

March 2010

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 11-08, a new section to chapter
2 40-05, and a new section to chapter 58-03 of the North Dakota Century Code, relating to the
3 authority of political subdivisions; to amend and reenact sections 4-09-14, 4-09-14.1, 4-09-14.2,
4 4-09-14.4, 4-09-15, 4-09-16, 4-09-17, 4-09-17.1, 4-09-18, 4-09-19, 4-09-20, 4-09-20.1,
5 4-09-20.2, 4-09-21, 4-09-22, 4-09-23, 4-09-24, and 4-09-25 of the North Dakota Century Code,
6 relating to the labeling and certification of seed; to provide a penalty; and to provide a
7 continuing appropriation.

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

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

11 **4-09-14. Prohibitions.**

12 1. ~~A person may not sell, offer for sale, expose for sale, transport for sale, or hold or~~
13 ~~store with the intent to sell, any agricultural, vegetable, flower, or tree and shrub~~
14 ~~seed within this state~~ The following activities are prohibited:

15 a. ~~Unless for~~ Offering for sale or selling ¹ agricultural seed, unless a test to
16 determine the percentage of germination ~~required under section 4-09-10~~ has
17 been completed ~~within a~~ during the preceding nine-month period, exclusive of
18 the ~~calendar~~ month in which the test was completed ~~or the seed is offered for~~
19 ~~sale beyond the sell by date exclusive of the calendar month in which the~~
20 ~~seed was to have been sold;~~ ²

21 b. ~~Unless for~~ Offering for sale or selling flower, vegetable, native grass, or forb
22 seed, unless a test to determine the percentage of germination ~~required under~~
23 ~~sections 4-09-10, 4-09-11, and 4-09-11.1~~ has been completed ~~within a~~ during

- 1 the preceding twelve-month period, exclusive of the calendar month in which
2 the test was completed;
- 3 c. ~~Unless for~~ Offering for sale or selling cool season ³ lawn and turf grasses,
4 including Kentucky bluegrass, red fescue, chewings fescue, hard fescue, tall
5 fescue, perennial rye grass, intermediate rye grass, annual rye grass, colonial
6 bent grass, creeping bent grass, and mixtures or blends of those grasses,
7 unless a test to determine the percentage of germination has been completed
8 ~~within a~~ during the preceding fifteen-month period, exclusive of the calendar
9 month in which the test was completed;
- 10 d. ~~Unless for~~ Offering for sale or selling hermetically sealed packages of tree,
11 shrub, agricultural, flower, wildflower, or vegetable ~~seed packaged in a~~
12 ~~hermetically sealed container under conditions as defined by the~~
13 ~~commissioner~~ seeds, ⁴ unless a test to determine the percentage of
14 germination has been completed ~~within a~~ during the preceding
15 thirty-six-month period ~~after the last day of the month that the seed was tested~~
16 ~~for germination before packaging. However, if seed in a hermetically sealed~~
17 ~~container is offered for sale more than thirty six months after the last day of~~
18 ~~the month in which the seed was tested before packaging, the seed must be~~
19 ~~retested within a twelve month period, exclusive of the calendar month in~~
20 ~~which the retest was completed,~~ ⁵ exclusive of the month in which the test
21 was completed;
- 22 e. ~~If the~~ Offering for sale or selling any seed is that:
23 (1) Is not labeled in accordance with this chapter; ~~or bears~~
24 (2) Bears a false or misleading labeling label;
- 25 f. ~~If there has been~~ Engaging in false or misleading advertising in connection
26 with the seed; ⁶
- 27 g. ~~If the~~ Offering for sale or selling any seed contains that exceeds the stated
28 tolerances for prohibited noxious weed seeds; ⁷
- 29 h. ~~Unless for~~ Offering for sale or selling any agricultural or vegetable seed,
30 unless the seed is labeled to show the rate of occurrence of restricted noxious
31 weed seeds, as required under sections ~~4-09-10 and 4-09-11~~ _____; ⁸

- 1 i. ~~If the seed~~ Offering for sale or selling any agricultural, vegetable, flower, or
2 tree and shrub seed that is designated, ~~offered~~, represented, or advertised
3 under any variety name or identification other than the variety name by which
4 the seed was known originally;
- 5 j. ~~If~~ Offering for sale or selling any agricultural, vegetable, flower, or tree and
6 shrub seed, if the seed contains restricted ~~noxious~~ weed seeds in excess of
7 twenty-five seeds per pound [453.59 grams]; ~~or~~ and
- 8 k. ~~If~~ Offering for sale or selling agricultural, vegetable, flower, or tree and shrub
9 seed, if the percentage by weight of all weed seeds in the seed exceeds one
10 percent.
- 11 2. The purchaser, vendor, or any person receiving any seed shipped into this state
12 ~~from without the state~~ shall have the ~~same~~ seed labeled in accordance with this
13 chapter. Certain standardized grades and labeling of seed in use elsewhere may
14 be permitted by the seed commissioner in connection with shipments of seed into
15 this state ~~from points outside this state~~ in lieu of the labeling provided for in this
16 chapter. ⁹
- 17 3. A person ~~in this state~~ may not:
- 18 a. Detach, alter, deface, or destroy any label provided for in this chapter ~~or to~~
19 alter;
- 20 b. Alter or substitute seed ~~in any manner~~ with the intent to defeat the purpose of
21 this chapter;
- 22 ~~b.~~ c. Disseminate ¹⁰ any false or misleading advertisement ~~concerning agriculture~~
23 ~~or vegetable seed in any manner or by any means~~ regarding seeds; ¹¹
- 24 ~~e.~~ d. Hinder or obstruct ~~in any way~~ any authorized person in the performance of the
25 person's duties under this chapter;
- 26 ~~e.~~ e. Fail to comply with a stop-sale order;
- 27 ~~e.~~ f. Use on seed labels or tags, ~~or to~~ use or attach to literature, or ~~to~~ state in any
28 manner or form ~~of~~ wording designed as a "disclaimer" or "nonwarranty"
29 clause with the intent to disclaim responsibility of the vendor of the seed for
30 the data on the label required by law;

Sixty-second
Legislative Assembly

- 1 f. ~~g.~~ Use the words "type" or "trace" on any ~~labeling label~~ in connection with the
- 2 name and description of any ~~agricultural and vegetable~~ seed;
- 3 ~~g.~~ h. Move ~~or otherwise~~, handle, or dispose of any lot of seed ~~held under~~ subject to
- 4 a stop-sale order, except with the written permission of the seed
- 5 commissioner and only for the purpose specified in this written permission;
- 6 ~~h.~~ i. Use the name of the seed department or the name of the official laboratory for
- 7 advertising purposes in connection with seed analyzed or tested by the seed
- 8 department or official laboratory, except in the case of registered or certified
- 9 seed; or
- 10 ~~i.~~ j. Plant any seed labeled "for vegetative cover only" with the intent to harvest for
- 11 seed or grain. ¹²

NOTE:

¹ Current law places label requirements on any agricultural seed that 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. ..." Based on earlier discussions, the proposed language in this bill draft places label requirements on any agricultural seed that is "offered for sale or sold." The Farm Service Agency addresses transportation in interstate commerce. Does the Seed Department deal with seed that is in transit in this state or only with seed that is offered for sale or sold?

² Current law appears to provide that a person may not sell certain seed unless a timely germination test has been conducted or unless the seed is being sold beyond its expiration date. At the recommendation of Seed Department personnel, the latter option has been removed.

³ Is the reference to "cool season" lawn and turf grasses significant?

⁴ If one prohibits the sale of seeds that have been packaged in a hermetically sealed container "under conditions as defined by the commissioner," one is in fact allowing the sale of seeds that have been hermetically sealed without having followed the conditions established by the Seed Commissioner. The rewrite therefore references only hermetically sealed seeds.

⁵ Current law goes on to state:

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 ...

This was stricken because it appears to be in conflict with the preceding language stating that offering for sale or selling seed in a hermetically sealed container if the germination test is more than 36 months old is a prohibited act. However, if the intent of the subdivision is to provide an option under which the outdated seed may still be sold, appropriate language can be drafted to do so.

⁶ Current law provides that a person 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 there has been false or misleading advertising in connection with the seed. At the recommendation of Seed Department personnel, this subdivision has been reworded to prohibit false or misleading advertising rather than prohibiting the sale of seed subject to false or misleading advertising.

⁷ Current law prohibits the sale of any seed that contains prohibited noxious weed seeds. The rewrite clarifies that tolerances apply.

⁸ Section 4-09-24 states that any person who violates this chapter is guilty of a Class A misdemeanor. Sections 4-09-10 and 4-09-11 require all containers of agricultural seed and vegetable seed that are 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 to bear a label. Those sections also set forth the information that must be on a label. Is this subdivision redundant with respect to one particular piece of information that must be on the label, i.e., the rate of occurrence of restricted weed seeds?

⁹ Subsections 2 and 3 should be placed in separate sections.

¹⁰ Disseminate means to "distribute." Is that the intent of this verbiage?

¹¹ Current law prohibits the dissemination of false or misleading advertisements regarding agricultural and vegetable seeds. Should the same apply to flower seeds and the seeds of trees and shrubs?

¹² Intention at the time of planting would be hard to prove.

1 **SECTION 2. AMENDMENT.** Section 4-09-14.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-09-14.1. Seed sales—Seed labeling fee permit —Exception.** A Before a person in
4 this state may ~~not~~ label agricultural, vegetable, flower, or tree or shrub seed ~~within, or and~~
5 before a person may label agricultural, vegetable, flower, or tree or shrub seed for delivery
6 within, into this state ~~unless, the person shall obtain~~ a seed labeling fee permit ~~has been~~
7 ~~obtained~~ from the seed commissioner ~~and has been issued to the labeler pursuant to section~~
8 ~~4-09-14.4.~~

9 **SECTION 3. AMENDMENT.** Section 4-09-14.2 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **4-09-14.2. Seed labeling fee permit—Cost added to selling price Collection of fees**
12 **- Records - Submission to seed commissioner.** ~~The labeler shall remit fees required by~~
13 ~~section 4-09-14.1 to the state seed department.~~

14 1. Each person issued a seed labeling permit shall collect fees on all seeds sold, in
15 the amount established by the seed commissioner, and shall forward the fees to

1 the seed commissioner at the time and in the manner determined by the seed
2 commissioner.

3 2. Each person issued a seed labeling permit shall keep records regarding all seeds
4 sold in this state and shall forward a report to the seed commissioner at the time
5 and in the manner determined by the seed commissioner.

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

8 **4-09-14.4. Permit Civil penalty.** ~~The commissioner may issue a permit to any person~~
9 ~~to label agricultural, vegetable, flower, and tree and shrub seeds in North Dakota. The person~~
10 ~~shall apply to the commissioner for a permit and shall furnish the commissioner with an annual~~
11 ~~statement of all seeds sold in this state when requested by the commissioner. Statements that~~
12 ~~must be furnished for each reporting period must be delivered to the commissioner not later~~
13 ~~than thirty one days after the end of each reporting period and must be accompanied by the~~
14 ~~appropriate fee. A penalty fee of~~

15 1. If a person that was issued a seed labeling permit fails to submit the assessments
16 or reports required by section 3 of this Act within thirty ¹ days of the date
17 determined by the seed commissioner, the seed commissioner shall assess ² a
18 penalty equal to five percent of the amount due or ten dollars, or five percent of the
19 total amount due, whichever is greater, will be assessed for reports that are not
20 postmarked within thirty one days after the end of the reporting period.

21 2. Any person ~~to whom~~ issued a seed labeling permit is granted shall show any
22 information in connection with the permit as the seed commissioner may require as
23 part of the label on all seed sold. ³

24 3. The seed commissioner ~~has the right at all reasonable times to~~ may examine the
25 any records of any permit holder to verify the correctness of its statements required
26 by section 3 of this Act upon request. ⁴

NOTE:

¹ Current law provides that the various submissions must be delivered to the Seed Commissioner not later than "thirty-one" days after the end of each reporting period. "Thirty" days is the standard period used for commodity assessments and in the interest of consistency is suggested here as well.

² Current law provides that a penalty "will be assessed" on reports that are not filed in a timely manner. When commodity assessments are not filed in a timely manner, the governing boards have the authority to assess a penalty but are not required to do so.

The committee may wish to discuss imposition of a penalty and ensure that the appropriate directive is used.

³ Current law requires a permitholder to "show any information in connection with the permit as the commissioner may require as part of the label" Please explain.

⁴ Because there may be some concern about what constitutes a "reasonable time," it would be preferable to state that the Seed Commissioner may examine records upon request.

1 **SECTION 5. AMENDMENT.** Section 4-09-15 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-09-15. Exemptions.**

4 1. This chapter does not apply to:

5 a. ~~Potatoes, whether sold or intended for food, manufacturing, or planting~~
6 ~~purposes potatoes.~~ ¹

7 b. ~~2. Seed~~ This chapter does not apply to seed or grain that is not intended for planting
8 purposes. ~~The~~

9 a. Each seller of seed or grain shall indicate on a form provided by the seller ²
10 the purpose for which the seed or grain is purchased. ³

11 b. The form must be available for inspection by the seed commissioner upon
12 request.

13 c. It is unlawful for the seller or buyer to make a false representation as to the
14 use of the seed or grain. ⁴

15 d. A farmer selling the farmer's own seed or grain to a commercial establishment
16 is exempt from the recordkeeping requirements of this subsection.

17 e. ~~3. Seed~~ This chapter does not apply to seed stored by or consigned to a seed
18 cleaning or conditioning plant for the purpose of cleaning or conditioning.

19 However, any labeling or other representation made with respect to uncleaned or
20 unconditioned seed is subject to the requirements of this chapter.

21 d. 4. A This chapter does not apply to a common carrier ⁵ with respect to any seed
22 transported or delivered for transportation in the ordinary course of business.

23 e. 5. A This chapter does not apply to a farmer who grows the farmer's own seed and
24 sells only the farmer's own seed and does not advertise or use a third party as an

25 agent or broker to bring buyer and seller together. However, a variety for which a
26 certificate plant variety protection has been applied for or issued is not exempt from

1 this chapter. The sale or transfer of protected varieties between farmers for the
2 purpose of planting without the approval of a variety owner or developer is
3 prohibited.
4 2- 6. A The penalties provided for by this chapter do not apply to a person is not subject
5 ~~to the penalties of this chapter for having that~~ sold, exposed for sale, or transported
6 for sale in this state any agricultural, vegetable, flower, or tree and shrub seed that
7 was incorrectly labeled or incorrectly represented as to kind, variety, or origin and
8 which could not be identified through examination, unless the person has failed to
9 obtain an invoice or grower's declaration stating the kind, or kind and variety, and
10 origin, if required, or has failed to take other precautions ~~as may have been~~
11 necessary to ensure that the seed was properly identified.

NOTE:

¹ If the chapter does not apply to potatoes, the reason for which the potatoes were sold does not matter.

² Does requiring each seller to provide his or her own form create any concerns about consistency?

³ Should the section articulate any additional information that might be useful from a regulatory perspective, e.g., the name and address of the purchaser, the location at which the seed is to be used, the date, etc.?

⁴ Section 12.1-11-02 provides that "A person is guilty of a class A misdemeanor if, in a governmental matter, he ... [m]akes a false written statement, when the statement is material and he does not believe it to be true ..."

⁵ In other sections of this chapter, current law provides that each container of 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 must have a label.

12 **SECTION 6. AMENDMENT.** Section 4-09-16 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **4-09-16. Certified seed.** ~~The commissioner shall:~~

- 15 1. ~~Establish~~ The seed commissioner shall establish a seed certification system for
16 this state ~~and adopt rules governing application for service, acceptance of suitable~~
17 ~~seed stocks for the production of a foundation, registered, certified, or inspected~~
18 ~~crop, field inspection, bin inspections, harvesting, handling, storage, conditioning,~~
19 ~~and preparation and handling of the seed for market.~~ ^{1 and 2}
20 2. ~~Accept for certification~~ The seed commissioner shall ³ accept all kinds, varieties,
21 selections, and names of seed stocks, ~~and establish~~ submitted for certification. ⁴

- 1 3. ~~The seed certification system must include standards of quality, degree of disease~~
2 ~~infection, and amounts of any admixtures, foreign seeds, noxious weeds, or other~~
3 ~~weed seeds that are allowed in for any lot or stock of seed, which that may be or~~
4 ~~may become eligible for field inspection or for final certification of the seed crop.~~
- 5 3. ~~Accept from any person a sample of seed which the person claims to be a new~~
6 ~~variety, distinct from any commonly known variety of the seed, together with a~~
7 ~~proposed, distinctive name. The commissioner shall determine the eligibility of a~~
8 ~~variety for certification based on factors including whether:~~
- 9 a. ~~The variety has been accepted into a certification program by a~~
10 ~~national designated or state designated certification authority according to~~
11 ~~established rule or regulation.~~
- 12 b. ~~The variety or selection is sufficiently distinguishable from existing varieties to~~
13 ~~allow for seed certification.~~
- 14 c. ~~The variety or selection has been released by a public or private industry~~
15 ~~breeding program through an acceptable release process or policy.~~
- 16 d. ~~Technical information regarding physical traits or genetic markers of the~~
17 ~~variety or selection has been provided to the commissioner for use in field and~~
18 ~~laboratory certification programs.~~
- 19 4. ~~Prescribe~~ Any person ⁵ seeking certification under this section shall provide to the
20 seed commissioner:
- 21 a. The name of the variety;
- 22 b. A statement regarding the variety's origin and the breeding procedure used in
23 its development;
- 24 c. A description of the morphological, physiological, or other characteristics that
25 distinguish the variety from other varieties;
- 26 d. Evidence supporting the identity of the variety;
- 27 e. A statement regarding the geographic area of adaptation;
- 28 f. A statement regarding plans and procedures for the maintenance of seed
29 classes, including the number of generations through which the variety may
30 be multiplied;

- 1 g. A description of the manner in which the variety is constituted when a
2 particular cycle of reproduction or multiplication is specified;
3 h. Any additional restrictions on the variety specified by the breeder; and
4 i. A sample of seed that is representative of the variety as marketed. ⁶
- 5 5. The seed commissioner shall prescribe all labels, seals, certificates, ~~or similar~~ and
6 statements that must be used for, or in relation to, any seed, or the various kinds
7 and qualities grown, handled, stored, held for sale, sold, or offered or exposed for
8 sale in this state as "breeders", "foundation", "registered", or "certified" seed; and
9 shall specify ~~what~~ the words, terms, or figures and information required to be on
10 the labels, seals, certificates, or ~~the seed containers of the seed must bear.~~
- 11 ~~5.~~ 6. Cooperate The seed commissioner shall cooperate with the managers of any seed
12 conditioning plants, or any commercially established seed firm, or any person
13 within or outside of the state having proper facilities and equipment to store,
14 condition, and otherwise handle seed ~~which~~ that is eligible for certification, and for
15 the purposes of handling and marketing "breeders", "foundation", "registered", or
16 "certified" seed. ⁷
- 17 ~~6.~~ 7. Cooperate The seed commissioner shall cooperate in the selection, testing, and
18 growing of seed for certification purposes and in the arrangement for increase of
19 foundation seed stocks suitable for the production of certified seed. ⁸
- 20 ~~7.~~ 8. Establish an equitable schedule of ~~The seed commissioner shall set and charge~~
21 fees and charges, ~~which must be uniform throughout the state,~~ for inspecting,
22 testing, analyzing, and recording the seed; and for other work and duties incident
23 to the growing, handling, marketing, and certifying of North Dakota seed, ~~and shall~~
24 collect all the fees and charges. ⁹

NOTE:

¹ The Seed Commissioner has the authority by virtue of Chapter 28-32 to adopt rules. It is not necessary to statutorily state what must be in the rules.

² Seed Department personnel wanted to ensure that within this directive, the seed commissioner had the authority to establish tolerances for certified seed. The committee might wish to discuss whether the establishment of tolerances should be specifically addressed.

³ Seed Department personnel have suggested that this section authorize the Seed Commissioner to accept kinds, varieties, selections, and names of seed stocks for certification, rather than mandating the Seed Commissioner to do so.

⁴ Rather than directing the Seed Commissioner to accept for certification that which is submitted, would it be more accurate to provide that any person may submit a particular variety, etc., to the Seed Commissioner and request that it be considered for certification?

⁵ The rewrite references "any person" rather than the "originator, developer, or owner of the variety, or agent thereof."

⁶ The list of requirements was included at the suggestion of Seed Department personnel.

⁷ It appears that this subsection is directing the Seed Commissioner to establish standards for state-approved seed conditioning plants.

⁸ With whom should the Seed Commissioner cooperate? Seed Department personnel have suggested that this subsection could be combined with the content of current Section 4-09-19 (aka Section 10 of this bill draft).

⁹ Section 4-09-08 also provides that the Seed Commissioner, with the approval of the commission, shall establish and charge fees for laboratory tests and services.

1 **SECTION 7. AMENDMENT.** Section 4-09-17 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-09-17. Certified seed - ~~Regulations governing labeling and representing~~ Use of**
4 **terms - Authorization.** ~~Seed grown in North Dakota, or grown elsewhere and transported into~~
5 ~~this state, which is sold, offered or exposed for sale, stored, transported, or distributed, or held~~
6 ~~with intent to sell or plant the same, may not be represented, advertised, labeled, or~~
7 ~~characterized in any way, either orally or in writing, with or by the use of the term "breeders",~~
8 ~~"foundation", "registered", "certified", "pedigreed", or "elite" seed, or any term or terms~~
9 ~~conveying a meaning substantially equivalent to the meaning of any of said terms, without the~~
10 ~~approval and authorization of the commissioner, who may adopt such rules as the~~
11 ~~commissioner finds necessary for the proper regulation and protection of the certified seed~~
12 ~~industry.~~ A person may not use the terms breeders, certified, foundation, elite, pedigreed, or
13 registered, or substantially equivalent terms, in labeling or in advertising, characterizing, or
14 representing seed that is offered for sale or sold in this state, unless authorized to do so by the
15 seed commissioner. The prohibition of this section applies to both oral and written forms of
16 advertising, characterizations, and representations.

NOTE:

1. This section was changed to prohibit a person from engaging in the unwanted activities.

2. By referring to seed that is offered for sale or sold in this state, the section does not need to maintain the current reference with respect to where the seed might have been grown.
3. The reference to transportation has been removed from this section because it was removed from previous sections pertaining to labeling.
4. Because the Seed Commissioner is already authorized to adopt rules under Chapter 28-32, it is not necessary to provide additional authorization in this chapter.
5. Since this section is a prohibition, consideration should be given to its possible relocation with other similar sections.

1 **SECTION 8. AMENDMENT.** Section 4-09-17.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-09-17.1. Plant Variety Protection Act. ~~Any~~**

- 4 1. Before any seed may be advertised, offered for sale, or sold by variety name and
5 ~~for which a certificate of plant variety protection has been issued under the Plant~~
6 ~~Variety Protection Act, as amended [Pub. L. 91-577; 84 Stat. 1551; 7 U.S.C. 2481~~
7 ~~et seq., effective as of July 1, 2009], as being for sale only in this state, as a class~~
8 of certified seed, the seed must be certified by an official seed certifying agency ~~in~~
9 ~~order for the seed to be advertised, offered for sale, or sold by variety name in the~~
10 ~~state of North Dakota~~ if a certificate of plant variety protection has been issued
11 under the Plant Variety Protection Act, as amended [Pub. L. 91-577; 84 Stat.
12 1551; 7 U.S.C. 2481 et seq., effective as of July 1, 2011].
- 13 2. Seed from a certified lot may be labeled as to variety name when used in a blend
14 or mixture by or with approval of the owner of the variety.

15 **SECTION 9. AMENDMENT.** Section 4-09-18 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **4-09-18. Certified seed standards - Publication.**

- 18 1. The rules ~~and requirements~~ for certification of crop seeds, other than potatoes,
19 must be published in the department bulletin.
- 20 2. The rules ~~and requirements~~ for seed potato certification must be published in the
21 department bulletin.

NOTE: Rules for certification are published in the North Dakota Administrative Code. Unless it is the intent to specifically require that rules be duplicated in a departmental publication, it appears that this section could be removed.

1 **SECTION 10. AMENDMENT.** Section 4-09-19 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-09-19. ~~Cooperation by~~ Seed commissioner with institutions, agencies, and**
4 **organizations - Authority to contract - Promotion of seed industry.** The seed
5 commissioner may ~~cooperate~~¹ ~~and enter into agreements with the United States department of~~
6 ~~agriculture and with the state departments and agricultural colleges of any of the states, and~~
7 ~~with organized agricultural fairs or exhibitions, or other organizations or persons in matters~~
8 ~~relating~~ contract with any person for any purpose related to the protection, inspection, analysis,
9 testing, ~~registering~~³, ~~and certifying~~ conditioning, and certification of North Dakota seed,⁴ and
10 the promotion and protection of the interests and welfare of North Dakota seed growers and
11 crop producers. ~~The commissioner may recognize and deal with growers, organizations, and~~
12 ~~institutions as agencies affiliating with the commissioner in pure seed matters.~~

NOTE:

¹ The Seed Commissioner does not need statutory authority to cooperate with others.

² The authority to "enter into agreements" is the authority to "contract."

³ At the suggestion of Seed Department personnel, the word "registering" is deleted and the word "conditioning" is added.

⁴ As an alternative to listing specific activities, would it be acceptable to merely authorize the Seed Commissioner to "contract with any person for any purpose related to this chapter" or "for any lawful purpose"?

⁵ At the suggestion of Seed Department personnel, the final sentence was removed.

This section authorized actions that could be included in the general "powers" of the Seed Commissioner.

13 **SECTION 11. AMENDMENT.** Section 4-09-20 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **4-09-20. Fees and collections - Disposition - Continuing appropriation.** ~~All moneys~~
16 ~~arising from the collection of fees and other charges~~

17 1. The seed commissioner shall forward all moneys received under this chapter ~~must~~
18 ~~be deposited by the commissioner with~~ to the state treasurer ~~and credited to~~ for
19 deposit in a special fund known as the seed department revolving fund, ~~and must~~
20 ~~be disbursed, within the limits of legislative appropriations, upon vouchers signed~~
21 ~~by the commissioner and warrant checks prepared.~~ All moneys in the seed

- 1 department fund are appropriated on a continuing basis to the seed department to
2 carry out this chapter. ¹
- 3 2. The seed commissioner shall approve all expenditures made pursuant to this
4 chapter and shall document the expenditures at the time and in the manner
5 required by the office of management and budget. ²
- 6 3. The seed commissioner shall provide a report to the house and senate
7 appropriations committees, at the time and in the manner directed by the chairmen
8 of the committees. The report must contain a summary of the department's
9 activities during the current biennium and a statement of revenues and
10 expenditures for the ensuing biennium. ³
- 11 4. Royalty, research, or patent fees will be collected on protected varieties when
12 necessary by the seed commissioner and disbursed less cost of collection. ⁴ ~~The~~
13 ~~state treasurer shall, at~~
- 14 5. At the direction of the commission, provide for the investment of the state treasurer
15 shall invest all available moneys ~~from the revolving~~ in the seed department fund.
16 The state treasurer shall ~~deposit~~ credit twenty percent of the investment income
17 ~~from the investment of the moneys in~~ to the general fund and the remaining eighty
18 percent of the investment income ~~in~~ to the seed department ~~revolving~~ fund. ⁵

NOTE:

¹ Current law refers to a Seed Department revolving fund. At the recommendation of Office of Management and Budget personnel, the rewrite clarifies that the Seed Department operates under a continuing appropriation authority.

² Current law requires Office of Management and Budget personnel to disburse moneys from the Seed Department fund "upon vouchers signed by the commissioner and warrant-checks prepared by the office of management and budget." The proposed language attempts to modernize the centuries-old reference to warrants while maintaining the role of the Office of Management and Budget.

³ By virtue of operating under a continuing appropriation, the Seed Department does not have to seek biennial appropriation authority. However, the Seed Department has indicated its desire to continue appearing before the Appropriations Committees. The language of subsection 3 would provide for a report to the Appropriations Committees.

⁴ The directive in subsection 4 is in need of clarification and perhaps greater detail.

⁵ The directive to credit 20 percent of the investment income to the general fund and 80 percent to the Seed Department fund is in current law and is comparable to the provisions governing the investment of moneys held by the agricultural commodity groups. (See Section 4-24-09.)

1 **SECTION 12. AMENDMENT.** Section 4-09-20.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-09-20.1. Liability of seed commission, seed department, seed commissioner,**
4 **and certified or noncertified agricultural seed producers.** A warranty of any kind, either
5 expressed or implied, including a warranty of merchantability, fitness for a particular purpose, or
6 absence of disease, is not made by the seed commission, the seed department, the seed
7 commissioner, or certified or noncertified agricultural seed producers as to the quantity or
8 quality of the crop produced from the agricultural seeds or as to other produce which is
9 inspected and certified, except as provided in this section. The sole warranty made is that the
10 agricultural seeds or other produce were produced, graded, packed, and inspected under the
11 rules of the department or United States department of agriculture. The seed commissioner
12 functions and serves only in an official regulatory manner.

13 **SECTION 13. AMENDMENT.** Section 4-09-20.2 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **4-09-20.2. Seed arbitration board - Petition - Arbitration hearing.**

- 16 1. The state seed arbitration board consists of the following six members:
- 17 a. The agriculture commissioner, ~~the state;~~
18 b. The seed commissioner, ~~the;~~
19 c. The director of the North Dakota state university extension service, ~~the;~~
20 d. The director of the North Dakota agricultural experiment station, ~~the;~~
21 e. The chairman of the ~~North Dakota~~ seed trade ~~committee~~ division¹ of the
22 North Dakota agriculture association;¹ and a
23 f. A representative of a major² ~~North Dakota~~ farm organization in this state,
24 appointed by the agriculture commissioner or an authorized designee.³ ~~Each~~
25 board member is
- 26 2. The chairman of the seed division of the North Dakota agriculture association and
27 the representative of a major North Dakota farm organization⁴ are entitled to
28 receive as per diem compensation in the amount of one hundred thirty-five dollars
29 and per day plus reimbursement of for expenses as provided by law for state
30 officers while officials, if the individual is attending meetings or performing duties
31 directed by the board, except that. The compensation under and reimbursement

1 ~~for expenses required by this subsection may not be paid to any member who~~
2 ~~receives compensation or salary as a regular state employee or official.~~
3 ~~Compensation and expenses for board members who do not receive~~
4 ~~compensation or salary as a regular state employee or official must be paid by the~~
5 ~~department of agriculture commissioner.~~ ⁵

6 2- 3. a. A seed labeler, seed dealer, or seed customer may petition the agriculture
7 commissioner ~~in writing~~ ⁶ for a hearing to settle a dispute involving a seed
8 transaction.

9 b. The agriculture commissioner shall submit the dispute to the seed arbitration
10 board, and the board shall arbitrate the dispute. ⁷

11 c. The board, within thirty days after the hearing, shall make a nonbinding
12 recommendation for the resolution of the dispute. ⁸ ~~Evidence~~

13 d. ~~Any evidence and testimony presented to the board at the hearing and any~~
14 findings or recommendations by the board are admissible ~~as evidence~~ in any
15 subsequent proceeding.

16 e. The board shall adopt rules of operation and procedures ~~procedure~~ for
17 arbitration ~~proceedings~~ hearings, including a formula for reimbursement by
18 the parties of the expenses of the arbitration process. ⁹

NOTE:

¹ Seed Department personnel asked that the rewrite reference the chairman of the Seed Trade Division of the North Dakota Agriculture Association, rather than the chairman of the Seed Trade Committee.

² Which farm organizations are considered to be "major"?

³ Is it the intent to allow either the Agriculture Commissioner or the commissioner's designee to appoint an individual or is the authorized designee being allowed to serve in place of the major farm organization representative?

⁴ The provisions regarding compensation and reimbursement for expenses were reworded because four of the six Seed Arbitration Board members are state employees or officials.

⁵ Current law does not address who serves as the chairman, who provides clerical support, or where the board meets.

⁶ Petitions are by their very nature "in writing."

⁷ If the Agriculture Commissioner has no discretion regarding the request for a hearing, why is the petition not filed directly with the board?

⁸ Is there any expectation that the hearing take place within a certain period of time after the request is filed?

⁹ Does the prevailing party receive reimbursement or is this intended to reimburse the Agriculture Commissioner for expenses incurred in bringing the board together?

Seed Department personnel have suggested that this section should be removed from its chapter and placed with statutes pertaining to the Agriculture Commissioner.

1 **SECTION 14. AMENDMENT.** Section 4-09-21 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-09-21. Enforcement - Hearing by seed commissioner - Application of chapter**
4 **28-32.**

- 5 1. The seed commissioner shall do all things necessary and proper to enforce this
6 chapter and ~~the regulations made thereunder~~ rules implementing this chapter. ¹
7 2. Whenever the seed commissioner is of the opinion that a violation of this chapter
8 or ~~of the regulations made thereunder exists~~ the rules implementing this chapter
9 has occurred, the seed commissioner shall ² hold a hearing as provided by chapter
10 28-32. If after the hearing, or without hearing if the person involved fails or refuses
11 to appear, the seed commissioner decides that the evidence warrants prosecution,
12 the seed commissioner shall proceed as ~~hereinafter provided.~~ ~~Any proceeding~~
13 ~~under this chapter for adopting or modifying rules and regulations and determining~~
14 ~~compliance with rules and regulations of the commissioner shall be conducted in~~
15 ~~accordance with chapter 28-32 and appeals may be taken as provided in chapter~~
16 ~~28-32 set forth in this chapter.~~ ³

NOTE:

¹ The directive to enforce this chapter and its rules should be placed in the section pertaining to the Seed Commissioner's duties.

² Current law literally requires the Seed Commissioner to hold a hearing under Chapter 28-32, before a case is forwarded for prosecution. This would apply to all circumstances. If it is the intent of the section to authorize the Seed Commissioner to proceed administratively under Chapter 28-32, then the verbiage is not needed. That authority already exists by virtue of the Administrative Agencies Practice Act.

³ The underscored language is covered under Chapter 28-32 and does not need to be reiterated in this chapter.

17 **SECTION 15. AMENDMENT.** Section 4-09-22 of the North Dakota Century Code is
18 amended and reenacted as follows:

1 **4-09-22. Prosecution for violations - Duty of attorney general and state's attorney.**

2 Upon a complaint by the seed commissioner alleging a violation of this chapter or of any
3 ~~regulation duly made thereunder~~ rule implementing this chapter, the attorney general; or the
4 state's attorney of the county ~~wherein~~ in which the case arises; shall ~~cause appropriate~~ initiate
5 legal proceedings ~~to be commenced and prosecuted for the enforcement of the penalties~~
6 ~~provided in this chapter.~~

NOTE: This section removes all discretion from the Attorney General or the state's attorney in determining whether to move forward with prosecution.

7 **SECTION 16. AMENDMENT.** Section 4-09-23 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **4-09-23. Seizure and injunction - Action.** ~~Any lot of agricultural, flower, tree and~~
10 ~~shrub, or vegetable seed~~

- 11 1. If the seed commissioner determines that any lot of seed is not in compliance with
12 ~~the provisions of this chapter is subject to seizure on complaint of,~~ the seed
13 commissioner; ~~or the commissioner's agent, to~~ may petition a court of competent
14 jurisdiction ~~in the locality in which the seed is located. In the event that the court~~
15 ~~finds the seed to be in violation of this chapter and~~ for seizure of the seed. If the
16 court orders the condemnation of ~~said~~ the seed, it must be denatured, processed,
17 destroyed, relabeled, or otherwise disposed of in ~~compliance~~ accordance with the
18 laws of this state. ~~Provided, that in no instance may the~~
- 19 2. A court may not order ~~such~~ disposition of ~~said~~ the seed without first having given
20 the ~~claimant~~ owner an opportunity to apply to the court for ~~the~~ release of ~~said~~ the
21 seed; or for permission to process or relabel ~~it~~ the seed in compliance with ~~the~~
22 ~~provisions of this chapter.~~
- 23 3. Any violation of this chapter may be enjoined in a court of competent jurisdiction
24 without bringing any other civil or criminal action.

25 **SECTION 17. AMENDMENT.** Section 4-09-24 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **4-09-24. Penalty - Criminal - Civil.**

- 28 1. A Any person who violates willfully violating this chapter or any rules adopted
29 ~~under~~ to implement this chapter is guilty of a class A misdemeanor.

- 1 2. When construing and enforcing the provisions of this chapter, the act, omission, or
2 failure of any officer, agent, or other person acting for or employed by any person
3 must ~~in every case be also~~ deemed to be the act, omission, or failure of such
4 person as well as that of the person employed.
- 5 3. A Any person found guilty of violating this chapter or the rules adopted ~~under to~~
6 implement this chapter is subject to a civil penalty in an amount not to exceed five
7 thousand dollars for each violation. The civil penalty may be imposed by a court in
8 a civil proceeding or by the seed commissioner through an administrative hearing
9 under chapter 28-32.

NOTE: A Class A misdemeanor is one "for which a maximum penalty of one year's imprisonment, a fine of two thousand dollars, or both, may be imposed."

10 **SECTION 18. AMENDMENT.** Section 4-09-25 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **4-09-25. Plant and seed records - ~~Exempt~~ Exemption.** The following records of the
13 ~~state seed commission~~ department are exempt from section 44-04-18:

- 14 1. Records of any plant or seed inspection, analysis, or testing and germination,
15 purity, variety, or disease determinations conducted by the ~~state~~ seed department
16 on a fee-for-service basis for nonpublic entities or persons; and
- 17 2. Information received by the seed ~~commission~~ department under chapter 4-09,
18 4-10, or 4-42 from a nonpublic entity or person that the nonpublic entity or person
19 determines is proprietary information or a trade secret.

NOTE: If records are obtained as a result of provisions in other chapters, exemptions should be noted in the appropriate chapters.

20 **SECTION 19.** A new section to chapter 11-08 of the North Dakota Century Code is
21 created and enacted as follows:

22 **Limitation on authority - Seed.** Notwithstanding any other law, a county may not
23 impose any requirements or restrictions pertaining to the registration, labeling, distribution, sale,
24 handling, use, application, transportation, or disposal of seed.

NOTE: This is existing law. It is recommended that the section be moved to the chapter pertaining to counties.

SOURCE: Section 4-09-02.1.

1 **SECTION 20.** A new section to chapter 40-05 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Limitation on authority - Seed.** Notwithstanding any other law, a city may not impose
4 any requirements or restrictions pertaining to the registration, labeling, distribution, sale,
5 handling, use, application, transportation, or disposal of seed. This section does not apply to
6 city zoning ordinances.

NOTE: This is existing law. It is recommended that the section be moved to the chapter pertaining to cities.

SOURCE: Section 4-09-02.1.

7 **SECTION 21.** A new section to chapter 58-03 of the North Dakota Century Code is
8 created and enacted as follows:

9 **Limitation on authority - Seed.** Notwithstanding any other law, a township may not
10 impose any requirements or restrictions pertaining to the registration, labeling, distribution, sale,
11 handling, use, application, transportation, or disposal of seed.

NOTE: This is existing law. It is recommended that the section be moved to the chapter pertaining to townships.

SOURCE: Section 4-09-02.1.