of the North Dakota Century Code is amended and reenacted as follows:

4-09-16. Certified seed. The commissioner shall:

1. Establish a seed certification system for this state and adopt rules governing application for service, acceptance of suitable seed stocks for the production of a foundation, registered, certified, or inspected crop, field inspection, bin inspections, harvesting, handling, storage, conditioning, and preparation and handling of ~~such~~ the seed for market.
2. Designate kinds, varieties, and names of seed stocks, and establish standards of quality, degree of disease infection, and amounts of any admixtures, foreign seeds, noxious weeds, or other weed seeds that are allowed in any lot or stock of seed, which may be or become eligible for field inspection or for final certification of the seed crop.

3. Prescribe all labels, seals, certificates, or similar statements that must be used for, or in relation to, any seed, or the various kinds and qualities grown, handled, stored, held for sale, sold, or offered or exposed for sale in this state as "breeders", "foundation", "registered", or "certified" seed, and shall specify what words, terms, or figures ~~such~~ the labels, seals, certificates, or the containers of ~~such~~ the seed must bear.
4. Cooperate with the managers of any seed conditioning plants, or any commercially established seed firm, or any person within or outside of the state having proper facilities and equipment to store, condition, and otherwise handle seed which is eligible for certification, for the purposes of handling and marketing "breeders", "foundation", "registered", or "certified" seed.
5. Cooperate in the selection, testing, and growing of seed for certification purposes and in the arrangement for increase of foundation seed stocks suitable for the production of certified seed.
6. Establish an equitable schedule of fees and charges, which must be uniform throughout the state, for inspecting, testing, analyzing, and recording ~~such~~ the seed, and for other work and duties incident to the growing, handling, marketing, and certifying of North Dakota seed, and shall collect all ~~such~~ the fees and charges.

SECTION 21. AMENDMENT. Section 4-09-17.1 of the North Dakota Century Code is amended and reenacted as follows:

4-09-17.1. Plant Variety Protection Act. Any seed advertised, offered for sale, or sold by variety name and for which a certificate of plant variety protection has been issued under the Plant Variety Protection Act, as amended, [Pub. L. 91-577; 84 Stat. 1551; 7 U.S.C. 2481 et seq., effective as of July 1, ~~2004~~ 2005], as being for sale only as a class of certified seed must be certified by an official seed certifying agency in order for the seed to be advertised, offered for sale, or sold by variety name in the state of North Dakota. Seed from a certified lot may be labeled as to variety name when used in a blend or mixture by or with approval of the owner of the variety.

SECTION 22. AMENDMENT. Section 4-09-18 of the North Dakota Century Code is amended and reenacted as follows:

4-09-18. Certified seed standards.

1. The rules and requirements for certification of crop seeds, other than potatoes, must be ~~those prescribed and set forth~~ published in the ~~state seed department bulletin number 54, published in March 1945, and subsequent announcements and revisions of the bulletin.~~
2. The rules and requirements for seed potato certification must be ~~those prescribed and set forth~~ published in the ~~state seed department bulletin number 49 as revised in August 1950, and subsequent announcements and revisions of the bulletin.~~

SECTION 23. AMENDMENT. Section 4-09-20.1 of the North Dakota Century Code is amended and reenacted as follows:

4-09-20.1. Liability of seed commission, seed department, commissioner, and certified or noncertified agricultural seed producers. ~~No warranties~~ A warranty of any kind, either expressed or implied, including ~~warranties~~ a warranty of merchantability, fitness for a particular purpose, or absence of disease, ~~are~~ is not made by the ~~state seed~~ commission, the ~~seed~~ department, the commissioner ~~or the commissioner's employees~~, or certified or noncertified agricultural seed producers as to the quantity or quality of the crop produced from the agricultural seeds or as to other produce which is inspected and certified, except as provided in this section. The ~~only~~ sole warranty made is that the agricultural seeds or other produce were produced, graded, packed, and inspected under the rules of the ~~state seed~~ department or United States department of agriculture. The commissioner ~~and the commissioner's employees function~~ functions and ~~serve~~ serves only in an official regulatory manner.

SECTION 24. AMENDMENT. Section 4-09-20.2 of the North Dakota Century Code is amended and reenacted as follows:

4-09-20.2. Seed arbitration board - Petition - Arbitration hearing.

1. The state seed arbitration board consists of the agriculture commissioner, the state seed commissioner, the director of the North Dakota state university extension service, the director of the North Dakota agricultural experiment station, the chairman of the North Dakota seed trade committee of the North Dakota agriculture association, and a representative of a major North Dakota farm organization appointed by the agriculture commissioner or an authorized designee. Each board member is entitled to receive as per diem compensation sixty-two dollars and fifty cents, and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the board, except that compensation under this subsection may not be paid to any member who receives compensation or salary as a regular state employee or official. Compensation and expenses for board members who do not receive compensation or salary as a regular state employee or official must be paid by the department of agriculture.
2. A seed labeler, seed dealer, or seed customer may petition the agriculture commissioner in writing for a hearing to settle a dispute involving a seed transaction. The agriculture commissioner shall submit the dispute to the seed arbitration board, and the board shall arbitrate the dispute. The board, within thirty days after the hearing, shall make a nonbinding recommendation for the resolution of the dispute. Evidence presented to the board and any findings or recommendations by the board are admissible as evidence in any subsequent proceeding. The board shall adopt rules and procedures for arbitration proceedings, including a formula for reimbursement by the parties of the expenses of the arbitration process.

SECTION 25. AMENDMENT. Section 4-09.1-02 of the North Dakota Century Code is amended and reenacted as follows:

4-09.1-02. Seed commissioner Commissioner - Duties. The commissioner may establish commodity grades and inspection services for the purpose of making inspection and otherwise providing for the proper handling and marketing of ~~the agricultural commodities defined in this chapter and may adopt rules necessary for and consistent with the provisions of this chapter.~~ The

commissioner shall appoint a chief inspector and other ~~agents, inspectors, assistants, and clerical aides~~ employees as are necessary to assist, represent, and act for the commissioner in carrying out the provisions of this chapter. The commissioner shall fix the salaries of employees of the commission within the limits of legislative appropriations therefor.

SECTION 26. AMENDMENT. Section 4-09.1-04 of the North Dakota Century Code is amended and reenacted as follows:

4-09.1-04. Cooperation with departments and bureaus. The commissioner may cooperate with the United States department of agriculture or any bureau or division thereof of the department, and with a similar state inspection service departments of the several states, and with any person, with the intent and purpose that the grade inspection service in this state, and so that any or all of the grade certificates issued on North Dakota the commodities, must be in this state are officially recognized and accepted elsewhere in the United States, and to protect and promote the interests of any and all persons each person having an interest in the commodities grown or handled in this state, and to provide for any necessary joint arrangements to further the purpose of this chapter.

SECTION 27. AMENDMENT. Section 4-25-01 of the North Dakota Century Code is amended and reenacted as follows:

4-25-01. Definitions Definition of agricultural seed. In this chapter unless the context or subject matter otherwise requires:

- 1- ~~The, the~~ term "agricultural seed" includes seeds of grass, forage, cereals, fiber, and oil crops, and any other kinds of seeds commonly recognized within this state as agricultural or field seeds and mixtures of such these seeds for sowing or planting purposes.
- 2- "Person" means any individual, partnership, corporation, limited liability company, company, society, or association, except a farmer resident of North Dakota who may sell seed of that person's own production.

SECTION 28. AMENDMENT. Section 4-25-02 of the North Dakota Century Code is amended and reenacted as follows:

4-25-02. Prohibitions. It is unlawful for any

1. A person in this state ~~to may not~~ accept full or partial payment in connection with the sale of any agricultural seeds to be delivered to the buyer at a later date, unless each ~~and every~~ transaction is accompanied by a written sales agreement or contract ~~which must contain thereon that contains~~ the following provisions:
 - 1- a. The date and place of the transaction.
 - 2- b. The signature and address of the buyer and the seller or the agent acting for the seller.
 - 3- c. The number of units and the price per unit.
 - 4- d. The total value of the transaction.

- 5- e. The total amount of the full or partial payment made to the seller by the buyer.
 - 6- f. The kind and variety of seed for wheat, durum, barley, oats, rye, flax, soybeans, field pea, and edible beans.
 - 7- g. The class of the seed to be delivered, and if the seed is not certified, then the minimum germination and seed purity percentages must be stated. If the seed is certified, the words "breeders", "foundation", "registered", or "certified", as the case may be, must be shown.
 - 8- h. The date of delivery or the latest date at which delivery is to be made.
 - 9- i. The place of delivery.
2. Any provision in any written order or contract, which is contrary to any of the provisions of this section hereby is declared to be against public policy and void.

SECTION 29. AMENDMENT. Section 4-25-03 of the North Dakota Century Code is amended and reenacted as follows:

4-25-03. Penalty. Any person violating ~~the provisions of sections 4-25-01 and section~~ 4-25-02 is guilty of a class B misdemeanor.

SECTION 30. AMENDMENT. Section 4-25-04 of the North Dakota Century Code is amended and reenacted as follows:

4-25-04. Repurchase contracts - Bonding requirement for nonresident seed dealers Nonresident seed dealer license. Any nonresident person or that person's agent shall pay an annual license fee of twenty-five dollars to the commissioner before engaging in the business of selling any agricultural grain or grass seed and entering into any contract with a purchaser whereby that person agrees to purchase or retains an option to purchase the grain or grass seed or feed grain produced. The license is renewable annually on January first of each year. At the time of applying for a license, the applicant shall furnish a corporate surety bond to be approved by the commissioner in the penal sum of ten thousand dollars running to the state of North Dakota for the use and benefit of any such purchaser of seed or seller under a repurchase contract or option, who may have a claim for relief against any seller or repurchaser who fails to comply with the terms of the purchase or repurchase contract. All fees collected under this section must be deposited in the seed department revolving fund. Any nonresident person engaged in the business in selling agricultural seed directly to the consumer in this state shall submit an annual application for a nonresident seed dealer license and submit an annual license fee, in an amount determined by the commission, to the state seed commissioner. A list of agents representing the nonresident company in this state must accompany the application.

SECTION 31. REPEAL. Sections 4-09-03.1, 4-09-10.1, and 4-09-14.3 of the North Dakota Century Code are repealed.

Approved April 8, 2005
Filed April 12, 2005

CHAPTER 61**SENATE BILL NO. 2277**

(Senators Flakoll, Christmann, Klein)
(Representatives Berg, Brandenburg, Nicholas)

**POLITICAL SUBDIVISION SEED REGULATION
PROHIBITED**

AN ACT to create and enact a new section to chapter 4-09 of the North Dakota Century Code, relating to limitations on regulation of seed by political subdivisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-09 of the North Dakota Century Code is created and enacted as follows:

Limitation on authority of political subdivisions regarding seed. A political subdivision, including a home rule city or county, may not adopt or continue in effect any ordinance, resolution, initiative, or home rule charter regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of seed. This section does not apply to city zoning ordinances.

Approved March 16, 2005
Filed March 17, 2005

CHAPTER 62**SENATE BILL NO. 2326**

(Senators Tallackson, Klein)
(Representatives Headland, Nicholas, Pollert, Solberg)

SEED POTATO CERTIFICATION

AN ACT to amend and reenact sections 4-10-01 and 4-10-06.3 of the North Dakota Century Code, relating to seed potato certification requirements; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

4-10-01. Definitions. In this chapter, unless the context or ~~subject matter~~ otherwise requires:

1. "Agent" or "agents", when used to indicate or refer to the commissioner's agent or agents, means the commissioner's deputies, inspectors, representatives, agents, or other assistants as the case requires.
2. "Certified" means the potatoes were randomly inspected and found to meet the rules and regulations of the state seed department.
3. "Closed container", or its plural form, means any container which shall be sewed, tied, sealed, glued, nailed, or otherwise closed in a practical or secure manner for handling.
4. "Commissioner" means the state seed commissioner.
5. "Inspection" means a random sample of potato plants or potato tubers were examined according to the rules ~~and regulations~~ of the state seed department or according to the instructions of the United States department of agriculture, food safety and quality service.
6. "Label", and its various grammatical forms, when used as a noun means 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 means 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 must be interpreted from its use and meaning as a noun and verb as herein prescribed.
7. "Other produce" means natural products of the farm, garden, and orchard, exclusive of grain, true seeds, livestock, and livestock products.

8. "Person" means both the singular and plural, as the case requires, and includes individuals, copartnerships, companies, societies, associations, firms, corporations, or limited liability companies.
9. "Potatoes" means what is commonly called and known as white or Irish potatoes.
- ~~40.~~ 9. "State seed department" means the seed department of the state of North Dakota.
10. "Variety" means a plant group within a single botanical taxon of the lowest-known rank which, without regard to whether the conditions for plant variety protection are met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one characteristic, and considered as a unit with regard to the suitability of the plant grouping for being propagated unchanged. A variety may be represented by seed, transplants, plants, tubers, tissue culture, plantlets, and other matter.

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

4-10-06.3. Imported seed potatoes - Certification requirement. All seed potatoes imported into this state for planting purposes by any person from any state, territory, or country must be accompanied by ~~an~~:

1.
 - a. An official grade certificate describing the grade of the potatoes; or
~~a~~
 - b. A health certificate to certify that the lot of seed potatoes was field inspected by an official certifying agency and is similar to the standards established by this chapter for seed potatoes; and
2. Any other document or certificate required for the importation of seed potatoes by the state, province, territory, or country of origin, including test results issued by a laboratory approved by the United States department of agriculture's animal and plant health inspection service.

SECTION 3. EMERGENCY. Section 2 of this Act is declared to be an emergency measure.

Approved April 8, 2005
Filed April 12, 2005

CHAPTER 63**HOUSE BILL NO. 1247**

(Representatives Aarsvold, D. Johnson, Monson, Pollert)
(Senators Freborg, Tallackson)

DRY BEAN COUNCIL AND DISTRICTS

AN ACT to amend and reenact sections 4-10.3-03 and 4-10.3-04 of the North Dakota Century Code, relating to the dry bean council and dry bean districts; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.3-03 of the North Dakota Century Code is amended and reenacted as follows:

4-10.3-03. North Dakota state dry bean council - Membership - Election - Term.

1. The North Dakota dry bean council is composed of one participating grower elected from each of the districts established in section 4-10.3-04. The chairman of the council must be a member of the council elected by a majority vote of the council. The agriculture commissioner is an ex officio member of the council.
2. Every elected council member must be a citizen of the state and a bona fide resident of and participating grower in the district the member represents.
3. The term of each elected member is three years and begins on April first of the year of election, except that initially one member must be elected for a three-year term; two members must be elected for two-year terms; and two members must be elected for one-year terms as designated by the commissioner.
4. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council shall, by majority vote, appoint another qualified participating grower for the remainder of the term of the office vacated.
5. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service, shall conduct all elections under this section in each district in the manner the commissioner deems fair and reasonable. Elections must be held before April first of each year.
6. No elected member of the council is eligible to serve more than ~~two~~ three consecutive three-year terms.

SECTION 2. AMENDMENT. Section 4-10.3-04 of the North Dakota Century Code is amended and reenacted as follows:

4-10.3-04. Dry bean districts - Establishment. The following dry bean districts are established for the purpose of dividing the state into districts containing as nearly equal dry bean acreages as practicable:

1. District one consists of the counties of ~~Benson, Bottineau, Burke, Cavalier, Divide, McHenry, Mountrail, Pembina, Pierce, Ramsey, Renville, Rolette, and Towner; Walsh, Ward, and Williams Counties.~~
2. District two consists of ~~Grand Forks County~~ Ramsey and Walsh Counties.
3. District three consists of the counties of ~~Barnes, Billings, Burleigh, Dunn, Eddy, Foster, Golden Valley, Griggs, Kidder, McKenzie, McLean, Mercer, Nelson, Oliver, Sheridan, Steele, Stutsman, and Wells~~ Grand Forks and Nelson Counties.
4. District four consists of Griggs, Steele, and Traill County Counties.
5. District five consists of the counties of ~~Adams, Bowman, Barnes, Cass, Dickey, Emmons, Grant, Hettinger, Kidder, LaMoure, Logan, McIntosh, Morton, Ransom, Richland, Sargent, Sioux, Slope, and Stark~~ and Stutsman Counties.
6. District six consists of Adams, Benson, Billings, Bottineau, Bowman, Burke, Burleigh, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Hettinger, McHenry, McKenzie, McLean, Mercer, Morton, Mountrail, Oliver, Pierce, Renville, Rolette, Sheridan, Sioux, Slope, Stark, Ward, Wells, and Williams Counties.

SECTION 3. APPLICATION. The initial term of the member representing district six must be arranged so that not more than two terms expire each year.

Approved March 8, 2005
Filed March 8, 2005

CHAPTER 64**SENATE BILL NO. 2403**

(Senators O'Connell, Nething, Robinson)

(Representatives Nicholas, Solberg)

BARLEY DISTRICT BOUNDARIES

AN ACT to amend and reenact section 4-10.4-04 of the North Dakota Century Code, relating to barley districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.4-04 of the North Dakota Century Code is amended and reenacted as follows:

4-10.4-04. Barley districts - Establishment. The following barley districts are established for the purpose of dividing the state into districts containing as nearly equal barley production as practicable:

1. State barley council district number one consists of the counties of Benson, Cavalier, Pembina, Walsh, Towner, and Ramsey.
2. State barley council district number two consists of the counties of Grand Forks, McLean, Nelson, Traill, Sheridan, Steele, Wells, Eddy, Foster, and Griggs.
3. State barley council district number three consists of the counties of Cass, Barnes, Burleigh, Emmons, Kidder, Logan, McIntosh, Richland, Ransom, LaMoure, Dickey, ~~and Sargent, and Stutsman.~~
4. State barley council district number four consists of the counties of Bottineau, Rolette, McHenry, Pierce, ~~Benson, Sheridan, Wells, Burleigh, Kidder, Stutsman, Emmons, Logan, and McIntosh~~ and Renville.
5. State barley council district number five consists of the counties of ~~Renville~~, Burke, Divide, Williams, Mountrail, Ward, ~~McLean~~, McKenzie, Dunn, Mercer, Oliver, Sioux, Grant, Morton, Stark, Billings, Golden Valley, Slope, Hettinger, Adams, and Bowman.

Approved March 16, 2005

Filed March 17, 2005

CHAPTER 65**SENATE BILL NO. 2236**

(Senators Christmann, Bowman, Taylor)
(Representatives Haas, Pollert, Schmidt)

CORN ASSESSMENTS

AN ACT to amend and reenact subsection 4 of section 4-10.6-01 and section 4-10.6-09 of the North Dakota Century Code, relating to collection of assessments on corn.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 4-10.6-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Designated handler" means any ~~person accepting for shipment, or otherwise acquiring an interest in or to~~ grain warehouse, licensed grain buyer, processing plant, or ethanol plant which purchases corn from a grower. ~~The term includes and~~ any person having a claim against the ~~producer~~ grower, when the actual or constructive possession of the corn is taken as security, part payment, or in satisfaction of a mortgage, pledge, lien, or claim.

SECTION 2. AMENDMENT. Section 4-10.6-09 of the North Dakota Century Code is amended and reenacted as follows:

4-10.6-09. Collection of assessment. Every designated handler shall collect the assessment from the seller by deducting the assessment from the purchase price of all corn subject to the assessment and purchased by the designated handler. If a grower sells corn to a person who is not a designated handler, the grower shall forward the assessment to the council at the time and in the manner prescribed by the council.

Approved March 31, 2005

Filed March 31, 2005

CHAPTER 66**HOUSE BILL NO. 1519**

(Representatives Nicholas, Aarsvold, Iverson, Svedjan)
(Senators Flakoll, Grindberg)

**AGRICULTURAL PRODUCTS UTILIZATION
COMMISSION GRANTS**

AN ACT to amend and reenact sections 4-14.1-02 and 4-14.1-03.1 of the North Dakota Century Code, relating to agricultural products utilization commission grants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-14.1-02 of the North Dakota Century Code is amended and reenacted as follows:

4-14.1-02. Agricultural fuel tax fund - Purposes. There is hereby created in the state treasury, a fund, to be known as the agricultural fuel tax fund, which must be used to fund programs for the enhancement of agricultural research, development, processing, technology, and marketing. The fund must be used to defray the expenses of the North Dakota agricultural products utilization commission necessary to implement the purposes of this chapter.

⁴² **SECTION 2. AMENDMENT.** Section 4-14.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

4-14.1-03.1. Agricultural products utilization commission - Authority. The North Dakota agricultural products utilization commission may apply for, accept, and expend any appropriation, grant, gift, or service made available from public or private sources consistent with the purpose of this chapter. The commission may administer grant programs consistent with the purpose of this chapter including a basic and applied research grant program, a utilization and marketing grant program, a cooperative marketing grant program, a farm diversification grant program, an agricultural prototype development grant program, an agricultural technologies grant program, and a North American marketing grant program. The commission may require, by contract, repayment of a grant, in whole or in part, if the grant recipient does not fulfill the conditions under which the grant was awarded.

Approved March 9, 2005
Filed March 9, 2005

⁴² Section 4-14.1-03.1 was also amended by section 2 of Senate Bill No. 2147, chapter 57.

CHAPTER 67

SENATE BILL NO. 2270

(Senators Trenbeath, Espegard, Nething)
(Representatives Kingsbury, Nelson)

ETHANOL PLANT PRODUCTION INCENTIVES

AN ACT to create and enact sections 4-14.1-07.1 and 4-14.1-07.2 of the North Dakota Century Code, relating to ethanol plant production incentives; to amend and reenact sections 4-14.1-08 and 4-14.1-10 of the North Dakota Century Code, relating to the ethanol production incentive fund; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 4-14.1-07.1 of the North Dakota Century Code is created and enacted as follows:

4-14.1-07.1. Ethanol plant production incentives - Report to budget section.

1. a. An ethanol plant that was in operation before July 1, 1995, and which has a production capacity of fewer than fifteen million gallons [56781000 liters] of ethanol may receive up to nine hundred thousand dollars in production incentives from the state during the 2005-07 biennium and may receive no production incentives under this section after the 2005-07 biennium.
- b. An ethanol plant that was in operation before July 1, 1995, and which produced fifteen million gallons [56781000 liters] or more in the previous fiscal year is eligible to receive up to four hundred fifty thousand dollars in production incentives from the state during the 2005-07 biennium and may receive no production incentives under this section after the 2005-07 biennium.
2. The agricultural products utilization commission shall determine the amount of production incentives to which a plant is entitled under this section by multiplying the number of gallons of ethanol produced by the plant and marketed to a distributor or wholesaler by forty cents. The commission shall forward the production incentives to the plant upon receipt of an affidavit by the plant indicating that the ethanol is to be sold at retail to consumers. The affidavit must be accompanied by an affidavit from a wholesaler or retailer indicating that the ethanol is to be sold at retail to consumers.
3. Within ninety days after the conclusion of the plant's fiscal year, the plant shall submit to the budget section of the legislative council a statement by a certified public accountant indicating whether the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received under this section.

SECTION 2. Section 4-14.1-07.2 of the North Dakota Century Code is created and enacted as follows:

4-14.1-07.2. Ethanol production incentives - Payments for increased production. If an ethanol plant that was in operation in this state before July 1, 1995, increases its production by the lesser of ten million gallons [37854000 liters] or fifty percent of its production capacity during any twelve-month period beginning on or after the effective date of this Act, that plant is eligible to receive ethanol production incentive payments under section 4-14.1-08 on its increased production.

⁴³ **SECTION 3. AMENDMENT.** Section 4-14.1-08 of the North Dakota Century Code is amended and reenacted as follows:

4-14.1-08. Ethanol production incentive - Calculation - Payment. The agricultural products utilization commission shall provide quarterly to each eligible facility a production incentive based on the average North Dakota price per bushel of corn received by farmers during the quarter, as established by the North Dakota agricultural statistics service and the average North Dakota rack price per gallon [3.79 liters] of ethanol during the quarter, as compiled by ~~the American coalition for ethanol~~ AXXIS petroleum. The amount payable as a production incentive must be calculated by including the sum arrived at under subsection 1 with the sum arrived at under subsection 2.

1. a. If the average quarterly price per bushel of corn is above one dollar and eighty cents, for each one cent by which the quarterly price is above one dollar and eighty cents, the agricultural products utilization commission shall add to the amount payable under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
 - b. If the average quarterly price per bushel of corn is one dollar and eighty cents, the agricultural products utilization commission shall add zero to any amount payable under this section.
 - c. If the average quarterly price per bushel of corn is below one dollar and eighty cents, for each one cent by which the quarterly price is below one dollar and eighty cents, the agricultural products utilization commission shall subtract from the amount payable under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
2. a. If the average quarterly rack price per gallon of ethanol is above one dollar and thirty cents, for each one cent by which the average quarterly rack price is above one dollar and thirty cents, the agricultural products utilization commission shall subtract from the amount payable under this section, two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
 - b. If the average quarterly rack price per gallon of ethanol is one dollar and thirty cents, the agricultural products utilization

⁴³ Section 4-14.1-08 was also amended by section 30 of Senate Bill No. 2018, chapter 46.

commission shall subtract zero from any amount payable under this section.

- c. If the average quarterly rack price per gallon of ethanol is below one dollar and thirty cents, for each one cent by which the average quarterly rack price is below one dollar and thirty cents, the agricultural products utilization commission shall add to the amount payable under this section two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.

⁴⁴ **SECTION 4. AMENDMENT.** Section 4-14.1-10 of the North Dakota Century Code is amended and reenacted as follows:

4-14.1-10. Ethanol production incentive fund - Continuing appropriation.

There is created in the state treasury a special fund known as the ethanol production incentive fund. The fund consists of transfers made in accordance with section 39-04-39 and deposits made in accordance with section 57-43.1-03.1. All moneys in the fund are appropriated on a continuing basis to the agricultural products utilization commission for use in paying ethanol production incentives under sections ~~4-14.1-07~~ 4-14.1-07.1, 4-14.1-07.2, 4-14.1-08, and 4-14.1-09.

Approved April 22, 2005

Filed April 25, 2005

⁴⁴ Section 4-14.1-10 was also amended by section 32 of Senate Bill No. 2018, chapter 46.

CHAPTER 68**SENATE BILL NO. 2156**

(Senators Klein, Erbele, Taylor)
(Representatives Brandenburg, Mueller, Pollert)

**AGRICULTURAL PROMOTION GROUP
COLLOCATION**

AN ACT to repeal section 4-24-07 of the North Dakota Century Code, relating to the collocation of agricultural promotion groups.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 4-24-07 of the North Dakota Century Code is repealed.

Approved March 9, 2005
Filed March 9, 2005

CHAPTER 69

HOUSE BILL NO. 1272

(Representatives Headland, Brandenburg, Mueller, Nicholas)
(Senators Erbele, Klein)

WHEAT COMMISSION MEMBERSHIP

AN ACT to amend and reenact section 4-28-03 of the North Dakota Century Code, relating to membership of the wheat commission; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-28-03 of the North Dakota Century Code is amended and reenacted as follows:

4-28-03. Wheat commission - Members. ~~There is hereby created the~~

1. The North Dakota state wheat commission ~~which~~ consists of seven members. One member must be appointed or elected from each of the districts of the state established by ~~the provisions of~~ this chapter and one member must be appointed or elected from the state at large. Each member, except the member from the state at large, must be a ~~bona fide~~ resident of and a qualified elector in the district the member represents, and must have farming operations in ~~such~~ the district, ~~and must have been actually engaged in the production of wheat and have derived a substantial portion of the member's income therefrom for at least five years next preceding the member's appointment or election.~~ The member from the state at large must have similar qualifications except as limited by district lines. An individual is not eligible to be a member of the wheat commission if that individual requested a refund under section 4-28-07 during the twelve-month period before the date on which the term sought by the individual would commence. This ineligibility does not apply to an individual who requested a refund because of an overpayment, as provided in subdivision c of subsection 2 of section 4-28-07. Each member of the wheat commission must be actively engaged in the production of wheat. A member of the wheat commission who elects not to plant wheat for one growing cycle may continue to serve on the commission if the member continues to be actively involved in farming. If a member elects not to plant wheat for more than one growing cycle, the member is deemed to have resigned and the commission shall declare the member's office vacant. A member of the wheat commission is not eligible to receive a refund under section 4-28-07; however, a member may request a refund because of an overpayment, as provided in subdivision c of subsection 2 of section 4-28-07. The commission may declare a member's position vacant if the member fails to attend two consecutive commission meetings.
2. Not more than sixty days prior to expiration of the term of the member from the state at large, a nominating committee consisting of the agriculture commissioner, the president of the North Dakota crop improvement association, the director of the North Dakota agricultural

experiment station, the director of the North Dakota state university extension service, the president of the North Dakota farm bureau, the president of the North Dakota farmers union, the president of the North Dakota grain dealers association, the president of the North Dakota grain growers association, and an individual who is a resident of this state and a member of the United States durum growers association, or their duly authorized representatives, shall submit to the governor a list of three names and within sixty days after expiration of the term the governor shall appoint, from the nominees so named, the member at large to the commission.

3. Each member of the commission shall hold office for a term of four years and until the member's successor has been selected and has qualified except that the commissioners elected and serving from the first and fourth districts shall hold office for terms ending on June 30, 1984; the commissioners elected and serving from the second and fifth districts shall hold office for terms ending on June 30, 1985; and the commissioners elected and serving from the third and sixth districts shall hold office for terms ending on June 30, 1982; and the commissioner appointed and serving as the state at large member shall hold office for a term ending on June 30, 1983. No producer is entitled to serve more than three terms.
4. At least sixty days prior to the expiration of the term of office of a commissioner representing any district, a meeting of producers must be held in each county in the district for the purpose of electing a county representative. The county agent shall call such meeting by publishing notice in the official newspaper of the county for two successive weeks, the last publication to be not less than five nor more than ten days prior to the meeting. The meeting must be held at a central location within the county and must be called to order by the county agent. The county agent, in cooperation with the cooperative extension service, shall conduct all elections under this section in each county in the manner the county agent deems fair and reasonable, except that a producer may vote only in the producer's county of residence. Votes must be canvassed by the county agent and certified by the county agent with the name and post-office address of the elected county representative to the director of the North Dakota state university extension service who shall thereupon, as expeditiously as possible, call a meeting of the county representatives of the district. Notice of such meeting must be sent to each county representative by registered or certified mail not less than five days prior to the meeting which must be held at a central location within the district. At such district meeting, the county representatives shall elect one of their number as the district member of the commission. The ballots at such meeting must be canvassed by the North Dakota state university extension service and the result of election certified to the governor by the director. To be eligible to hold the position of county representative, an individual must be actively engaged in the production of wheat. A county representative who elects not to plant wheat for one growing cycle may continue to serve as a county representative if the individual continues to be actively involved in farming. If a county representative elects not to plant wheat for more than one growing cycle, the member is deemed to have resigned and the commission shall declare the member's position vacant. Additional meetings of county representatives may be called by the state wheat commission for the purpose of promoting its programs. All expenses of

all such meetings and elections must be paid from commission funds. County representatives must be reimbursed for expenses necessarily incurred in attending meetings and performing other official duties on the same basis as other state officers.

5. Any vacancy occurring on the commission other than by expiration of term of office must be filled by the county representatives who shall elect one of their number as the district member of the commission for the remainder of the unexpired term. If the vacancy is from the state at large, appointment must be made from three nominations submitted by the nominating committee as in the case of the original appointment.

SECTION 2. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2005-06 interim, the feasibility and desirability of revising the process for appointing or electing individuals to the North Dakota wheat commission. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

Approved April 11, 2005
Filed April 12, 2005

CHAPTER 70**HOUSE BILL NO. 1518**

(Representatives Nicholas, Boucher, Brandenburg, Mueller, Uglen)
(Senator Warner)

WHEAT COMMISSION AND LEVY

AN ACT to create and enact a new section to chapter 4-28 of the North Dakota Century Code, relating to the wheat tax levy; to amend and reenact sections 4-28-06 and 4-28-07 of the North Dakota Century Code, relating to the North Dakota wheat commission; to repeal section 4-28-07 of the North Dakota Century Code, relating to the wheat tax levy; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-28-06 of the North Dakota Century Code is amended and reenacted as follows:

4-28-06. Wheat commission - Duties and powers. In the administration of this chapter, the commission has the following powers, authority, and duties:

1. To foster and promote programs aimed at increasing the sale, utilization, and development of wheat, both at home and abroad.
2. To publish and disseminate reliable information on the value of wheat and wheat products for any purpose for which they are valuable and useful to both processor and consumer.
3. To search for and promote new uses of wheat and wheat products.
4. To contract and cooperate with any person, firm, corporation, limited liability company, or association, or with any local, state, or federal department or agency for executing or carrying on a program or programs of research, education, and publicity.
5. To lease, purchase, own, equip, maintain, and operate a commission office.
6. To appoint, employ, bond, discharge, fix the compensation and prescribe the duties of such administrative, clerical, technical and other personnel, employees, and agents as it may deem necessary to conduct the business and affairs of the commission.
7. To accept donations of funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the work and objectives of the commission, depositing all funds so received in the state wheat commission fund in the state treasury.
8. To promote North Dakota opportunities as afforded by the development of the St. Lawrence seaway provide market maintenance and development services, utilization research, transportation research, and education.

9. To address trade and domestic issues.
10. To seek improvement in the export quality of wheat.
- 40- 11. To exercise all express and implied rights, powers, and authority that may be necessary to perform and carry out the expressed purposes of this chapter and all of the purposes reasonably implied incidentally thereto or lawfully connected therewith and to adopt, rescind, modify, and amend all necessary and proper orders, resolutions, rules, and regulations for the procedure and exercise of its powers and the performance of its duties.
- 44- 12. To prosecute in the name of the state of North Dakota any suit or action to enforce collection or assure payment of the tax or assessment authorized by the provisions of this chapter, and to sue and be sued in the name of the commission.
13. To engage in any other related activities.

⁴⁵ **SECTION 2. AMENDMENT.** Section 4-28-07 of the North Dakota Century Code is amended and reenacted as follows:

4-28-07. Wheat tax levy.

1. a. A tax of ~~ten~~ fifteen mills per bushel [35.24 liters] by weight must be levied and imposed upon all wheat grown in this state, delivered into this state, or sold through commercial channels to a first purchaser in this state.
- b. The tax must be levied and assessed at the time of sale and deducted by the purchaser from the price paid, or in the case of a lien, pledge, or mortgage, deducted from the proceeds of the loan or claim secured, subject to adjustment at the time of settlement in the event the number of bushels [liters] is not accurately determined at the time of the lien, pledge, or mortgage.
- c. At the time of sale, the first purchaser in this state shall issue and deliver to the producer or seller a record of the transaction in the manner prescribed by the commission.
2. a. Any producer who sells wheat to a first purchaser in this state and who is subject to the deduction provided in this chapter, within sixty days following the deduction or final settlement, may make application by personal letter to the wheat commission for a refund application blank.
- b. Upon the return of the blank, properly executed by the producer, accompanied by a record of the deduction by the purchaser, the producer must be refunded the net amount of the deduction collected.

⁴⁵ Section 4-28-07 was repealed by section 4 of House Bill No. 1518, chapter 70.

- c. If no request for refund has been made within the period prescribed above, then the producer is presumed to have agreed to the deduction. However, a producer, for any reason, having paid the tax more than once on the same wheat, upon furnishing proof of this to the commission, is entitled to a refund of the overpayment.
3. The commission, to inform the producer, shall develop and disseminate information and instructions relating to the purpose of the wheat tax and manner in which refunds may be claimed and to this extent shall cooperate with governmental agencies, state and federal, and private businesses engaged in the purchase of wheat.
4. ~~The commission may use the amount raised by two mills of the levy provided for in this section to support the commission's involvement in trade issues throughout the world.~~
5. ~~The commission may use the~~ shall expend an amount at least equal to that raised by up to two mills of the levy provided for in this section for the purposes of providing market maintenance and development services, utilization research, transportation research, and education; addressing domestic policy issues; and engaging in other related activities; or for the purposes of contracting for market maintenance and development services, utilization research, transportation research, and education; addressing domestic policy issues; and engaging in other related activities, to contract for activities related to domestic wheat policy issues, wheat production, promotion, and sales. The contracts may be with no more than two trade associations that are incorporated in this state and which have as their primary purpose the representation of wheat producers. The contracts must require that any trade association receiving money under this section pay from that money all dues required as a condition of the trade association's membership in any national trade association. The contracts also must prohibit any trade association receiving money under this section from eliminating any dues required as a condition of membership in that trade association or from reducing such dues below the amount required for membership as of January 1, 2005.
5. The commission shall expend an amount at least equal to that raised by three mills of the levy provided for in this section to pay any debts for legal services incurred by the commission, until the debts for legal services are paid in full.
6. When the wheat commission presents the report required by section 4-24-10, the commission shall present a separate report detailing the nature and extent of the commission's efforts to address trade and domestic policy issues. The commission may invite other entities with which it has contracted to assist in the presentations.
7. At the time the wheat commission presents the report required by section 4-24-10, each trade association with which the wheat commission has contracted under subsection 4 also shall present a report detailing all activities in which the trade association engaged under the provisions of the contract.

SECTION 3. A new section to chapter 4-28 of the North Dakota Century Code is created and enacted as follows:

Wheat tax levy.

1.
 - a. A tax of twelve mills per bushel [35.24 liters] by weight must be levied and imposed upon all wheat grown in this state, delivered into this state, or sold through commercial channels to a first purchaser in this state.
 - b. The tax must be levied and assessed at the time of sale and deducted by the purchaser from the price paid, or in the case of a lien, pledge, or mortgage, deducted from the proceeds of the loan or claim secured, subject to adjustment at the time of settlement in the event the number of bushels [liters] is not accurately determined at the time of the lien, pledge, or mortgage.
 - c. At the time of sale, the first purchaser in this state shall issue and deliver to the producer or seller a record of the transaction in the manner prescribed by the commission.
2.
 - a. Any producer who sells wheat to a first purchaser in this state and who is subject to the deduction provided for in this chapter, within sixty days following the deduction or final settlement, may make application by personal letter to the wheat commission for a refund application blank.
 - b. Upon the return of the blank, properly executed by the producer, accompanied by a record of the deduction by the purchaser, the producer must be refunded the net amount of the deduction collected.
 - c. If no request for refund has been made within the period prescribed in this subsection, the producer is presumed to have agreed to the deduction. A producer that, for any reason, has paid the tax more than once on the same wheat, upon furnishing proof of that payment to the commission, is entitled to a refund of the overpayment.
3. To inform the producer, the commission shall develop and disseminate information and instructions relating to the purpose of the wheat tax and manner in which refunds may be claimed and to this extent shall cooperate with state and federal agencies and private businesses engaged in the purchase of wheat.
4. The commission shall expend an amount at least equal to that raised by two mills of the levy provided for in this section to contract for activities related to domestic wheat policy issues, wheat production, promotion, and sales. The contracts may be with no more than two trade associations that are incorporated in this state and which have as their primary purpose the representation of wheat producers. The contracts must require that any trade association receiving money under this section pay from the money all dues required as a condition of the trade association's membership in any national trade association. The contracts also must prohibit any trade association receiving money under this section from eliminating any dues required as a condition of

membership in that trade association or from reducing such dues below the amount required for membership as of January 1, 2005.

5. When the wheat commission presents the report required by section 4-24-10, the commission shall present a separate report detailing the nature and extent of the commission's efforts to address trade and domestic policy issues. The commission may invite other entities with which it has contracted to assist in the presentations.
6. At the time the wheat commission presents the report required by section 4-24-10, each trade association with which the wheat commission has contracted under subsection 4 also shall present a report detailing all activities in which the trade association engaged under the provisions of the contract.

⁴⁶ **SECTION 4. REPEAL.** Section 4-28-07 of the North Dakota Century Code is repealed.

SECTION 5. EFFECTIVE DATE. The increase in the levy imposed by section 2 of this Act applies to all sales occurring on and after the day of the next calendar quarter occurring at least thirty days after the effective date of this Act.

SECTION 6. EFFECTIVE DATE. Sections 3 and 4 of this Act become effective on July 1, 2009.

Approved April 14, 2005
Filed April 18, 2005

⁴⁶ Section 4-28-07 was also amended by section 2 of House Bill No. 1518, chapter 70.

CHAPTER 71

SENATE BILL NO. 2114

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

DAIRY REGULATION AND FEES

AN ACT to amend and reenact subsection 9 of section 4-30-01 and sections 4-30-02, 4-30-18, 4-30-20, 4-30-36, 4-30-36.2, 4-30-36.3, and 4-30-36.4 of the North Dakota Century Code, relating to dairy regulations, reinspection fees, and references to current food and drug administration regulations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 4-30-01 of the North Dakota Century Code is amended and reenacted as follows:

9. "Distributor" means a person ~~who purchases milk or milk products and transports them to a retail dealer or a consumer or company that provides storage, transportation, delivery, or distribution of milk and milk products to any person who offers for sale or sells to any consumer milk or milk products.~~

SECTION 2. AMENDMENT. Section 4-30-02 of the North Dakota Century Code is amended and reenacted as follows:

4-30-02. Licenses required - Fees - Term. Every producer-processor, peddler, distributor, every person purchasing milk or milk products for processing or manufacturing, or owning, operating, or leasing a creamery, cheese factory, condensery, drying plant, ice cream plant, ice milk plant, milk plant, every other business engaged in the processing or manufacturing of milk or milk products and every organization acquiring milk or milk products as an agent for sale on behalf of others and doing business within this state shall obtain the license required by this section for each such place of business. Application for license must be made to the commissioner upon forms as the commissioner may require. Upon making application for license, it is implied that consent is given by the applicant for inspection by the department. If the commissioner finds that the applicant conforms to the North Dakota laws and the rules and regulations of the department, the commissioner shall issue a license for conducting those operations listed on the application form. If a licensee wishes to conduct operations other than those listed, the licensee may request that the commissioner approve them, and if the commissioner finds that the proposals are in conformance with North Dakota laws and the rules of the department, the commissioner shall approve them. The license must be posted conspicuously in each licensed business. All licenses issued under this section must expire on the thirtieth day of June of each year and are not transferable. The fee for licenses is twenty-five dollars. Every organization acquiring milk or milk products as an agent for sale on behalf of others is, for the purposes of this chapter, deemed to be a purchaser of milk from a dairy producer. A reinspection fee of seventy-five dollars per inspection must be paid by each dairy farm facility for which the commissioner has conducted a reinspection resulting from suspension of a farm permit, degrade of a farm facility from grade A to manufacturing grade, or unsanitary conditions that must be corrected within a specified period of time.

SECTION 3. AMENDMENT. Section 4-30-18 of the North Dakota Century Code is amended and reenacted as follows:

4-30-18. Sampling and testing procedures - Equipment - Supplies. The laboratory procedures, equipment, chemicals, and other apparatus or substances used in the sampling, hauling, or testing of milk or milk products must conform to that described in the ~~sixteenth~~ seventeenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association, incorporated, a copy of which shall be on file in the department. No equipment, chemicals, or other apparatus or substance used in the sampling, hauling, or testing of milk or milk products which is not in conformance with the requirements of this chapter may be sold or offered for sale. The commissioner through the adoption of rules may alter, amend, or prohibit any specific requirement of this section and may approve other sampling, hauling, or testing procedures or equipment. The commissioner, where appropriate, may check calibration of farm bulk milk tanks and equipment.

SECTION 4. AMENDMENT. Section 4-30-20 of the North Dakota Century Code is amended and reenacted as follows:

4-30-20. Sampling of milk. Every purchaser of milk from a dairy producer shall collect a minimum sample of two ounces [59.15 milliliters] from each bulk tank of milk received from a producer. Samples must be collected and maintained in accordance with those procedures contained in the ~~sixteenth~~ seventeenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association, incorporated. Records must be kept which readily identify the sample with those items used to determine payment for the milk. Such items must include: weight, butterfat content, protein, solids-not-fat, and the total amount of money paid for the milk.

SECTION 5. AMENDMENT. Section 4-30-36 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36. Standards for grade A milk and milk products - Adoption of amendments. Only grade A milk may be sold as fluid beverage for human consumption. The minimum standards for milk and milk products designated as grade A are the same as the minimum requirements of the "Grade A Pasteurized Milk Ordinance, 2004 2003 Revision, Public Health Service, Food and Drug Administration, Publication No. 229" including "Grade 'A' Condensed and Dry Milk Ordinance 1995 Revision, Grade A Condensed and Dry Milk Products and Condensed and Dry Whey - Supplement 1" and all supplements added thereto ~~except that the minimum requirements for solids-not-fat in all grade A milk is eight and one-half percent and the butterfat content of grade A whole milk is three and one-fourth percent~~ which includes provisions from the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey - Supplement 1 to the Grade A PMO" and all supplements added thereto. The commissioner may adopt as department regulations other standards in addition to any amendments, supplements to, or new editions of the milk ordinance which are in the interest of public safety, wholesomeness of product, consumer interest, sanitation, good supply, salability, and promotion of grade A milk and milk products.

SECTION 6. AMENDMENT. Section 4-30-36.2 of the North Dakota Century Code is amended and reenacted as follows:

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

officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service/food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Shippers - ~~2004~~ 2003 Revision, Edition" and the sampling of milk and dairy products must be in accordance with the guidelines recommended in the ~~sixteenth~~ seventeenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association.

SECTION 7. AMENDMENT. Section 4-30-36.3 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.3. Milk laboratory evaluations officer - Duties - Guidelines. The milk laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy products laboratories within the state. Evaluations and certification of milk laboratories must be made in accordance with the ~~sixteenth~~ seventeenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association and the procedures outlined in the public health service/food and drug administration publication entitled "Evaluation of Milk Laboratories - 1995 Edition".

SECTION 8. AMENDMENT. Section 4-30-36.4 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.4. Grade A pasteurized milk ordinance. Dairy producers, processors, and manufacturers shall comply with the "Grade A Pasteurized Milk Ordinance, ~~2004~~ 2003 Revision, Public Health Service, Food and Drug Administration; ~~Publication No. 229~~" and its supplements and follow the standards set by the "Procedures Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, ~~2004~~ 2003 Revision".

Approved March 7, 2005
Filed March 8, 2005

CHAPTER 72**SENATE BILL NO. 2355**

(Senators Klein, Taylor)

(Representative Kreidt)

PESTICIDE APPLICATOR SERVICE OF PROCESS

AN ACT to amend and reenact section 4-35-11 of the North Dakota Century Code, relating to designation of the agent for service of process for a nonresident pesticide applicator or dealer; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-35-11 of the North Dakota Century Code is amended and reenacted as follows:

4-35-11. Nonresident application - Designation of agent for service of process. Any nonresident applying for certification as an applicator or dealer under this chapter to operate in this state shall file a written power of attorney designating the ~~secretary of state~~ North Dakota state university extension service or its designee as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and the power of attorney must be so prepared and in such form as to render effective the jurisdiction of the courts of this state over the nonresident applicant; provided, however, that any nonresident who has a duly appointed resident agent upon whom process may be served as provided by law is not required to designate the ~~secretary of state~~ extension service as such agent. The ~~secretary of state~~ extension service is allowed such fees therefor as provided by law for designating resident agents. The nonresident must be furnished with a copy of the designation of the ~~secretary of state~~ extension service or of a resident agent. The copy will be duly certified by the ~~secretary of state~~ extension service.

SECTION 2. APPLICATION. Any document filed before the effective date of this Act designating the secretary of state as agent for service of process, including any written powers of attorney, must be transferred to the extension service on the effective date of this Act.

Approved March 21, 2005

Filed March 21, 2005