

September 2010

Introduced by

1 A BILL for an Act to amend and reenact sections 4-09.1-01, 4-09.1-02, 4-09.1-03, 4-09.1-04,
2 and 4-09.1-05 of the North Dakota Century Code, relating to commodity grades and
3 inspections; to repeal section 4-09.1-06 of the North Dakota Century Code, relating to the
4 issuance of rules by the seed department; and to provide a continuing appropriation.

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

6 **SECTION 1. AMENDMENT.** Section 4-09.1-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **4-09.1-01. Definitions.** In this chapter, unless the context or subject matter otherwise
9 requires:

- 10 1. ~~"Commission" means the state seed commission.~~
- 11 2. ~~"Commissioner" means the state seed commissioner.~~
- 12 3. ~~"Commodities", "commodity" means any agricultural product of the soil crop for~~
13 ~~which grades, standards, or inspection services, or all of them, have not been~~
14 ~~established by the United States department of agriculture~~ has not established
15 grades, standards, or inspection services pursuant to the United States Grain
16 Standards Act, as amended August 15, 1968 [~~Pub. L. 90-487; 82 Stat. 761;~~
17 7 U.S.C. 71 et seq.].

NOTE: Is it important to provide that the grades, standards, or inspection services must
have been established by the United States Department of Agriculture under the United
States Grain Standards Act?

18 **SECTION 2. AMENDMENT.** Section 4-09.1-02 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **4-09.1-02. ~~Commissioner~~ Seed commissioner - Duties.** The seed commissioner
21 ~~may establish~~ shall:

- 1 1. Establish commodity grades ~~and~~;
- 2 2. Provide¹ commodity inspection services ~~for the purpose of making inspection and~~
3 ~~otherwise providing for the proper handling and marketing of commodities~~². ~~The~~
4 ~~commissioner shall appoint~~;
- 5 3. Appoint a chief inspector; ~~and other employees as are~~
- 6 4. Employ and compensate necessary ~~in carrying out this chapter. The~~
7 ~~commissioner shall fix the salaries of employees within the limits of legislative~~
8 ~~appropriations~~ personnel.

NOTE:

- 1 1 Current law requires that the Seed Commissioner "establish" inspection services. The rewrite directs that the Seed Commissioner "provide" such services.
- 2 2 The rewrite directs the Seed Commissioner to provide commodity inspection services and removes the reason why this should be done. If there are specific as opposed to general objectives that the Seed Commissioner must accomplish, those should be articulated in the statute.

9 **SECTION 3. AMENDMENT.** Section 4-09.1-03 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **4-09.1-03. Grade inspection - Fees and charges.** ~~The~~

- 12 1. Subject to the approval of the seed commission, the seed commissioner,~~with the~~
13 ~~approval of the seed commission,~~ shall establish and charge fees for ~~making~~
14 providing commodity grade inspections,~~and the~~.
- 15 2. The fees must be uniform throughout the state for periods of time as must be
16 specified.¹ ~~The~~
- 17 3. As nearly as possible, the fee for commodity grade inspection must,~~as nearly as~~
18 ~~possible,~~ approximate the cost of the service.²

NOTE:

- 1 1 Current law requires that the fees must be uniform throughout the state "for periods of time as must be specified." Is this intended to provide that the uniform fees are in effect until a date certain (e.g., June 30, 2011) or is it intended to provide that fees may be set based on the amount of time that the actual inspection takes?
- 2 2 If fees are required to be uniform throughout the state, how can they approximate the cost of the service? Would not the cost of service vary with time and distance?

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

1 **4-09.1-04. Cooperation with departments and bureaus.** The seed commissioner
2 may cooperate with the United States department of agriculture or any bureau or division of the
3 department, with a similar state inspection service, contract with any state or federal
4 governmental entity and with any person ~~so that any or all of the~~ for the joint recognition and
5 acceptance of grade certificates issued by or on the commodities in behalf of this state are
6 officially recognized and accepted elsewhere in the United States to protect and promote the
7 interests of each person having an interest in the commodities grown or handled in this state,
8 and to provide for any necessary joint arrangements to further the purpose of this chapter.

NOTE: It is not clear from the current law whether the intent is to authorize reciprocity.
If so, is it limited to other states or does it include other nations?

9 **SECTION 5. AMENDMENT.** Section 4-09.1-05 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **4-09.1-05. Seed commission may receive and expend funds - Continuing**
12 **appropriation.** ~~All~~ The seed commissioner shall forward all moneys arising from the collection
13 of fees and other charges under the provisions of received under this chapter ~~must be~~
14 ~~deposited by the commissioner with~~ to the state treasurer ~~and credited to~~ for deposit in a
15 special fund known as the seed department revolving fund. All ~~proceeds deposited by the state~~
16 ~~treasurer moneys~~ in the seed department revolving fund are ~~subject to appropriation by the~~
17 ~~legislative assembly~~ appropriated on a continuing basis to the seed department to carry out
18 statutory directives.

NOTE: The rewrite reconciles this section with the changes proposed to Section
4-09-20, i.e., clarifying that the Seed Department fund is a special fund and providing
that all moneys in the fund are appropriated to the Seed Department on a continuing
basis. The continuing appropriation for the purposes of "carrying out specific statutory
directives" was selected rather than the standard phrase "to carry out this chapter"
because at least two chapters reference this particular fund.

19 **SECTION 6. REPEAL.** Section 4-09.1-06 of the North Dakota Century Code is
20 repealed.

NOTE: Section 4-09.1-06 provides that:

Any proceeding under this chapter for issuing or modifying rules and determining
compliance with rules of the commission or commissioner must be conducted in
accordance with chapter 28-32 and appeals may be taken as provided in chapter
28-32.

It has been omitted from the rewrite because the actions of the agency are already
governed by Chapter 28-32.

ADDITIONAL NOTE:

Much of the content in this chapter is already duplicated in other sections of the seed laws. The only notable exception would be the authority to provide commodity inspection services. (See page 2, line 2.) If this authority is articulated in the section governing the powers of the Seed Commissioner, it would appear that there is no reason to retain Chapter 4-09.1.