

Sixty-second  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1027**

Introduced by

Legislative Management

(Agriculture Committee)

1 A BILL for an Act to create and enact a new section to chapter 4-10, chapters 4.1-53, 4.1-54,  
2 and 4.1-57, a new section to chapter 11-08, a new section to chapter 40-05, and a new section  
3 to chapter 58-03 of the North Dakota Century Code, relating to the labeling, certification, and  
4 sale of seed; to amend and reenact sections 4-10-12.1, 60-02-01, and 60-02.1-01 of the North  
5 Dakota Century Code, relating to seed labeler and wholesale potato dealer licenses; to repeal  
6 chapters 4-09, 4-09.1, 4-11, 4-25, and 4-42 of the North Dakota Century Code, relating to the  
7 labeling, certification, and sale of seed; to provide a penalty; and to provide a continuing  
8 appropriation.

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

10 **SECTION 1. AMENDMENT.** Section 4-10-12.1 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12 **4-10-12.1. Liability - Potato crop quantity and quality.**

13 The state seed commission, state seed department, commissioner and the commissioner's  
14 employees, certified seed potato producers, and wholesale potato dealers licensed under  
15 chapter ~~4-14~~4.1-57 make no expressed or implied warranty of any kind as to the quantity or  
16 quality of the crop produced from the seed potatoes or through other produce inspected and  
17 certified, including merchantability, fitness for a particular purpose, or absence of disease. The  
18 only representation is that the potatoes or other produce were ~~produced, graded, packed, and~~  
19 inspected under the rules of the state seed department or United States department of  
20 agriculture. The commissioner and the commissioner's employees function and serve only in an  
21 official regulatory manner.

22 **SECTION 2.** A new section to chapter 4-10 of the North Dakota Century Code is created  
23 and enacted as follows:

1       **Plant and seed records - Exempt.**

2       The following records of the state seed commission are exempt from section 44-04-18:

- 3       1. Records of any plant or seed inspection, analysis, or testing and germination, purity,  
4       variety, or disease determinations conducted by the state seed department on a  
5       fee-for-service basis for nonpublic entities or persons.  
6       2. Information received by the seed commission under this chapter from a nonpublic  
7       entity or person that the nonpublic entity or person determines is proprietary  
8       information or a trade secret.

9       **SECTION 3.** Chapter 4.1-53 of the North Dakota Century Code is created and enacted as  
10 follows:

11       **4.1-53-01. Definitions.**

12       In this chapter, unless the context otherwise requires:

- 13       1. "Agricultural seed" means:  
14       a. The seed of cereal, fiber, forage, grass, or oil crops;  
15       b. Irish potato seed tubers;  
16       c. Lawn seed;  
17       d. Any other seed designated by the seed commissioner as agricultural seed; and  
18       e. Any mixture of seeds referenced in this subsection.  
19       2. "Blend" means seed that consists of more than one variety, provided each variety  
20       consists of more than five percent of the whole, by weight.  
21       3. "Brand" means a design, name, number, symbol, or word used to identify the seed of  
22       one person and distinguish the seed from that of another person.  
23       4. "Certification" means a process that:  
24       a. Is designed to maintain the genetic purity and varietal identity of crop cultivars;  
25       and  
26       b. Requires a variety of components, including:  
27       (1) An examination of records provided by the producer;  
28       (2) An inspection of the field in which the plants producing seed for certification  
29       are growing; and  
30       (3) The testing and grading of a representative sample.

- 1       5.   "Certified" means a designation that the seed department has authorized a labeler to  
2       use on seed that met the requirements for certification.
- 3       6.   "Conditioning" means any process to remove unwanted seeds or other matter from a  
4       seed lot in order to produce a uniform product.
- 5       7.   "Flower seed" means the seed of a herbaceous plant grown for its bloom, ornamental  
6       foliage, or other ornamental part.
- 7       8.   "Germination" means the physiological process of development and the emergence  
8       from the seed embryo of essential structures that are indicative of the ability to  
9       produce a normal plant under favorable conditions.
- 10      9.   "Hard seed" means a seed that has an impermeable seed coat and has not absorbed  
11      water by the end of the prescribed test period.
- 12      10.   "Inert matter" means anything other than unbroken seeds.
- 13      11.   "Kind" means one or more related species or subspecies known singly or collectively  
14      by a common name.
- 15      12.   "Label" means a device or tag attached to a seed container, printed or stamped  
16      information on a seed container, or written information accompanying a lot of bulk  
17      seed.
- 18      13.   "Labeler" means the person identified by name and address on the label.
- 19      14.   "Lot" means an identifiable quantity of seed that is uniform within permitted tolerances  
20      for the factors that appear on its label.
- 21      15.   "Mixture" means seed consisting of more than one kind, each in excess of five percent  
22      of the whole, by weight.
- 23      16.   "Official seed-certifying agency" means:
  - 24          a.   An agency that is authorized under the laws of a state, territory, or possession to  
25          officially certify seed and which has standards and procedures approved by the  
26          United States secretary of agriculture to assure the genetic purity and identity of  
27          any seed it certifies; or
  - 28          b.   An agency of a foreign country if the United States secretary of agriculture has  
29          determined that the agency adheres to seed certification procedures and  
30          standards that are comparable to those generally adhered to by a seed-certifying  
31          agency meeting the criteria set forth in subdivision a.

- 1       17. "Prohibited weed seed" means:
- 2           a. The seed or propagule of any weed designated as noxious by the agriculture
- 3               commissioner in accordance with section 4.1-47-05; or
- 4           b. The seed or propagule of any weed determined by the seed commissioner to be
- 5               highly destructive and difficult to control by good cultural practices or by the use
- 6               of herbicides.
- 7       18. "Pure seed" means a quantity of seed that belongs to a particular kind or variety and
- 8           which does not contain either inert matter or seeds of another kind or variety.
- 9       19. "Record" includes all information relating to origin or source, variety, lot identification,
- 10           quantity, inspection, processing, testing, labeling, distribution, and file samples of the
- 11           seed.
- 12       20. "Restricted weed seed" means a seed that is determined by the seed commissioner to
- 13           be:
- 14           a. Objectionable in agricultural seed, lawn or turf seed, vegetable seed, and flower
- 15               seed; and
- 16           b. Controllable by good cultural practices or the use of herbicides.
- 17       21. "Selection" means a subgroup of a variety and includes clones, lines, and strains.
- 18       22. "Treated" means a seed has received an application of a substance intended to
- 19           enhance the performance of the seed or alter a physiological process of the plant.
- 20       23. "Unbroken seed" means a seed that is more than fifty percent intact.
- 21       24. "Variety" means a subdivision of a kind that:
- 22           a. Can be differentiated by one or more identifiable morphological, physiological, or
- 23               other characteristics from other varieties of the same kind;
- 24           b. Has describable variations in essential and distinct characteristics; and
- 25           c. Will remain unchanged in its essential and distinct characteristics and uniformity
- 26               when reproduced or reconstituted, as required by the different categories of
- 27               varieties.

28       **4.1-53-02. Seed department - Location.**

29       The North Dakota seed department is the official seed-certifying agency of the state. The

30       seed department must be located on the campus of North Dakota state university of agriculture

31       and applied science.

1       **4.1-53-03. Official seal.**

2       The seed department shall have and use an official departmental seal that has been  
3 recorded in the office of the secretary of state.

4       **4.1-53-04. Seed commission - Membership.**

5       The seed commission is the governing board of the seed department. The seed  
6 commission consists of the following nine members:

- 7       1. An individual appointed by the North Dakota crop improvement association;
- 8       2. An individual appointed by the North Dakota certified seed potato growers association;
- 9       3. An individual appointed by the North Dakota dry edible bean seed growers  
10 association;
- 11       4. An individual appointed by the North Dakota agricultural association;
- 12       5. An individual appointed by the North Dakota potato council;
- 13       6. A resident of this state appointed by the northern plains potato growers association;
- 14       7. An individual who operates a seed-conditioning plant approved by the seed  
15 department, appointed by the North Dakota grain dealers association;
- 16       8. The director of the agricultural experiment station or the director's designee; and
- 17       9. The agriculture commissioner or the agriculture commissioner's designee.

18       **4.1-53-05. Seed commission - Chairman - Meetings.**

- 19       1. The agriculture commissioner shall serve as the chairman of the seed commission.
- 20       2. The chairman shall call all regular meetings of the seed commission and shall call a  
21 special meeting within seven days if petitioned to do so by two members of the seed  
22 commission.
- 23       3. The seed commission shall hold at least two regular meetings each year.

24       **4.1-53-06. Seed commission - Appointment of proxy.**

25       If a member of the seed commission is unable to attend a meeting of the commission, the  
26 member may appoint a proxy. The appointment must be in writing and must be presented to the  
27 chairman. The vote of the proxy is final.

28       **4.1-53-07. Seed commission - Members - Compensation.**

29       Each member of the seed commission, except the agriculture commissioner and the  
30 director of the agricultural experiment station, is entitled to receive compensation at the rate of  
31 one hundred thirty-five dollars per day and reimbursement for expenses, as provided by law for

1 state officers, if the member is attending a commission meeting or performing duties directed by  
2 the commission.

3 **4.1-53-08. Seed commission - Powers.**

4 The seed commission may:

- 5 1. Establish branch offices and laboratories at locations in this state, other than the  
6 campus of North Dakota state university of agriculture and applied science, if the seed  
7 commissioner determines that they are necessary to carry out the duties of the seed  
8 commission, the seed commissioner, or the seed department;
- 9 2. Dismiss the seed commissioner for cause; and
- 10 3. Appoint an acting seed commissioner if the position becomes vacant.

11 **4.1-53-09. Seed commission - Duties.**

12 The seed commission shall:

- 13 1. Appoint a seed commissioner;
- 14 2. Compensate the seed commissioner; and
- 15 3. Review the appointment of a seed commissioner, annually.

16 **4.1-53-10. Seed commissioner - Powers.**

17 The seed commissioner may:

- 18 1. Contract with North Dakota state university of agriculture and applied science for the  
19 use of facilities and equipment;
- 20 2. Contract with any person for any lawful purpose;
- 21 3. Enter upon real property and access any structure and personal property, at any time,  
22 to:
  - 23 a. Inspect, sample, and test seed for compliance with this chapter; and
  - 24 b. Inspect records for compliance with this chapter; and
- 25 4. Collect royalty, research, and patent fees.

26 **4.1-53-11. Seed commissioner - Duties.**

27 The seed commissioner shall:

- 28 1. Manage the seed department;
- 29 2. Provide, equip, and maintain offices, laboratories, and any other facilities necessary to  
30 carry out this chapter, subject to the approval of the seed commission;
- 31 3. Employ and compensate necessary personnel;

- 1       4. Permit North Dakota state university of agriculture and applied science to use the seed
- 2       department facilities and the services of the seed department laboratories at
- 3       convenient times;
- 4       5. Determine the nature and size of any seed and plant samples required by the seed
- 5       department in order to conduct official tests or make official determinations and shall
- 6       prescribe the manner in which the seed and plant samples are to be obtained and
- 7       delivered to the seed department;
- 8       6. Provide commodity inspection services upon request;
- 9       7. Establish and charge fees for services, subject to the approval of the seed
- 10      commission;
- 11      8. Provide periodic reports to the seed commission regarding the management and
- 12      operation of the seed department;
- 13      9. Recommend to the seed commission the biennial budget and annual salary schedules
- 14      for the seed department;
- 15      10. Submit the seed department's biennial budget, as approved by the seed commission,
- 16      to the office of management and budget;
- 17      11. Do all things necessary to enforce this chapter and rules implementing this chapter;
- 18      and
- 19      12. Perform any other duties as directed by the seed commission.

20      **4.1-53-12. Agricultural seed - Label requirements.**

- 21      1. Agricultural seed offered for sale or sold in this state, for planting purposes, must be
- 22      labeled.
- 23      2. a. If the agricultural seed is offered for sale or sold in a container, the label must be
- 24      plainly printed in English and conspicuously placed on or attached to the
- 25      container.
- 26      b. If the agricultural seed is offered for sale or sold in bulk, the label must be plainly
- 27      printed in English and provided to the purchaser at or before the time of delivery.

28      **4.1-53-13. Agricultural seed - Label - Content.**

29      A label required by section 4.1-53-12 must include:

- 30      1. The lot number or other lot identification;
- 31      2. a. The state or foreign country in which the seed was grown; or

- 1           b. A statement indicating that the origin of the seed is unknown;
- 2       3. The percentage by weight of all weed seed;
- 3       4. The name of each restricted weed seed present and its rate of occurrence per pound
- 4           [453.59 grams], if:
- 5           a. In seeds of grasses and small seeded legumes, the rate of occurrence exceeds
- 6               thirteen seeds per pound [453.59 grams]; or
- 7           b. In any other agricultural seeds, the rate of occurrence exceeds five seeds per
- 8               pound [453.59 grams];
- 9       5. The percentage by weight of any other agricultural seeds present;
- 10      6. The percentage by weight of inert matter;
- 11      7.   a. The percentage of germination, exclusive of hard seed;
- 12           b. The percentage of hard seed, if applicable; and
- 13           c. The month and year in which the percentages were determined; and
- 14      8. The full name and address of the labeler.

15   **4.1-53-14. Agricultural seed - Label requirements - Treated seed.**

- 16      1. In addition to any other requirements set forth in this chapter, if the seed has been
- 17           treated, the label must indicate that the treatment has occurred and must include the
- 18           commonly accepted, coined, chemical, or abbreviated chemical name of the
- 19           substance used in the treatment.
- 20           a. If the substance with which the seed was treated is harmful to humans or to other
- 21               vertebrate animals, the label must contain a cautionary statement prohibiting use
- 22               of the seed for human or animal consumption.
- 23           b. If the substance with which the seed was treated is a mercurial or a similarly toxic
- 24               substance, the label must contain a statement and symbol indicating that the
- 25               substance is poison.
- 26           c. If the substance with which the seed was treated is an inoculant, the label must
- 27               contain the date beyond which the inoculant is claimed not to be effective for use
- 28               on that particular seed.
- 29      2. The information required by this section may be placed on a separate label.



1       **4.1-53-15. Agricultural seed - Label requirement - Hermetically sealed containers.**

2       In addition to any other label requirements set forth in this chapter, if agricultural seed that is  
3 offered for sale or sold is in a container that has been hermetically sealed, the label must so  
4 indicate.

5       **4.1-53-16. Agricultural seed - Additional label requirements - Limited applicability.**

6       1. In addition to any other label requirements set forth in this chapter, the label on each  
7 container of barley, canola, dry beans, durum, field peas, flax, oats, rye, soybeans,  
8 and wheat seed offered for sale or sold in this state for planting purposes must  
9 include:

- 10       a. The kind of each agricultural seed;  
11       b. The variety of each agricultural seed component constituting more than five  
12 percent of the whole; and  
13       c. The percentage by weight of each agricultural seed component constituting more  
14 than five percent of the whole.

15       2. In addition to any other requirements set forth in this chapter, the label on each  
16 container of agricultural seed other than barley, canola, dry beans, durum, field peas,  
17 flax, oats, rye, soybeans, and wheat seed offered for sale in this state for planting  
18 purposes:

- 19       a. Must include the kind of each agricultural seed;  
20       b. May include the variety of each agricultural seed component constituting more  
21 than five percent of the whole; and  
22       c. Must include the percentage by weight of each agricultural seed component  
23 constituting more than five percent of the whole.

24       **4.1-53-17. Agricultural seed - Selling by brand - Label requirement.**

25       The seed of barley, canola, dry beans, durum, field peas, flax, oats, rye, soybeans, and  
26 wheat may be sold by brand, provided the true variety name or number is clearly stated on the  
27 label.

28       **4.1-53-18. Canola seed - Additional label requirements.**

29       In addition to any other requirements set forth in this chapter, if the agricultural seed is  
30 canola, the seed must:

1. Have been certified by the seed commissioner as meeting the standards of this state;
- or
2. Have been certified by the appropriate agency of another state or country having  
canola certification standards that are determined by the seed commissioner to meet  
or exceed the standards of this state.

**4.1-53-19. Agricultural seed components - Label requirements - Mixture or blend - Designation.**

If 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  
include each component in excess of one percent of the whole named together with the  
percentage by weight of each. Each component must be listed in the order of its predominance.  
If more than one component is named, the word "mixture" or "blend" must be stated  
appropriately with the name of the mixture or blend.

**4.1-53-20. Agricultural seed - Sale of small quantities - Container label requirements.**

If agricultural seed is sold in quantities of five pounds [2.26796 kilograms] or less, the  
container into which the seed is placed is exempt from the labeling requirements of this chapter  
provided:

1. The container from which the seed is taken is in compliance with the labeling  
requirements of this chapter; and
2. The seed is removed from the container referenced in subsection 1 and weighed, in  
the presence of the purchaser.

**4.1-53-21. Vegetable seed - Label requirements.**

1. Each container of vegetable seed offered for sale or sold in this state, for planting  
purposes, must be labeled.
2. The label must be plainly printed in English and placed conspicuously on or attached  
to the container.

**4.1-53-22. Vegetable seed - Label - Content.**

The label for vegetable seed packed in units of one pound or less and the label for  
vegetable seed on prepared mats, tapes, or in preplanted containers must include:

1. The kind and variety of seed;
2. The lot number or other lot identification;

1        3. The full name and address of the labeler;

2        4. The month and year in which the germination test was completed; and

3        5. a. The percentage of germination; or

4        b. The date by which the seed must be sold, as established in section 4.1-53-52.

5        **4.1-53-23. Vegetable seed - Additional label requirements.**

6        If the germination test referenced in section 4.1-53-22 results in a finding that the seed does  
7 not meet the standards for germination, as established by the commissioner, the label must  
8 include:

9        1. The percentage of germination, exclusive of hard seed;

10       2. The percentage of hard seed, if present; and

11       3. The words "below standard" in at least eight-point type.

12       **4.1-53-24. Vegetable seed - Larger units - Label requirements - Exception.**

13       1. The label for any vegetable seed other than that referenced in section 4.1-53-22 must  
14 include:

15       a. The lot number or other lot identification;

16       b. (1) The kind and variety of vegetable seed present in excess of five percent by  
17 weight;

18       (2) The percentage by weight of each seed referenced in paragraph 1, in order  
19 of its predominance;

20       (3) The percentage of germination for each seed referenced in paragraph 1,  
21 exclusive of hard seed;

22       (4) The percentage of hard seed, if present; and

23       (5) The month and year that the percentages were determined; and

24       c. The full name and address of that labeler.

25       2. If vegetable seed is sold in quantities of five pounds [2.26796 kilograms] or less, the  
26 container into which the seed is placed is exempt from the labeling requirements of  
27 this chapter provided:

28       a. The container from which the seed is taken is in compliance with the labeling  
29 requirements of this chapter; and

30       b. The seed is removed from the container referenced in subsection 1 and weighed,  
31 in the presence of the purchaser.

1       **4.1-53-25. Vegetable seed - Quantity - Label requirement.**

2       If the vegetable seeds are on a mat, on tape, or in some other germination medium, and the  
3 quantity of seed cannot be readily determined, the label must include the minimum number of  
4 seeds per definable unit.

5       **4.1-53-26. Vegetable seed - Label requirements - Treated seed.**

6       1. In addition to any other requirements set forth in this chapter, if the vegetable seed has  
7 been treated, the label must indicate that the treatment has occurred and must include  
8 the commonly accepted, coined, chemical, or abbreviated chemical name of any  
9 substance used in the treatment.

10      2. If the substance with which the seed was treated is harmful to humans or to other  
11 vertebrate animals, the label must contain a cautionary statement prohibiting use of  
12 the seed for human or animal consumption.

13      3. If the substance with which the seed was treated is a mercurial or a similarly toxic  
14 substance, the label must contain a statement and symbol indicating that the  
15 substance is poison.

16      4. If the substance with which the seed was treated is an inoculant, the label must  
17 contain the date beyond which the inoculant is claimed not to be effective on that  
18 particular seed.

19      5. The information required by this section may be placed on a separate label.

20       **4.1-53-27. Vegetable seed - Label requirement - Hermetically sealed containers.**

21       In addition to any other label requirements set forth in this chapter, if vegetable seed that is  
22 offered for sale or sold is in a container that has been hermetically sealed, the label must so  
23 indicate.

24       **4.1-53-28. Flower seed - Label requirements.**

25      1. Each container of flower seed offered for sale or sold in this state, for planting  
26 purposes, must be labeled.

27      2. The label must be plainly printed in English and conspicuously placed on or attached  
28 to the container.

29       **4.1-53-29. Flower seed - Label - Content.**

30      1. The label for flower seed must include:

31          a. (1) The kind and variety; or

- 1                   (2) The information required by rule with respect to type and performance  
2                   characteristics;  
3           b.   (1) The month and year in which the seed was tested; or  
4                   (2) The year for which the seed was packaged; and  
5           c.   The full name and address of the labeler.  
6           2. If the flower seed is packed in units of more than one pound [453.59 grams], the label  
7               must also include the lot number or other lot identification, unless the flower seed is on  
8               prepared mats, on tapes, or in preplanted containers.  
9           3. If the flower seed is of a kind for which standard testing procedures are prescribed by  
10               the association of official seed analysts, the label must also include:  
11               a.   The percentage of germination exclusive of hard seed; and  
12               b.   The percentage of hard seed, if present.  
13           4. If the flower seed is of a kind for which standard testing procedures are prescribed by  
14               the association of official seed analysts and if the seed does not meet the standard for  
15               germination required by rule, the label must also include the percentage of  
16               germination exclusive of hard seeds and the words "below standard" in at least  
17               eight-point type.

18           **4.1-53-30. Flower seed - Quantity - Label requirement.**

19           If the flower seeds are on a mat, on tape, or in some other germination medium and the  
20           quantity of seed cannot be readily determined, the label must include the minimum number of  
21           seeds per definable unit.

22           **4.1-53-31. Flower seed - Label requirements - Treated seed.**

- 23           1. In addition to any other requirements set forth in this chapter, if the flower seed has  
24               been treated, the label must indicate that the treatment has occurred and must include  
25               the commonly accepted, coined, chemical, or abbreviated chemical name of the  
26               substance used in the treatment.  
27               a. If the substance with which the flower seed was treated is harmful to humans or  
28               to other vertebrate animals, the label must contain a cautionary statement  
29               prohibiting use of the seed for human or animal consumption.

- 1            b. If the substance with which the seed was treated is a mercurial or a similarly toxic  
2            substance, the label must contain a statement and symbol indicating that the  
3            substance is poison.
- 4            c. If the substance with which the seed was treated is an inoculant, the label must  
5            contain the date beyond which the inoculant is claimed not to be effective on that  
6            particular seed.
- 7            2. The information required by this section may be placed on a separate label.

8            **4.1-53-32. Tree seed and shrub seed - Label requirements.**

- 9            1. a. Each container of tree seed or shrub seed offered for sale or sold in this state, for  
10            planting purposes, must be labeled.
- 11            b. The label must be plainly printed in English and conspicuously placed on or  
12            attached to the container.
- 13            2. If seed is supplied in fulfillment of a contract for the collection and gathering of the  
14            seed, the label requirements of this section may be met by an analysis tag attached to  
15            the invoice if each container is clearly identified by a lot number stenciled on the  
16            container or if the seed is in bulk.
- 17            3. If the seed is offered for sale or sold in bulk, the label must be provided to the  
18            purchaser at or before the time of delivery.

19            **4.1-53-33. Tree seed and shrub seed - Label - Content.**

20            A label required by this section must include:

- 21            1. The common name of the tree or shrub species and, if appropriate, the name of the  
22            subspecies;
- 23            2. The scientific name of the genus, the species, and, if appropriate, the name of the  
24            subspecies;
- 25            3. The lot number or other lot identification;
- 26            4. The elevation at which or the upper and lower elevations within which the seed was  
27            collected;
- 28            5. The percentage of pure seed by weight; and
- 29            6. The full name and address of the labeler.

1       **4.1-53-34. Tree seed and shrub seed - Label - Statement of origin.**

2       In addition to any other label requirements set forth in section 4.1-53-33, the label of tree  
3 seed or shrub seed must identify the location from which the seeds were collected by:

4       1.   Latitude and longitude; or

5       2.   County or township.

6       **4.1-53-35. Tree seed and shrub seed - Label requirements - Percentage of**  
7 **germination.**

8       1.   If the tree seed or shrub seed belongs to a species for which standard germination  
9 testing procedures are prescribed by the association of official seed analysts, the label  
10 must include:

11       a.   (1) The percentage of germination, exclusive of hard seed;

12       (2) The percentage of hard seed; and

13       (3) The month and year in which the percentage of germination was  
14 determined; or

15       b.   A statement indicating that the test to determine the percentage of germination is  
16 not yet completed and that the results will be supplied upon request.

17       2.   If the tree or shrub seed belongs to a species for which standard germination testing  
18 procedures are prescribed, the label must include the year in which the seed was  
19 collected.

20       **4.1-53-36. Tree seed and shrub seed - Label requirements - Treated seed.**

21       1.   In addition to any other requirements set forth in this chapter, if the tree seed or shrub  
22 seed has been treated, the label must indicate that the treatment has occurred and  
23 must include the commonly accepted, coined, chemical, or abbreviated chemical  
24 name of any substance used in the treatment.

25       2.   If the substance with which the seed was treated is harmful to humans or to other  
26 vertebrate animals, the label must contain a cautionary statement prohibiting use of  
27 the seed for human or animal consumption.

28       3.   If the substance with which the seed was treated is a mercurial or a similarly toxic  
29 substance, the label must contain a statement and symbol indicating that the  
30 substance is poison.

- 1       4. If the substance with which the seed was treated is an inoculant, the label must  
2       contain the date beyond which the inoculant is claimed not to be effective for use on  
3       that particular seed.

4       **4.1-53-37. Tolerances.**

- 5       1. In order to determine correctness and accuracy in labeling seed as required by this  
6       chapter, the seed commissioner shall:  
7       a. Apply the tolerances established by the Federal Seed Act of August 9, 1939  
8       [53 Stat. 1275; 7 U.S.C. 1551 et seq.], as amended through June 30, 2011; or  
9       b. Establish stricter tolerances by rule.  
10      2. Notwithstanding subsection 1, the tolerance for yellow starthistle is zero.

11      **4.1-53-38. Seed labeling permit - Reports - Fees - Civil penalty.**

- 12      1. Before a person in this state may label agricultural, vegetable, flower, or tree or shrub  
13      seed and before a person may label agricultural, vegetable, flower, or tree or shrub  
14      seed for delivery into this state, the person shall obtain a seed labeling permit from the  
15      seed commissioner.  
16      2. Each person issued a seed labeling permit under this section shall:  
17      a. Record all seeds sold by that person in this state;  
18      b. Report all seeds sold by that person in this state to the seed commissioner at the  
19      time and in the manner determined by the seed commissioner; and  
20      c. Submit at the time and in the manner determined by the seed commissioner, fees  
21      in the amount set by the seed commissioner and applicable to all seeds that the  
22      person sells in this state.  
23      3. If a person issued a seed labeling permit under this section fails to submit the reports  
24      or fees required by this section within thirty days of the date determined by the seed  
25      commissioner, the seed commissioner may assess a penalty equal to five percent of  
26      the amount due or ten dollars, whichever is greater.

27      **4.1-53-39. Invoice and records.**

28      A labeler shall:

- 29      1. Retain a record of each lot of seed handled for three years after final disposition of the  
30      lot;



- 1       2.   Retain a file sample of each lot of seed handled for one year after final disposition of
- 2           the lot; and
- 3       3.   Make the records and file samples required by this section available to the seed
- 4           commissioner upon request.

5       **4.1-53-40. Shipments from out of state - Label requirements.**

6       The purchaser, vendor, or any other person receiving seed shipped into this state must  
7   have the seed labeled:

- 8       1.   In accordance with this chapter; or
- 9       2.   If permitted by the seed commissioner, in accordance with requirements applicable in
- 10           other jurisdictions.

11       **4.1-53-41. Nonresident seed dealer's license.**

- 12       1.   A person that is not a resident of this state may not offer for sale or sell any
- 13           agricultural, vegetable, flower, or tree or shrub seed in this state directly to a consumer
- 14           unless the person first obtains a nonresident seed dealer's license. In order to obtain
- 15           the license, a person must submit to the seed commissioner an application for a
- 16           license, together with the required fee.
- 17       2.   A license issued under this section covers all employees and agents of the applicant,
- 18           provided their names are included with the application.
- 19       3.   A license issued under this section expires on December thirty-first.

20       **4.1-53-42. Certified seed - Establishment of certification system.**

- 21       1.   The seed commissioner shall establish a seed certification system for this state.
- 22       2.   The seed certification system must include standards of quality for any lot or stock of
- 23           seed that may be or may become eligible for field inspection or for final certification.
- 24       3.   The seed commissioner shall make the requirements for seed certification readily
- 25           available in electronic and printed formats.

26       **4.1-53-43. Requests for certification - Required submissions.**

- 27       1.   Any person may submit kinds, varieties, selections, and names of seed stock and
- 28           request that the seed commissioner consider the submission for certification.
- 29       2.   In order to pursue certification, a person shall provide to the seed commissioner:
- 30           a.   The name of the variety;

- b. A statement regarding the variety's origin and the breeding procedure used in its development;
- c. A description of the morphological, physiological, or other characteristics that distinguish the variety from other varieties;
- d. Evidence supporting the identity of the variety;
- e. A statement regarding the geographic area of adaptation;
- f. A statement regarding plans and procedures for the maintenance of seed classes, including the number of generations through which the variety may be multiplied;
- g. A description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified;
- h. Any additional restrictions on the variety specified by the breeder; and
- i. A sample of seed that is representative of the variety as marketed.

**4.1-53-44. Certified seed - Specific label requirements.**

The seed commissioner shall prescribe the labels, seals, certificates, and statements that must be used for, or in relation to, any seed, or the various kinds and qualities grown, handled, stored, offered for sale, or sold in this state as "breeders", "foundation", "registered", or "certified" seed, and shall specify the words and information required to be on the labels, seals, certificates, and seed containers.

**4.1-53-45. Certified seed - Use of certain terms - Required authorization.**

A person may not use the terms "breeders", "foundation", "registered", or "certified", and may not use substantially equivalent terms, in the labeling or in the advertising, characterization, or representation of seed that is offered for sale or sold in this state, unless authorized to do so by the seed commissioner. The prohibition of this section applies to oral and written forms of advertising, characterizations, and representations.

**4.1-53-46. Seed conditioning facilities - Other facilities - Standards.**

The seed commissioner may establish standards for:

1. Seed conditioning facilities and any other facilities that handle seed eligible for certification; and
2. Facilities that handle and market "breeders", "foundation", "registered", or "certified" seed.

1       **4.1-53-47. Seed for certification purposes - Increase in foundation seed stocks.**

2       The seed commissioner may participate with any public or private entity in the selection,  
3 testing, and production of seed for certification purposes and in efforts to increase foundation  
4 seed stocks suitable for the production of certified seed.

5       **4.1-53-48. Plant Variety Protection Act - Requirements for certification.**

- 6       1. If a certificate of plant variety protection issued under the Plant Variety Protection Act  
7 [7 U.S.C. 2121 et seq.], as amended through July 31, 2011, specifies that the variety  
8 may be sold only as a class of certified seed, that seed must be certified by an official  
9 seed-certifying agency before it can be advertised for sale, offered for sale, or sold.  
10      2. Seed from a certified lot may be used in a blend or mixture by or with the approval of  
11 the owner of the variety.

12      **4.1-53-49. Identity-preserved seed and crops - Determination of genetic traits.**

- 13      1. The seed commissioner may inspect and analyze seed or crops grown, sold, or  
14 otherwise present in this state to determine and verify the genetic traits of the seed or  
15 the crops.  
16      2. For purposes of conducting the inspection, analysis, or verification, the seed  
17 commissioner may:  
18          a. Accept samples of seed or crops grown in this state, sold in this state, or  
19 otherwise present in this state from any person that owns the seed or crops; and  
20          b. Upon request of the owner, obtain samples of the seed or crops.

21      **4.1-53-50. Identity-preserved seed and crops - Verification and certification services.**

22      The seed commissioner may establish programs and procedures to provide producers with  
23 customized verification and certification services pertaining to identity-preserved seed and  
24 crops.

25      **4.1-53-51. Sale of seed - Prohibitions.**

26      A person may not offer for sale or sell any seed that:

- 27      1. Is not labeled in accordance with the requirements of this chapter;  
28      2. Is labeled with information the person knows is false or misleading;  
29      3. Is designated, represented, or advertised as having a variety name other than that by  
30 which the seed was originally known;

1       4.   Contains restricted weed seeds in excess of twenty-five seeds per pound  
2       [453.59 grams];

3       5.   Exceeds the stated tolerances for noxious weed seeds; or

4       6.   Contains weed seeds in excess of one percent by weight.

5       **4.1-53-52. Germination test - Requirement for sale.**

6       1.   a.   Except as provided in subsection 4, a person may not offer for sale or sell any  
7       agricultural seed unless:

8               (1)   The seed has been tested to determine the percentage of germination; and

9               (2)   The period of time between the first day of the month following that in which  
10              the germination test was completed and the date on which the seed is  
11              offered for sale or sold does not exceed nine months.

12       b.   Subdivision a is not applicable to lawn and turf grasses.

13       2.   a.   Except as provided in subsection 4, a person may not offer for sale or sell any  
14       flower, vegetable, grass, or forb seed unless:

15               (1)   The seed has been tested to determine the percentage of germination; and

16               (2)   The period of time between the first day of the month following that in which  
17              the germination test was completed and the date on which the seed is  
18              offered for sale or sold does not exceed twelve months.

19       b.   Subdivision a is not applicable to lawn and turf grasses.

20       3.   Except as provided in subsection 4, a person may not offer for sale or sell any lawn  
21       and turf grass seed, or any blends or mixtures of lawn and turf grass seed, unless:

22       a.   The seed has been tested to determine the percentage of germination; and

23       b.   The period of time between the first day of the month following that in which the  
24       germination test was completed and the date on which the seed is offered for  
25       sale or sold does not exceed fifteen months.

26       4.   A person may not offer for sale or sell any agricultural, flower, vegetable, or tree or  
27       shrub seed in hermetically sealed packages unless:

28       a.   The seed has been tested to determine the percentage of germination; and

29       b.   The period of time between the first day of the month following that in which the  
30       germination test was completed and the date on which the seed is offered for  
31       sale or sold does not exceed thirty-six months.

1       **4.1-53-53. Prohibited activities.**

2       A person may not:

- 3       1.   Detach, alter, deface, or destroy any label provided for in this chapter;
- 4       2.   Alter or substitute seed with the intent to defeat the purpose of this chapter;
- 5       3.   Engage in false or misleading advertising regarding seeds;
- 6       4.   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 the official laboratory, except in the case of certified seed;
- 9       5.   Fail to comply with a stop-sale order issued by the seed commissioner;
- 10      6.   Use the words "type" or "trace" on a label in connection with the name and description  
11      of any seed;
- 12      7.   Disclaim in any manner or form a vendor's responsibility for any label content required  
13      by law; or
- 14      8.   Sell or transfer a protected variety to another producer for the purpose of planting  
15      without obtaining the approval of the variety owner or developer.

16      **4.1-53-54. Stop-sale order - Issuance - Enforcement - Appeal.**

- 17      1.   The seed commissioner may issue a written stop-sale order to the owner or custodian  
18      of any lot of seed that the seed commissioner finds to be in violation of this chapter.
- 19      2.   The seed commissioner may attach terms and conditions that must be fulfilled before  
20      the order will be lifted.
- 21      3.   The stop-sale order shall remain in effect until the seed commissioner is satisfied that  
22      the violation no longer exists. Upon making that determination, the seed commissioner  
23      shall lift the stop-sale order.
- 24      4.   The seed commissioner shall do all things necessary and proper to enforce a  
25      stop-sale order issued under this section.
- 26      5.   Any person subject to a stop-sale order under this section may appeal the order to a  
27      court of competent jurisdiction.

28      **4.1-53-55. Seizure and injunction - Action.**

- 29      1.   If the seed commissioner determines that any lot of seed is not in compliance with this  
30      chapter, the seed commissioner may petition a court of competent jurisdiction for  
31      seizure of the seed. If the court orders the condemnation of the seed, it must be

1           denatured, processed, destroyed, relabeled, or otherwise disposed of in accordance  
2           with the laws of this state.

3           2. A court may not order disposition of the seed without first having given the owner an  
4           opportunity to apply to the court for release of the seed, or for permission to process or  
5           relabel the seed in compliance with this chapter.

6           3. Any violation of this chapter may be enjoined in a court of competent jurisdiction  
7           without bringing any other civil or criminal action.

8           **4.1-53-56. Prosecution for violations - Duty of attorney general and state's attorney.**

9           Upon a complaint by the seed commissioner alleging a violation of this chapter or of any  
10          rule implementing this chapter, the attorney general or the state's attorney of the county in  
11          which the case arises shall initiate legal proceedings.

12          **4.1-53-57. Penalty - Criminal - Civil - Exemption.**

13          1. Any person willfully violating this chapter or the rules implementing this chapter is  
14          guilty of a class A misdemeanor.

15          2. When construing and enforcing this chapter, the act, omission, or failure of any officer,  
16          agent, or other person acting for or employed by any person must be deemed to be  
17          the act, omission, or failure of such person as well as that of the person employed.

18          3. Any person found guilty of violating this chapter or the rules implementing this chapter  
19          is subject to a civil penalty in an amount not to exceed five thousand dollars for each  
20          violation. The civil penalty may be imposed by a court in a civil proceeding or by the  
21          seed commissioner.

22          4. A person is not subject to the penalties of this chapter for having offered for sale or  
23          sold any seed that was incorrectly represented as to kind, variety, or origin and which  
24          could not be identified through examination, unless the person failed to:

25                  a. Obtain an invoice or grower's declaration stating the required information; or

26                  b. Take other actions necessary to ensure that the seed was properly identified.

27          **4.1-53-58. Certificates and reports - Publication.**

28          If the seed commissioner signs a document relating to the findings and determinations  
29          made in a laboratory by seed department personnel, a court shall accept the document as  
30          prima facie evidence of the statements contained in the document. The seed commissioner is  
31          subject to court order for a review of the findings and determinations set forth in the document.

1       **4.1-53-59. Liability of seed commission, seed department, seed commissioner, and**  
2 **certified or noncertified agricultural seed producers.**

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

11       **4.1-53-60. Seed department records - Exemption.**

12       The following records of the seed department are exempt from section 44-04-18:

- 13       1. Records of any plant or seed analysis, testing, and variety or disease determination  
14       conducted by the seed department on a fee-for-service basis for private persons; and
- 15       2. Information that is received by the seed department under this chapter from a private  
16       person and which the private person determines is proprietary information or a trade  
17       secret.

18       **4.1-53-61. Applicability of chapter.**

19       This chapter does not apply to:

- 20       1. Seed that is not intended for planting purposes; and
- 21       2. Seed grown by a producer and sold by that producer without advertising and without  
22       using a third party as an agent or broker to effect the sale, provided this exemption is  
23       not applicable if the seed is a variety protected by the Plant Variety Protection Act  
24       [7 U.S.C. 2321 et seq.], as amended through July 31, 2011.

25       **4.1-53-62. Seed department fund - Continuing appropriation.**

- 26       1. The seed commissioner shall forward all moneys received under this chapter to the  
27       state treasurer for deposit in a special fund known as the seed department fund. All  
28       moneys in the seed department fund are appropriated on a continuing basis to the  
29       seed department to carry out this chapter.

2. The seed commissioner shall approve all expenditures made pursuant to this chapter and shall document the expenditures at the time and in the manner required by the office of management and budget.

3. The seed commissioner shall provide a report to the house and senate appropriations committees, at the time and in the manner directed by the chairmen of the committees. The report must contain a summary of the department's activities during the current biennium and a statement of revenues and expenditures for the ensuing biennium.

4. At the direction of the seed commission, the state treasurer shall invest all available moneys in the seed department fund. The state treasurer shall credit twenty percent of the investment income to the general fund and the remaining eighty percent of the investment income to the seed department fund.

**SECTION 4.** Chapter 4.1-54 of the North Dakota Century Code is created and enacted as follows:

**4.1-54-01. Seed arbitration board - Membership.**

The seed arbitration board consists of the following members:

1. The agriculture commissioner;

2. The seed commissioner;

3. The director of the North Dakota state university extension service;

4. The director of the North Dakota agricultural experiment station;

5. The chairman of the seed trade division of the North Dakota agriculture association;  
and

6. A producer appointed by the agriculture commissioner.

**4.1-54-02. Seed arbitration board - Compensation.**

The chairman of the seed division of the North Dakota agriculture association and the producer are entitled to receive compensation in the amount of one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officials, if the individual is attending meetings or performing duties directed by the board. The compensation and reimbursement for expenses required by this section must be paid by the agriculture commissioner.



1       **4.1-54-03. Seed arbitration board - Rules of operation and procedure.**

2       The seed arbitration board shall adopt rules of operation and procedure for arbitration  
3 hearings, including a formula for reimbursement by the parties of the expenses of the arbitration  
4 process.

5       **4.1-54-04. Seed arbitration board - Petition - Hearing - Recommendation.**

6       1. A seed labeler, seed dealer, or seed customer may file with the agriculture  
7 commissioner a petition for a hearing to settle a dispute involving a seed transaction.

8       2. The agriculture commissioner shall forward the petition to the seed arbitration board.

9       3. The seed arbitration board shall hold a hearing and within thirty days issue a  
10 nonbinding recommendation for a resolution of the dispute.

11       **4.1-54-05. Seed arbitration board - Hearing - Use of evidence.**

12       Any evidence and testimony presented at a seed arbitration hearing and any findings or  
13 recommendations by the seed arbitration board are admissible in any subsequent proceeding.

14       **SECTION 5.** Chapter 4.1-57 of the North Dakota Century Code is created and enacted as  
15 follows:

16       **4.1-57-01. Definitions.**

17       In this chapter, unless the context otherwise requires:

18       1. "Insolvency" means an inability to provide payment for potatoes purchased by the  
19 dealer.

20       2. "Potato" means an Irish potato.

21       3. "Wholesale potato dealer" means any person who:

22           a. Buys potatoes in wholesale lots directly from a producer or a producer  
23 cooperative;

24           b. Sells or handles potatoes in wholesale lots for the purpose of processing or  
25 resale; or

26           c. Handles potatoes on account of or as an agent for another.

27       **4.1-57-02. Wholesale potato dealer - License required.**

28       Before a person may engage in the business of a wholesale potato dealer, the person must  
29 be licensed by the seed commissioner.

1       **4.1-57-03. Application for license - Content.**

2       To obtain a license as a wholesale potato dealer, a person must complete an application  
3 and submit it to the seed commissioner. The application must be signed by the applicant under  
4 oath and must include:

- 5       1. The location in which the applicant intends to operate as a wholesale potato dealer;
- 6       2. The estimated amount of business to be done monthly;
- 7       3. The amount of business done the preceding year, if any;
- 8       4. The greatest volume of potatoes, by hundredweight, purchased during any one month  
9       in the preceding calendar year;
- 10      5. The greatest value of potatoes purchased during any one month in the preceding  
11      calendar year;
- 12      6. The name of each partner if the applicant is a partnership;
- 13      7. The name of each corporate officer and the state of incorporation if the applicant is a  
14      corporation;
- 15      8. The name of each manager and the state of organization if the applicant is a limited  
16      liability company;
- 17      9. The name of every agent employed by the applicant on the date of the application;
- 18      10. A financial statement prepared in accordance with generally accepted accounting  
19      principles showing the assets and liabilities of the applicant;
- 20      11. A list of similar licenses issued to the applicant by other states; and
- 21      12. The name of each state that has:
  - 22      a. Refused to issue the applicant a wholesale potato dealer's license;
  - 23      b. Suspended or revoked a wholesale potato dealer's license that had been issued  
24      to the applicant;
  - 25      c. Refused to issue a wholesale potato dealer's license to an agent of the applicant;  
26      or
  - 27      d. Suspended or revoked a wholesale potato dealer's license that had been issued  
28      to an agent of the applicant.

1       **4.1-57-04. Application for license - Required security.**

2       1. As a condition of licensure, the seed commissioner shall require an applicant to file a  
3       current financial statement prepared in accordance with generally accepted  
4       accounting principles and:

5       a. A cash bond or a surety bond, in an amount and form determined by the seed  
6       commissioner; or

7       b. An irrevocable letter of credit.

8       2. The form of security required by the seed commissioner under subsection 1 must be  
9       conditioned for:

10      a. The faithful performance of the person's duties as a wholesale potato dealer;

11      b. Compliance with all laws and rules relating to the purchase of potatoes by the  
12      wholesale potato dealer;

13      c. Prompt payment in the case of insolvency; and

14      d. The protection and benefit of any potato producer in this state during the period  
15      the license is in effect.

16       **4.1-57-05. Termination of bond - Notice to seed commissioner - Suspension of**  
17       **license.**

18       The surety may terminate its liability under a bond by giving the seed commissioner at least  
19       ninety days' notice of intent to terminate. The surety is released from all future liability accruing  
20       on the bond after the expiration of ninety days from the date the seed commissioner received  
21       the notice or on a later date specified by the surety. This section does not relieve, release, or  
22       discharge the surety from any liability incurred before the expiration of the ninety-day period.  
23       Unless the wholesale potato dealer files a new bond or an irrevocable letter of credit at least  
24       thirty days before the surety's liability ceases, the seed commissioner, without hearing, shall  
25       suspend the wholesale potato dealer's license. The seed commissioner may not remove the  
26       suspension until a new bond or an irrevocable letter of credit has been filed with and approved  
27       by the seed commissioner.

28       **4.1-57-06. License - Fee - Expiration.**

29       The seed commissioner shall establish the fee for a wholesale potato dealer's license,  
30       subject to approval by the seed commission. A license issued under this chapter expires on  
31       June thirtieth of each year.

1       **4.1-57-07. License - Posting.**

2       The wholesale potato dealer shall post the license or a certified copy of the license in the  
3 office at each location where the dealer transacts business.

4       **4.1-57-08. License - Refusal - Suspension - Cancellation - Grounds.**

5       1. The seed commissioner may refuse to issue a license to operate as a wholesale  
6 potato dealer if:

7           a. The applicant was refused a wholesale potato dealer's license by another state;

8           b. The applicant had a wholesale potato dealer's license suspended or revoked by  
9 another state; or

10          c. The applicant employs in a position of responsibility an individual who had a  
11 wholesale potato dealer's license suspended or revoked by another state.

12       2. The seed commissioner may suspend or revoke a license to operate as a wholesale  
13 potato dealer if:

14           a. The dealer had a wholesale potato dealer's license suspended or revoked by  
15 another state;

16           b. The dealer employs in a position of responsibility an individual who had a  
17 wholesale potato dealer's license suspended or revoked by another state; or

18           c. The dealer has been convicted of:

19               (1) An offense under section 4.1-57-22;

20               (2) An offense involving fraudulent use of the mails; or

21               (3) Any other offense pertaining to the conduct of the person as a wholesale  
22 potato dealer.

23       **4.1-57-09. Agent of licensee - Ineligibility.**

24       The seed commissioner may determine that an individual may not act as an authorized  
25 agent for a licensee if the individual was refused a wholesale potato dealer's license by another  
26 state or if the individual had a wholesale potato dealer's license suspended or revoked by  
27 another state.

28       **4.1-57-10. Accounts and records.**

29       A wholesale potato dealer shall keep accurate accounts and retain records of all  
30 transactions as a dealer for eighteen months. The dealer shall make the records available to the  
31 seed commissioner upon request.

1       **4.1-57-11. Discontinuation of business - Duty of dealer.**

2       If a wholesale potato dealer sells, disposes of, or discontinues the business for which the  
3 dealer obtained a license during the period covered by the license, the dealer shall notify the  
4 seed commissioner in writing and, at the request of the seed commissioner, produce a  
5 statement of assets and liabilities as of the date the business was sold, disposed of, or  
6 discontinued.

7       **4.1-57-12. Bonds - Requirements for increase - Production of verified financial**  
8 **statements - Hearing.**

9       The seed commissioner may at any time require an increase in the amount of a wholesale  
10 potato dealer's bond. The seed commissioner may at any time require verified financial  
11 statements from a dealer. If a dealer fails to furnish the information or fails to furnish a new or  
12 higher bond when directed by the seed commissioner, the seed commissioner shall suspend  
13 the dealer's license. After providing the dealer with at least ten days' notice and a hearing, the  
14 seed commissioner may revoke the dealer's license.

15       **4.1-57-13. Seed commissioner - Appointment as trustee.**

- 16       1. If a person notifies the seed commissioner that a wholesale potato dealer has  
17 breached any of the conditions for which security was given under this chapter, the  
18 seed commissioner shall investigate the allegation.
- 19       2. The seed commissioner may hold a hearing to obtain additional testimony and  
20 documentary evidence. If the seed commissioner determines that the allegation is  
21 supportable, the seed commissioner shall apply to the district court of the county in  
22 which the claim is alleged to have occurred for appointment as trustee.
- 23       3. Upon notice to the wholesale potato dealer as the court may prescribe or upon waiver  
24 of notice by the dealer, the court shall hear the matter in a summary manner. If the  
25 court determines that the dealer has breached any condition for which security was  
26 given under this chapter and if the court determines that it would be in the best interest  
27 of all persons holding claims against the dealer that the seed commissioner execute  
28 the trust, the court shall issue an order appointing the seed commissioner as a trustee,  
29 without bond. The seed commissioner shall proceed in the manner provided for in this  
30 chapter.

1       4.   The seed commissioner, as trustee, shall notify by certified mail all persons having  
2       claims against the dealer that the claims must be filed with the seed commissioner by  
3       a date certain. Any person who fails to file a claim within the time allotted is barred  
4       from participation in any fund marshalled by the seed commissioner under this  
5       chapter.

6       5.   All moneys collected and received by the seed commissioner as trustee must be  
7       deposited in the Bank of North Dakota pending the marshalling of the fund.

8       **4.1-57-14. Report - Notice to claimants - Payment of claims.**

9       Upon recovery of the trust fund, or so much of the fund as is possible to recover or  
10      necessary to pay all outstanding claims, the seed commissioner shall file a report in court  
11      showing the amount payable on each claim. If the fund is insufficient to pay all claims in full, the  
12      seed commissioner shall prorate the fund among the claimants. The court shall notify the  
13      claimants by mail regarding the proposed distribution and direct that the claimants show cause  
14      why the report should not be approved and distribution made in accordance with the report.  
15      After holding a hearing on the matter, the court shall approve or modify the report, issue an  
16      order directing the distribution of the fund, and discharge the seed commissioner from all duties  
17      as trustee.

18      **4.1-57-15. Representation of seed commissioner.**

19      The attorney general shall represent the seed commissioner in any action or proceeding  
20      brought under this chapter and may employ legal assistance when necessary. Any expenses  
21      incurred by the attorney general in providing representation to the seed commissioner may be  
22      deducted from the trust fund.

23      **4.1-57-16. Inspection of potatoes - Rights to demand certificate of inspection.**

- 24      1.   When potatoes are ready for sale or are on their way to market, the owner, conveyor,  
25      prospective buyer, or any other interested party may demand and is entitled to  
26      inspection of the potatoes and to an inspection certificate as provided by law.  
27      2.   Whenever potatoes are shipped to or received by a wholesale potato dealer for  
28      handling, purchase, or sale in this state and the wholesale potato dealer finds the  
29      potatoes to be spoiled, damaged, unmarketable, in unsatisfactory condition,  
30      mislabeled, or misrepresented in any way, unless both parties waive inspection before  
31      sale or other disposition, the wholesale potato dealer shall cause the potatoes to be

1 examined by an inspector assigned by the seed commissioner for that purpose. The  
2 inspector shall execute and deliver a certificate to the wholesale potato dealer stating  
3 the day, the time, and the place of inspection and the condition of the potatoes. The  
4 wholesale potato dealer shall mail or deliver a copy of the certificate to the shipper of  
5 the inspected potatoes.

6 **4.1-57-17. Report by wholesale potato dealer - Payment.**

7 A wholesale potato dealer to whom potatoes have been shipped or consigned for sale and  
8 to whom title has not yet passed shall provide to the person who shipped or consigned the  
9 potatoes, within a reasonable time after receiving the potatoes, a written report detailing the  
10 potatoes' time of arrival, the quantity, the quality, and the price per unit. At the time of providing  
11 the report, the wholesale potato dealer shall pay the person who shipped or consigned the  
12 potatoes the net amount due for the potatoes.

13 **4.1-57-18. Sales reports unsatisfactory - Remedy of shipper.**

14 If a person who shipped or consigned the potatoes, after demand, receives no payment or  
15 report of sale of potatoes, or is dissatisfied with the remittance, sale, or report, the shipper may  
16 file a complaint with the seed commissioner. Upon receipt of a complaint, the seed  
17 commissioner shall initiate an investigation.

18 **4.1-57-19. Investigation - Hearing - Action on license.**

- 19 1. If the seed commissioner receives a complaint against any person dealing in,  
20 shipping, transporting, storing, or selling potatoes, the seed commissioner may initiate  
21 an investigation.
- 22 2. The seed commissioner may enter upon real property and access any structure and  
23 personal property at any time to inspect and sample potatoes for compliance with the  
24 laws of this state.
- 25 3. After an investigation, the seed commissioner may suspend the license of any  
26 wholesale potato dealer. Within ten days of the suspension, the seed commissioner  
27 shall schedule, provide notice of, and hold a hearing on the suspension.
- 28 4. After receiving both testimony and documentary evidence, the seed commissioner  
29 may reverse the suspension, continue the suspension, or revoke the wholesale potato  
30 dealer's license. If appropriate, the seed commissioner may demand the return of any  
31 agent's identification card issued by the seed commissioner.

1       5. Any aggrieved party may appeal a decision of the seed commissioner under this  
2       section to the district court.

3       **4.1-57-20. Fees and collections - Continuing appropriation.**

4       The seed commissioner shall forward all moneys received from the collection of fees and  
5       other charges under this chapter to the state treasurer for deposit in a special fund known as  
6       the seed department fund. All moneys in the seed department fund are appropriated on a  
7       continuing basis to the state seed department to carry out statutory directives.

8       **4.1-57-21. Enforcement of chapter.**

9       The seed commissioner shall do all things necessary to enforce this chapter and rules  
10      implementing this chapter. The attorney general or the state's attorney in the county where a  
11      case arises shall prosecute violations of this chapter and the rules.

12      **4.1-57-22. Violations of chapter - Penalty.**

13      A person is guilty of a class A misdemeanor if the person:

- 14      1. Makes any false statement or report as to the grade, condition, markings, quality, or  
15      quantity of potatoes received or delivered, or acts in a manner designed to deceive the  
16      consignor or purchaser of the potatoes;
- 17      2. Breaches any contract for the purchase or sale of potatoes to which the person was a  
18      party unless the breach is based on a state inspection certificate, secured with  
19      reasonable promptness after receipt of the shipment and showing that the kind or  
20      quality of potatoes is not that which was purchased or ordered;
- 21      3. Fails to account for potatoes or to pay for potatoes within the time required by this  
22      chapter;
- 23      4. Purchases for the person's own account any potatoes received on consignment, either  
24      directly or indirectly, without the consent of the consignor;
- 25      5. Issues false or misleading market quotations;
- 26      6. Cancels any quotations during the period advertised by the person;
- 27      7. Makes any false or misleading statement on an application for licensure as a  
28      wholesale potato dealer;
- 29      8. Increases the sales charges on shipped potatoes by means of fictitious sales;



- 1        9. Receives potatoes from foreign states or countries for sale or resale, within or outside  
2        this state, and gives the purchaser the impression through any method of advertising  
3        or description that the potatoes are from a source other than their true origin; or  
4        10. Violates this chapter or any rule implementing this chapter.

5        **SECTION 6.** A new section to chapter 11-08 of the North Dakota Century Code is created  
6 and enacted as follows:

7        **Limitation on authority - Seed.**

8        Notwithstanding any other law, a county may not impose any requirements or restrictions  
9        pertaining to the registration, labeling, distribution, sale, handling, use, application,  
10       transportation, or disposal of seed.

11       **SECTION 7.** A new section to chapter 40-05 of the North Dakota Century Code is created  
12 and enacted as follows:

13       **Limitation on authority - Seed.**

14       Notwithstanding any other law, a city may not impose any requirements or restrictions  
15       pertaining to the registration, labeling, distribution, sale, handling, use, application,  
16       transportation, or disposal of seed. This section does not apply to city zoning ordinances.

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

19       **Limitation on authority - Seed.**

20       Notwithstanding any other law, a township may not impose any requirements or restrictions  
21       pertaining to the registration, labeling, distribution, sale, handling, use, application,  
22       transportation, or disposal of seed.

23       **SECTION 9. AMENDMENT.** Section 60-02-01 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25       **60-02-01. Definitions.**

26       In this chapter, unless the context or subject matter otherwise requires:

- 27       1. "Commission" means the public service commission.  
28       2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which  
29       the sale price is to be paid or may be paid more than thirty days after the delivery or  
30       release of the grain for sale and which contains the notice provided in subsection 7 of  
31       section 60-02-19.1. If a part of the sale price of a contract for the sale of grain is to be

1           paid or may be paid more than thirty days after the delivery or release of the grain for  
2           sale, only such part of the contract is a credit-sale contract.

3           3. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower,  
4           sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa,  
5           and any other commercially grown grain or grass seed. "Grain" as defined in this  
6           chapter shall not include grain or grass seeds owned by or in the possession of the  
7           warehouseman that have been cleaned, processed, and specifically identified for an  
8           intended use of planting for reproduction and for which a warehouse receipt has not  
9           been issued.

10          4. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale  
11          contract.

12          5. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain  
13          warehouse, terminal warehouse, or other structure or facility not licensed under the  
14          United States Warehouse Act [7 U.S.C. 241-273] in which grain is received for storing,  
15          buying, selling, shipping, or processing for compensation. Provided, however, that  
16          nothing in this chapter shall be construed to require a processor to receive, store, or  
17          purchase any lot or kind of grain at said facility.

18          6. "Public warehouseman" means the person operating a public warehouse that is  
19          located or doing business within this state, whether or not such owner or operator  
20          resides within this state. The term does not include a person who is permitted to sell  
21          seed under chapter ~~4-094.1-53~~, if that person does not store grain for the public and  
22          buys grain only for processing and subsequent resale as seed, or an authorized dealer  
23          or agent of a seed company holding a permit in accordance with section  
24          ~~4-09-14.44.1-53-38~~.

25          7. "Receipts" means grain warehouse receipts, scale tickets, checks, or other  
26          memoranda given by a public warehouseman for, or as evidence of, the receipt,  
27          storage, or sale of grain except when such memoranda was received as a result of a  
28          credit-sale contract.

29          8. "Receiving station" means any facility other than an individually licensed warehouse  
30          that is used by a licensed public warehouseman to receive and temporarily store grain

1 prior to transferring the grain to the warehouseman's primary licensed warehouse  
2 location or delivering it directly to market.

3 **SECTION 10. AMENDMENT.** Section 60-02.1-01 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **60-02.1-01. Definitions.**

6 In this chapter, unless the context or subject matter otherwise requires:

- 7 1. "Commission" means the public service commission.
- 8 2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which  
9 the sale price is to be paid or may be paid more than thirty days after the delivery or  
10 release of the grain for sale and which contains the notice provided in subsection 7 of  
11 section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be  
12 paid or may be paid more than thirty days after the delivery or release of the grain for  
13 sale, only such part of the contract is a credit-sale contract.
- 14 3. "Facility" means a structure in which grain purchased by a grain buyer is received or  
15 held.
- 16 4. "Facility-based grain buyer" means a grain buyer who operates a facility licensed  
17 under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.
- 18 5. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower,  
19 sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa,  
20 and any other commercially grown grain or grass seed. "Grain" does not include grain  
21 or grass seeds owned by or in the possession of the grain buyer which have been  
22 cleaned, processed, and specifically identified for an intended use of planting for  
23 reproduction and for which a warehouse receipt has not been issued.
- 24 6. "Grain buyer" means any person, other than a public warehouseman as defined in  
25 chapter 60-02, who purchases or otherwise merchandises grain for compensation.  
26 The term does not include:
  - 27 a. A producer of grain who purchases grain from other producers to complete a  
28 carload or truckload in which the greater portion of the load is grain grown by the  
29 producer or on-farm feedlot operations in which at least fifty percent of the  
30 livestock is owned by the owner of the farm.

1           b. A person who is permitted to sell seed under chapter ~~4-094.1-53~~, if that person  
2           buys grain only for processing and subsequent resale as seed.

3           c. A person who is an authorized dealer or agent of a seed company holding a  
4           permit in accordance with section ~~4-09-14.44.1-53-38~~.

5           7. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale  
6           contract.

7           8. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer  
8           for, or as evidence of, the receipt or sale of grain except when such memoranda was  
9           received as a result of a credit-sale contract.

10          9. "Roving grain buyer" means a grain buyer who does not operate a facility where grain  
11          is received.

12          **SECTION 11. REPEAL.** Chapters 4-09, 4-09.1, 4-11, 4-25, and 4-42 of the North Dakota  
13          Century Code are repealed.