

AGRICULTURE

CHAPTER 58

HOUSE BILL NO. 1181

(Agriculture Committee)

(At the request of the State Board of Higher Education)

BOARD OF AGRICULTURAL RESEARCH AND EDUCATION COMPOSITION AND BUDGET

AN ACT to amend and reenact subsection 1 of section 4-05.1-16, subsection 5 of section 4-05.1-19, section 4-05.1-20, and subsection 1 of section 4-05.1-21 of the North Dakota Century Code, relating to state board of agricultural research and education biennial budget requests and use of agricultural research fund annual proceeds; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹ **SECTION 1. AMENDMENT.** Subsection 1 of section 4-05.1-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The state board of agricultural research and education consists of:
 - a. The president of North Dakota state university or the president's designee;
 - b. The vice president of agricultural affairs at North Dakota state university;
 - c. The administrator of the agricultural experiment station;
 - d. The five persons appointed to the agricultural consultation board by the ag coalition and serving in that capacity on July 1, 1997;
 - e. The five persons appointed to the agricultural consultation board by the extension service's multicounty program units and serving in that capacity on July 1, 1997;
 - f. The two persons appointed to the agricultural consultation board by the president of North Dakota state university as representatives of the state's research extension centers and serving in that capacity on July 1, 1997;

³¹ Section 4-05.1-16 was also amended by section 12 of Senate Bill No. 2021, chapter 46.

- g. The agriculture commissioner, who serves in an ex officio nonvoting capacity; and
- h. The director of the North Dakota state university extension service.

³² **SECTION 2. AMENDMENT.** Subsection 5 of section 4-05.1-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Develop a biennial budget request and submit that request to the state board of higher education ~~on or before March first of each even-numbered year;~~

SECTION 3. AMENDMENT. Section 4-05.1-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-20. Agricultural research fund - Continuing appropriation. The agricultural research fund is a special fund in the state treasury. The moneys in the fund must be expended for purposes of agricultural research. Any interest earned by the fund is appropriated to the state board of agricultural research and education.

³³ **SECTION 4. AMENDMENT.** Subsection 1 of section 4-05.1-21 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The state board of agricultural research and education may use the proceeds of the agricultural research fund for reasonable administrative expenses not to exceed fifty thousand dollars and annually shall apportion the remaining proceeds of the agricultural research fund as follows:
 - a. Seventy percent to research activities affecting North Dakota agricultural commodities that account for at least two percent of the gross sales of all agricultural commodities grown or produced in the state. The percentage of the dollars available for each agricultural commodity under this section may not exceed the percentage that the gross sales of the agricultural commodity bear to the North Dakota gross sales of all agricultural commodities grown or produced during the previous year, as determined by the agricultural statistics service;
 - b. Eighteen percent to research activities affecting North Dakota animal agriculture; and

³² Section 4-05.1-19 was also amended by section 14 of Senate Bill No. 2021, chapter 46.

³³ Section 4-05.1-21 was also amended by section 15 of Senate Bill No. 2021, chapter 46.

- c. Twelve percent to research activities affecting new and emerging crops in North Dakota.

Approved April 3, 2001
Filed April 3, 2001

CHAPTER 59

HOUSE BILL NO. 1200

(Representatives M. Klein, Belter, Nelson)
(Senators Krebsbach, Thane, Wanzek)

RESEARCH EXTENSION CENTER LAND PURCHASE

AN ACT to authorize the north central research extension center to purchase certain land in Ward County and to authorize the Williston research extension center to purchase certain land in Williams County, North Dakota; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Purchase of land authorized.

1. The north central research extension center may purchase the land described in this subsection for the price and on the terms as determined by the north central research extension center. The land to be purchased is the southeast quarter of section ten and the northeast quarter of section fifteen, township one hundred fifty-four north, range eighty-three west, Ward County, North Dakota.
2. The Williston research extension center may purchase the land described in this subsection for the price and on the terms as determined by the Williston research extension center. The land to be purchased is the northwest quarter of section thirteen, township one hundred fifty-four north, range ninety-seven west, Williams County, North Dakota.
3. The attorney general shall review and approve as to form and legality all legal documents, papers, and instruments required for the purchases authorized by this Act.

SECTION 2. APPROPRIATION - REFUND FUND TRANSFER. There is appropriated out of any moneys in the attorney general refund fund from lawsuit settlement collections in the state treasury, not otherwise appropriated, the sum of \$260,000, or so much of the sum as may be necessary, and \$60,000 from other funds, to the north central research extension center for the purpose of purchasing land for research extension purposes at the north central research extension center and the sum of \$61,000, or so much of the sum as may be necessary, from any moneys in the attorney general refund fund from lawsuit settlement collections in the state treasury, not otherwise appropriated, and \$24,000 from other funds, to the Williston research extension center for the purpose of purchasing land for research extension purposes in Williams County, for the biennium beginning July 1, 2001, and ending June 30, 2003. The funds appropriated from the attorney general refund fund must be transferred to the agriculture research and extension operating fund as requested by the state board of agriculture research and education.

Approved April 28, 2001
Filed April 28, 2001

CHAPTER 60

SENATE BILL NO. 2104

(Agriculture Committee)

(At the request of the State Seed Department)

SEED COMMISSION MEMBERSHIP AND SEED LABELING

AN ACT to amend and reenact sections 4-09-03, 4-09-13, 4-09-14.4, 4-09-16, 4-09-17, 4-09-17.1, and 4-09-18 of the North Dakota Century Code, relating to state seed commission membership and seed labeling.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. The state seed commission is the governing board of the seed department and shall adopt rules and regulations pursuant to chapter 28-32 to effectuate the purposes of this section.
2. The state seed commission consists of a representative of the North Dakota crop improvement association, a representative of the North Dakota certified seed potato growers association, a representative of the North Dakota dry edible bean seed growers association, a representative of the North Dakota agricultural association, an elected member of the North Dakota potato council selected by the North Dakota potato council, a representative of the red river valley potato growers association who is a North Dakota resident, a representative of the North Dakota grain dealers association who also operates a state-approved seed conditioning plant selected by the board of directors of the North Dakota grain dealers association, and the agriculture commissioner, or the commissioner's designee, who shall serve as chairman. The associate dean and director of the experiment station, or the director's designee, of the college of agriculture of the North Dakota state university of agriculture and applied science is ~~an advisory, nonvoting~~ a voting member of the commission.
3. The commission shall meet ~~during the months of November and June of each~~ a minimum of two times each calendar year and may hold special meetings at the call of the chairman or by request of any two members of the commission. Members of the commission must be reimbursed for mileage and travel as specified in section 54-06-09 and expenses as specified in section 44-08-04 for attendance at regular and special meetings. A commission member unable to attend a meeting of the commission may be represented by a proxy who has written authorization from such commission member.

4. The commission shall appoint a qualified manager of the seed department who must be known as the state seed commissioner. The commission shall fix the salary of the commissioner within legislative appropriation therefor. The commissioner's appointment must be reviewed annually by the commission, and the commissioner is subject to removal for cause. In the event of a vacancy in the office of seed commissioner, the commission may appoint a temporary state seed commissioner to serve until such time as a permanent commissioner is appointed. The state seed commissioner has responsibility for preparing the biennial budget and annual salary schedules which must be approved by the commission prior to submission to the state budget director. The commissioner is directly responsible to the commission and shall make semiannual reports to the commission and such other reports as requested by the commission.

³⁴ **SECTION 2. AMENDMENT.** Section 4-09-13 of the North Dakota Century Code is amended and reenacted as follows:

4-09-13. Tolerances. The tolerances used in determining correctness and accuracy in labeling seed as described in this chapter must be those tolerances used under the Federal Seed Act of August 9, 1939, and subsequent amendments ~~thereto~~ as of July 1, 2001, except if the commissioner, by rule, establishes tolerances that meet or exceed Federal Seed Act tolerances.

SECTION 3. AMENDMENT. Section 4-09-14.4 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-14.4. Permit. The commissioner is authorized at the commissioner's discretion, under such rules as may be promulgated, to issue a permit to any person to label agricultural, vegetable, flower, and tree and shrub seeds in North Dakota. The person shall apply to the commissioner for a permit and shall furnish the seed department with ~~periodic statements~~ an annual statement of all seeds sold in North Dakota when requested by the seed commissioner. ~~Each statement must be itemized to show the number of each class of containers referred to in section 4-09-14.3.~~ Statements that must be furnished for each reporting period, must be delivered to the commissioner not later than thirty-one days after the end of each reporting period, and must be accompanied by the appropriate fee. A penalty fee of ten dollars, or five percent of the total amount due, whichever is greater, will be assessed for reports that are not postmarked within thirty-one days after the end of the reporting period. Any person to whom a permit is granted shall show such information in connection therewith as the commissioner may require as part of the label on all seed sold. The commissioner or the commissioner's authorized agent has the right at all reasonable times to examine the records of any permitholder to verify the correctness of its statements. ~~The commissioner, when requested, may grant a farmer who grows his own seed and sells only his own seed, the right to report annually.~~

SECTION 4. AMENDMENT. Section 4-09-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

³⁴ Section 4-09-13 was also amended by section 1 of Senate Bill No. 2204, chapter 62.

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

1. Establish a seed certification system for this state and adopt rules governing application for service, acceptance of suitable seed stocks for the production of a foundation, registered, certified, or inspected crop, field inspection, bin inspections, harvesting, handling, storage, conditioning, and preparation and handling of such seed for market.
2. Designate kinds, varieties, and names of seed stocks, and establish standards of quality, degree of disease infection, and amounts of any admixtures, foreign seeds, noxious weeds, or other weed seeds that are allowed in any lot or stock of seed, which may be or become eligible for field inspection or for final certification of the seed crop.
3. Prescribe all labels, seals, certificates, or similar statements that must be used for, or in relation to, any seed, or the various kinds and qualities grown, handled, stored, held for sale, sold, or offered or exposed for sale in this state as "breeders", "foundation", "registered", or "certified"; ~~or "inspected"~~ seed, and shall specify what words, terms, or figures such labels, seals, certificates, or the containers of such seed must bear.
4. Cooperate with the managers of any seed conditioning plants, or any commercially established seed firm, or any person within or outside of the state having proper facilities and equipment to store, condition, and otherwise handle seed which is eligible for certification, for the purposes of handling and marketing "breeders", "foundation", "registered", or "certified"; ~~or "inspected"~~ seed.
5. Cooperate in the selection, testing, and growing of seed for certification purposes and in the arrangement for increase of foundation seed stocks suitable for the production of certified seed.
6. Establish an equitable schedule of fees and charges, which must be uniform throughout the state, for inspecting, testing, analyzing, and recording such seed, and for other work and duties incident to the growing, handling, marketing, and certifying of North Dakota seed, and shall collect all such fees and charges.

SECTION 5. AMENDMENT. Section 4-09-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-17. Certified seed - Regulations governing labeling and representing. Seed grown in North Dakota, or grown elsewhere and transported into this state, which is sold, offered or exposed for sale, stored, transported, or distributed, or held with intent to sell or plant the same, may not be represented, advertised, labeled, or characterized in any way, either orally or in writing, with or by the use of the term "breeders", "foundation", "registered", "certified", "pedigreed", or "elite"; ~~or "inspected"~~ seed, or any term or terms conveying a meaning substantially equivalent to the meaning of any of said terms, without the approval and authorization of the commissioner, who may adopt such rules as the commissioner finds necessary for the proper regulation and protection of the certified seed industry.

SECTION 6. AMENDMENT. Section 4-09-17.1 of the North Dakota Century Code is amended and reenacted as follows:

4-09-17.1. Plant Variety Protection Act. Any seed advertised, offered for sale, or sold by variety name and for which a certificate of plant variety protection has been issued under the Plant Variety Protection Act, as amended, [Pub. L. 91-577; 84 Stat. 1551; 7 U.S.C. 2481 et seq., effective as of July 1, 2001] as being for sale only as a class of certified seed must be certified by an official seed certifying agency in order for the seed to be advertised, offered for sale, or sold by variety name in the state of North Dakota. Seed from a certified lot may be labeled as to variety name when used in a blend or mixture by or with approval of the owner of the variety.

SECTION 7. AMENDMENT. Section 4-09-18 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-18. Certified seed standards - Fees. The rules, and requirements, ~~and fees~~ for certification of crop seeds, other than potatoes, must be those prescribed and set forth in the state seed department bulletin number 51, published in March 1945, and subsequent announcements and revisions of the bulletin.

The rules, and requirements, ~~and fees~~ for seed potato certification must be those prescribed and set forth in the state seed department bulletin number 49 as revised in August 1950, and subsequent announcements and revisions of the bulletin.

Approved April 23, 2001

Filed April 23, 2001

CHAPTER 61

SENATE BILL NO. 2169

(Agriculture Committee)

(At the request of the State Seed Arbitration Board)

SEED ARBITRATION BOARD COMPOSITION AND PETITIONS

AN ACT to amend and reenact sections 4-09-03.1 and 4-09-20.2 of the North Dakota Century Code, relating to the composition of and petitions to the state seed arbitration board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-03.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-03.1. State seed arbitration board - Compensation and expenses.

The state seed arbitration board consists of the commissioner of agriculture, the state seed commissioner, the director of the North Dakota state university extension service, the director of the North Dakota agricultural experiment station, the chair of the North Dakota seed trade committee of the North Dakota agriculture association, and a representative of a major North Dakota farm organization appointed by the commissioner of agriculture, or their authorized designees. Each board member is entitled to receive as per diem compensation sixty-two dollars and fifty cents, and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the board, except that no compensation under this section may be paid to any member who receives compensation or salary as a regular state employee or official. Compensation and expenses for board members who do not receive compensation or salary as a regular state employee or official must be paid by the department of agriculture.

SECTION 2. AMENDMENT. Section 4-09-20.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-20.2. Seed arbitration board - Petition - Arbitration hearing. A seed labeler, seed dealer, or a seed customer ~~shall~~ may petition the commissioner of agriculture in writing for a hearing to settle a dispute involving a seed transaction. The commissioner of agriculture shall submit the dispute to the seed arbitration board, and the board shall arbitrate the dispute. The board, within thirty days after the hearing, shall make a nonbinding recommendation for the resolution of the dispute. Evidence presented to the board and any findings or recommendations by the board are admissible as evidence in any subsequent proceeding. The board shall adopt rules and procedures for arbitration proceedings, including a formula for reimbursement by the parties of the expenses of the arbitration process.

Approved March 28, 2001
Filed March 28, 2001

CHAPTER 62

SENATE BILL NO. 2204

(Senators Nichols, Erbele, Tomac)
(Representatives Boehm, Nelson, Rennerfeldt)

SEED CLASSIFICATION AND NOXIOUS WEED SEEDS

AN ACT to create and enact a new section to chapter 4-09 of the North Dakota Century Code, relating to the establishment of a seed classification system; to amend and reenact section 4-09-13 and subsection 1 of section 4-09-14 of the North Dakota Century Code, relating to noxious weed seeds; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁵ **SECTION 1. AMENDMENT.** Section 4-09-13 of the North Dakota Century Code is amended and reenacted as follows:

4-09-13. Tolerances. The tolerances used in determining correctness and accuracy in labeling seed as described in this chapter must be those tolerances used under the Federal Seed Act of August 9, 1939, and subsequent amendments ~~thereto~~ as of July 1, 2001, except that the tolerance for yellow starthistle must be zero and the commissioner may, by rule, establish tolerances that are more strict than the Federal Seed Act tolerances.

SECTION 2. A new section to chapter 4-09 of the North Dakota Century Code is created and enacted as follows:

Seed classification system - Weed tolerances. The seed commission shall establish a seed classification system for annual crops and perennial crops which references tolerances for each restricted noxious weed species.

SECTION 3. AMENDMENT. Subsection 1 of section 4-09-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. It is unlawful for any person to sell, offer for sale, expose for sale, transport for sale, or hold or store with the intent to sell, any agricultural, vegetable, flower, or tree and shrub seed within this state if:
 - a. The test to determine the percentage of germination required under sections 4-09-10, 4-09-11, 4-09-11.1, and 4-09-11.2 has not been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to the sale, offering for sale, or transportation, provided that seeds contained in a hermetically sealed container, as defined by regulation issued by the seed commissioner, may be sold,

³⁵ Section 4-09-13 was also amended by section 2 of Senate Bill No. 2104, chapter 60.

transported for sale, or held for sale unless the test provided in this subdivision has not been completed within a thirty-six-month period, exclusive of the calendar month in which the test was completed, immediately prior to the sale, offering for sale, or transportation for sale;

- b. ~~Such~~ The seed is not labeled in accordance with the provisions of this chapter or bears false or misleading labeling;
- c. There has been false or misleading advertising in connection with ~~such~~ the seed;
- d. ~~Such~~ The seed contains prohibited noxious weed seeds;
- e. With regard to agricultural or vegetable seed, ~~such~~ the seed is not labeled to show the rate of occurrence of restricted noxious weed seeds, as required under sections 4-09-10 and 4-09-11;
- f. ~~Such~~ The seed is designated, offered, represented, or advertised under any name or identification other than that by which it was known originally;
- g. ~~Such~~ The seed contains restricted noxious weed seeds in excess of ~~ninety~~ twenty-five seeds per pound [453.59 grams]; or
- h. The percentage by weight of all weed seeds in the seed exceeds one percent.

Any person, under rules ~~and regulations to be made therefor~~ adopted by the commissioner, may submit to the commissioner a sample of any seed which the person claims to be a new variety, distinct from any commonly known variety of ~~such~~ the seed, together with a proposed, distinctive name ~~therefor~~. The commissioner, within one year, shall make ~~such~~ any tests ~~as the commissioner considers necessary~~, and if the commissioner finds as a result of ~~such~~ the tests that ~~such~~ the seed or plant is of a new variety, distinct from any known variety of ~~such~~ the seed ~~known theretofore~~ and that the proposed name ~~proposed therefor~~ will properly distinguish ~~said~~ the seed from any and all other varieties ~~thereof~~, the commissioner shall issue to the ~~person applying therefor~~ applicant a permit to designate ~~such~~ the seed by ~~said~~ the proposed name. The purchaser, vendor, or any person receiving any seed shipped into this state from without the state, shall have the same labeled in accordance with ~~and in conformity to the requirements of~~ this chapter. Certain standardized grades and labeling of seed in use elsewhere may be permitted by the commissioner in connection with shipments of seed into this state from points outside ~~thereof~~ this state in lieu of the labeling provided for in this chapter.

SECTION 4. EXPIRATION DATE. This Act is effective through July 31, 2003, and after that date is ineffective.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 63**SENATE BILL NO. 2103**

(Agriculture Committee)

(At the request of the State Seed Department)

COMMODITY GRADE INSPECTION FEES

AN ACT to amend and reenact section 4-09.1-03 of the North Dakota Century Code, relating to elimination of administrative rulemaking proceedings in establishing fees for commodity grade inspections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09.1-03 of the North Dakota Century Code is amended and reenacted as follows:

4-09.1-03. Grade inspection - Fees and charges. The commissioner, with the approval of the seed commission, shall ~~fix by rule~~ establish and charge fees for making commodity grade inspections, and the fees must be uniform throughout the state for periods of time as must be specified. The fee for commodity grade inspection must, as nearly as possible, approximate the cost of the service.

Approved March 21, 2001

Filed March 21, 2001

CHAPTER 64

SENATE BILL NO. 2389

(Senators Holmberg, Tallackson)

CERTIFIED SEED POTATO TRANSFERS

AN ACT to amend and reenact section 4-10-06.1 of the North Dakota Century Code, relating to transfers of certified seed potatoes; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10-06.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10-06.1. Seed potatoes - Certification requirement.

1. A person may not plant seed potatoes in lots of one acre [.405 hectare] or more, for the purpose of selling the crop to be harvested, unless the seed potatoes ~~have~~:
 - a. ~~Have~~ been certified by the commissioner as meeting the standards of this chapter, ~~have~~;
 - b. ~~Have~~ been certified by another state or province having a similar seed potato quality assurance program; ~~or have~~
 - c. ~~Have~~ been field-inspected and approved by the commissioner. ~~However, the~~
2. ~~The commissioner shall permit a North Dakota growers grower~~ to plant uncertified potatoes grown by ~~them the grower~~, if the ~~growers are grower is~~ within twelve months of having ~~their the grower's~~ own certified parent seed potatoes.
3. The commissioner shall permit a North Dakota potato grower to sell or otherwise transfer certified seed potatoes to another North Dakota potato grower. The recipient grower may plant the seed potatoes only for commercial production. The seed potatoes may not be recertified or retained for use in the following production cycle.
4. If the commissioner has reason to believe that seed potatoes meeting the requirements of this section are not available in sufficient quantities to fulfill planting needs, the commissioner may permit the planting of seed potatoes with a higher disease content, provided that bacterial ring rot is not present and that a serious disease threat is not posed.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 65

HOUSE BILL NO. 1250

(Representatives Berg, D. Johnson, Nicholas)
(Senators Erbele, Heitkamp, Wanzek)

AGRICULTURAL COMMODITY COUNCIL COMPENSATION

AN ACT to amend and reenact sections 4-10.1-06, 4-10.2-05, 4-10.3-05, 4-10.4-05, 4-10.5-04, 4-10.6-04, and 4-10.7-05, subsection 4 of section 4-18.1-04, subsection 3 of section 4-27-05, and sections 4-28-05 and 4-34-07 of the North Dakota Century Code, relating to compensation for agricultural commodity council members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.1-06 of the North Dakota Century Code is amended and reenacted as follows:

4-10.1-06. Meetings - Quorum - Compensation and expenses of council.

A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of three council members within seven days of receiving such a petition. ~~Each~~ The council shall determine the amount of compensation payable to each member of the council, except the chairman, shall receive the sum of twenty-five. The amount payable may not exceed seventy-five dollars per day for each day spent in performance of the business of the council, ~~together with traveling plus reimbursement of expenses as provided by law for state officers, while on council business on the same basis as employees of attending meetings or performing duties directed by the commissioner.~~

SECTION 2. AMENDMENT. Section 4-10.2-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.2-05. Meetings - Quorum - Compensation and expenses of council.

A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of two council members within seven days of receiving such a petition. ~~Each~~ The council shall determine the amount of compensation payable to each member of the council is entitled to receive as compensation sixty-two dollars and fifty cents. The amount payable may not exceed seventy-five dollars per day and to plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council. No compensation may be paid under this section to any member who receives compensation or salary as a regular state employee or official.

SECTION 3. AMENDMENT. Section 4-10.3-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.3-05. Meetings - Quorum - Compensation and expenses of council.

A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. The chairman shall call meetings of the council. The chairman shall call all special meetings on the petition of three council members within seven days of receiving the petition. ~~Each~~ The council shall determine the amount of compensation payable to each member of the council is entitled to receive as compensation sixty-two dollars and fifty cents. ~~The amount payable may not exceed seventy-five dollars per day and to plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council. No compensation may be paid under this section to any member who receives compensation or salary as a regular state employee or official.~~

SECTION 4. AMENDMENT. Section 4-10.4-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.4-05. Meetings - Quorum - Compensation and expenses of council.

A quorum is necessary for the transaction of all business in carrying out the duties of the council. The chairman shall call all meetings of the council except special meetings which the chairman shall call on the petition of two council members within seven days of receiving such a petition. ~~Each~~ The council shall determine the amount of compensation payable to each voting member of the council is entitled to receive sixty-two dollars and fifty cents as compensation. ~~The amount payable may not exceed seventy-five dollars per day and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 plus reimbursement of expenses as provided by law for state officers, while attending council meetings or in the performance of such special performing duties as directed by the council may direct.~~ The compensation provided in this section may not be paid to any member of the council who receives salary or other compensation as a regular employee of the state.

SECTION 5. AMENDMENT. Section 4-10.5-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.5-04. Meetings - Quorum - Compensation and expenses of council.

All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of three council members within seven days of receiving the petition. ~~Each~~ The council shall determine the amount of compensation payable to each member of the council, except the commissioner, is entitled to receive sixty-two dollars and fifty cents. ~~The amount payable may not exceed seventy-five dollars per day as compensation, together with expenses as provided in sections 44-08-04 and 54-06-09 plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council, except that no compensation may be paid to any council member who receives compensation or salary as a regular state employee or official.~~

SECTION 6. AMENDMENT. Section 4-10.6-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.6-04. Meetings - Compensation and expenses of council. The chairman shall call all meetings of the council. The chairman shall call special meetings on the petition of three council members, within seven days of receiving the petition. ~~Each~~ The council shall determine the amount of compensation payable to each council member is entitled to receive as per diem compensation sixty-two dollars and fifty cents, and. ~~The amount payable may not exceed seventy-five dollars per day plus reimbursement of expenses as provided by law for state officers,~~

while attending meetings or performing duties directed by the council, except that no compensation under this section may be paid to any member who receives compensation or salary as a regular state employee or official.

SECTION 7. AMENDMENT. Section 4-10.7-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.7-05. Meetings - Quorum - Compensation of council members. A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of three council members within seven days of receiving the petition. ~~Each~~ The council shall determine the amount of compensation payable to each member of the council is entitled to receive as compensation sixty-two dollars and fifty cents. The amount payable may not exceed seventy-five dollars per day ~~and to plus~~ reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council, except that no compensation under this section may be paid to any member who receives compensation or salary as a regular state employee or official.

SECTION 8. AMENDMENT. Subsection 4 of section 4-18.1-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- ~~Each~~ The board shall determine the amount of compensation payable to each member of the board shall receive fifty. The amount payable may not exceed seventy-five dollars per diem for each day actually spent in the performance of the member's official day plus reimbursement for expenses as provided by law for state officers, while attending meetings or performing duties; ~~plus mileage and expenses as are allowed to other state officers, but in no event may a~~ directed by the board. A member's per diem payments may not exceed fifteen hundred dollars in any one year.

SECTION 9. AMENDMENT. Subsection 3 of section 4-27-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- ~~The appointive and elected members of the commission are entitled to receive a salary of forty-seven dollars~~ shall determine the amount of compensation payable to each member of the commission. The amount payable may not exceed seventy-five dollars per day plus reimbursement of expenses as provided by law for state officers, while actually engaged in the official duties of attending meetings or performing duties directed by the commission; plus their actual expenses at the same rates as other state officials.

SECTION 10. AMENDMENT. Section 4-28-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-28-05. Wheat commission - Meeting - Expenses - Legal adviser. Upon call of the governor, the commission shall first meet and organize by electing from the membership a chairman and vice chairman, who shall hold office for one year and until their successors are elected and have qualified. Thereafter the commission shall meet at least once every calendar quarter at such times and places as determined by the commission and may meet in special meetings upon such call and

notice as prescribed by rules adopted by the commission. ~~Members of the~~ The commission ~~must be reimbursed for actual~~ shall determine the amount of compensation payable to each member of the commission. The amount payable may not exceed seventy-five dollars per day plus reimbursement of expenses necessarily incurred in as provided by law for state officers, while attending meetings and or performing other official duties on the same basis as other state officers and are entitled to receive as per diem compensation sixty-two dollars and fifty cents for each day actually devoted to official business of directed by the commission. The attorney general shall act as legal adviser to the commission or designate an assistant for that purpose and within the limit of the funds available to the commission it may employ other counsel to advise and represent the commission in its affairs and proceedings.

SECTION 11. AMENDMENT. Section 4-34-07 of the North Dakota Century Code is amended and reenacted as follows:

4-34-07. Compensation - Expenses. ~~Commission members shall receive the sum of forty~~ The commission shall determine the amount of compensation payable to each member of the commission. The amount payable may not exceed seventy-five dollars per day for each meeting attended and shall receive necessary plus reimbursement of expenses for meals, lodging, and travel in the same amount and in the same manner as permitted as provided by law for state officials and employees officers, while attending meetings or performing other official duties as directed by the commission. The members of the commission shall receive no other salary or compensation for their service on the commission.

Approved March 13, 2001

Filed March 13, 2001

CHAPTER 66

HOUSE BILL NO. 1258

(Representatives Monson, Kerzman, Nelson, Nicholas)
(Senators Krauter, Wanzek)

CANOLA DISTRICTS AND OILSEED COUNCIL MEMBERSHIP

AN ACT to create and enact a new section to chapter 4-10.2 of the North Dakota Century Code, relating to canola districts; to amend and reenact section 4-10.2-03 of the North Dakota Century Code, relating to membership of the oilseed council; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.2-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.2-03. North Dakota oilseed council - Membership - Election - Term.

1. The North Dakota oilseed council is composed of ~~one~~:
 - a. One participating sunflower grower elected from each of the districts established in section 4-10.2-04; ~~one~~;
 - b. One participating canola grower elected from each of the districts established in section 2 of this Act;
 - c. One participating safflower grower appointed by the governor; ~~one~~;
 - d. One participating crambe grower appointed by the governor; ~~one participating rapeseed or canola grower appointed by the governor; one~~;
 - e. One participating flax grower appointed by the governor; ~~and one~~
 - f. One member appointed by the director of the agricultural experiment station.
2. The chairman of the council must be a member of the council elected by a majority vote of the council. The commissioner is an ex officio member of the council.
3. a. Every elected and appointed council member must be a citizen of the state.
 - b. Every The elected member who is a sunflower grower must be a bona fide resident of and participating sunflower grower in the district the member represents.

McKenzie, Mercer, Oliver, Divide, Burke, Williams, Mountrail, Renville, Ward, and McLean.

2. District two consists of the counties of Bottineau, Rolette, Pierce, Sheridan, Wells, Eddy, Foster, Burleigh, Kidder, Benson, Stutsman, McIntosh, Emmons, Logan, McHenry, LaMoure, and Dickey.
3. District three consists of the counties of Cavalier, Pembina, Ramsey, Towner, Walsh, Nelson, Grand Forks, Griggs, Steele, Traill, Barnes, Cass, Ransom, Richland, and Sargent.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 14, 2001

Filed March 14, 2001

CHAPTER 67**HOUSE BILL NO. 1095**

(Agriculture Committee)

(At the request of the Agricultural Products Utilization Commission)

APUC MEMBER COMPENSATION

AN ACT to amend and reenact section 4-14.1-05 of the North Dakota Century Code, relating to compensation of members of the agricultural products utilization commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-14.1-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.1-05. Agricultural products utilization commission - Reimbursement - Compensation. All members of the agricultural products utilization commission must be reimbursed for their actual and necessary expenses incurred in the performance of their duties, in the same manner as other state officials are reimbursed, according to sections 44-08-04 and 54-06-09; ~~and if.~~ If not otherwise employed by the state of North Dakota, members of the commission are entitled to receive as per diem compensation sixty-two dollars and fifty cents for each day devoted to attending meetings and performing other duties relating to official business of the commission. ~~may receive up to fifty dollars for each regular meeting attended~~ The commission chairman, if not otherwise employed by the state of North Dakota, may receive an additional one hundred dollars for each day of a regular meeting attended as payment for reviewing and evaluating grant proposals.

Approved March 12, 2001

Filed March 12, 2001

CHAPTER 68

SENATE BILL NO. 2122

(Agriculture Committee)

(At the request of the State Board of Higher Education)

TREES FOR NORTH DAKOTA PROGRAM

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to optional income tax contributions to the trees for North Dakota program trust fund; to amend and reenact sections 4-21.2-01, 4-21.2-02, and 4-21.2-03 of the North Dakota Century Code, relating to changing the centennial trees program to the trees for North Dakota program; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-21.2-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-21.2-01. (Effective through June 30, 2001) Centennial trees Trees for North Dakota program. The centennial trees for North Dakota program is created for the public purpose of fostering the goal of planting one hundred million trees in North Dakota during the decade of the 1990s strengthening the tradition of tree planting and management in this state.

SECTION 2. AMENDMENT. Section 4-21.2-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-21.2-02. (Effective through June 30, 2001) Centennial trees Trees for North Dakota program trust fund. A special fund known as the centennial trees for North Dakota program trust fund is established in the state treasury. Income earned on moneys in the fund must be credited to the fund. The state forester shall deposit all program funds received for the program from governmental and private sources in the trust fund. Moneys in the fund Program funds may be spent directly or by expended for direct costs or distributed for grants and contracts by the state forester within the limits of legislative appropriations for defraying the costs associated with execution of the centennial trees for North Dakota program.

The state treasurer shall transfer all funds in the centennial trees program trust fund to the trees for North Dakota program trust fund.

SECTION 3. AMENDMENT. Section 4-21.2-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-21.2-03. (Effective through June 30, 2001) Authority for local governments to participate. Any political subdivision of the state may provide financial aid or supportive services to the ~~centennial trees~~ for North Dakota program.

SECTION 4. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Optional contributions to trees for North Dakota program trust fund. An individual may designate on the tax return of that individual a contribution to the trees

for North Dakota program trust fund of any amount of one dollar or more to be added to tax liability or deducted from any refund that would otherwise be payable by or to the individual. The tax commissioner shall notify taxpayers of this optional contribution on the individual state income tax returns. The tax commissioner shall transfer the amount of optional contributions under this section to the state treasurer for deposit in the trust for North Dakota program trust fund for use as provided in chapter 4-21.2.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 6, 2001

Filed March 6, 2001

CHAPTER 69

SENATE BILL NO. 2171 (Senator Andrist)

DRY PEA AND LENTIL ASSESSMENT FUND

AN ACT to amend and reenact sections 4-24-09 and 4-24-10 of the North Dakota Century Code, relating to the dry pea and lentil assessment fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-24-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-24-09. Agricultural commodity assessments funds - Investment income allocation. The state treasurer, notwithstanding any other provision of law to the contrary, shall invest in accordance with section 21-10-07 all available moneys in the spud fund, oilseed fund, dry bean fund, dry pea and lentil fund, barley fund, soybean fund, corn fund, honey fund, turkey fund, milk stabilization fund, dairy promotion commission fund, state wheat commission fund, and the beef commission fund. The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer, by rule, shall establish, in cooperation with the agricultural commodity organizations, guidelines to be followed regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services when provided without cost by the state to the agricultural commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund.

SECTION 2. AMENDMENT. Section 4-24-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-24-10. Agricultural commodity promotion groups to report to legislative assembly - Report contents. Between the first and tenth legislative day of each regular legislative session, the North Dakota potato council, the North Dakota oilseed council, the North Dakota dry bean council, the North Dakota dry pea and lentil council, the North Dakota barley council, the North Dakota soybean council, the North Dakota corn utilization council, the North Dakota beekeepers association, the North Dakota turkey federation, the North Dakota milk marketing board, the North Dakota dairy promotion commission, the North Dakota state wheat commission, and the North Dakota beef commission must file a uniform report at a public hearing before the standing agriculture committee of each house of the legislative assembly. The presiding officer of each house of the legislative assembly may direct that the reports be filed with some other standing committee of that house. Each report must contain a summary of the activities of the commodity group during the current biennium, a single-page uniform statement of revenues and expenditures for the next biennium. Each report, except the reports of the North

Dakota beekeepers association and the North Dakota turkey federation, must also include a state auditor's report on the commodity group's single-page uniform statement of revenues and expenditures for the previous two fiscal years.

Approved March 14, 2001

Filed March 15, 2001

CHAPTER 70**HOUSE BILL NO. 1209**

(Representatives Mueller, D. Johnson, Metcalf)
(Senators Robinson, Urlacher, Wanzek)

AGRICULTURAL HALL OF FAME NOMINEES

AN ACT to amend and reenact subsection 4 of section 4-24-11.1 of the North Dakota Century Code, relating to the North Dakota agricultural hall of fame; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 4-24-11.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The committee ~~may induct no more than three~~ shall determine the number of nominees to be inducted into the North Dakota agricultural hall of fame in 1998 and no more than two nominees each year ~~thereafter~~. Any person who is nominated for induction into the North Dakota agricultural hall of fame and receives at least one vote is automatically considered for induction the following year. The nominee may provide the committee with updated or additional information to be considered.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 13, 2001
Filed March 13, 2001

CHAPTER 71

HOUSE BILL NO. 1442

(Representatives Lemieux, Kempenich, Lloyd, Pietsch)
(Senators G. Nelson, Wardner)

GENETICALLY MODIFIED CROP SAMPLING

AN ACT relating to the sampling of genetically modified crops.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Genetically modified seed - Patent infringement - Sampling - Mediation.

1. For purposes of this section, farmer means the person responsible for planting a crop on, managing the crop, and harvesting the crop from land on which a patent infringement is alleged to have occurred.
2. a. Before a person holding a patent on a genetically modified seed may enter upon any land farmed by another for the purpose of obtaining crop samples to determine whether patent infringement has occurred, the person holding the patent:
 - (1) Shall notify the agriculture commissioner in writing of the person's belief that a patent infringement has occurred and include facts from the allegation;
 - (2) Shall notify the farmer in writing of the allegation that a patent infringement has occurred and request written permission to enter upon the farmer's land; and
 - (3) Must obtain the written permission of the farmer.
- b. If the farmer withholds written permission, the person holding a patent may petition the state district court for an order granting permission to enter upon the farmer's land.
3. The farmer may accompany the person holding the patent at the time any samples are taken.
4. If requested by the farmer or the person holding the patent, the state seed commissioner shall accompany the person holding the patent at the time any sample is taken. The state seed commissioner may impose a fee for providing that service. The patent holder and the farmer shall each pay one-half of the fee charged by the commissioner.
5. If the person holding a patent believes that the crop from which samples are to be taken may be subject to intentional damage or destruction, the person may seek a protection order from the state district court. The protection order may not interrupt or interfere with normal farming practices, including harvest and tillage.

6. The person holding the patent may take samples from a standing crop, from representative standing plants in the field, or from crops remaining in the field after harvest.
7. The person holding the patent may obtain no more samples than those reasonably necessary to make a determination regarding patent infringement. An equal number of samples must remain in the custody of the state seed commissioner or the farmer for future comparison and verification purposes. All samples taken must be placed in containers, labeled as to the date, time, and location from which they were taken, and the labels must be signed by the farmer, the person who took the samples, and the state seed commissioner if the commissioner was present at the time the samples were taken. The patent holder and the farmer shall share equally the cost of the containers needed for the second set of samples which are retained by the state seed commissioner or the farmer. The farmer and the person holding the patent shall share equally the cost of the containers and the cost of obtaining the samples.
8. Within sixty days from the date the samples are taken, an independent laboratory shall conduct all tests to determine whether patent infringement has occurred. The person holding the patent shall notify the farmer of the test results, by certified mail or by any other method of delivery for which a signature is required, within twenty-one days from the date the results were reported to the person holding the patent.
9. The parties may participate in mediation at any time. The mediation must be conducted by a mediator jointly selected by the farmer and the person holding the patent. If the farmer and the person holding the patent are unable to select a mediator, the mediation must be conducted by an independent agricultural mediation service.
10. If the case is not settled after mediation, either party may file a claim for relief with the federal district court having jurisdiction over the claim. Unless otherwise specified in a contract between the farmer and the person holding the patent, the appropriate state district court is the one that has jurisdiction over that portion of this state in which the farmer's land is located.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 72

HOUSE BILL NO. 1170

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

CREAM STANDARDS ELIMINATED

AN ACT to amend and reenact sections 4-30-01, 4-30-02, 4-30-02.1, 4-30-03.1, 4-30-03.2, 4-30-03.3, 4-30-03.4, 4-30-03.5, 4-30-03.6, 4-30-03.7, 4-30-03.8, 4-30-13.1, 4-30-18, 4-30-20, 4-30-36, 4-30-36.2, 4-30-36.3, 4-30-36.4, 4-30-37, 4-30-38, 4-30-47, and 4-30-48 of the North Dakota Century Code, relating to elimination of references to the sale of cream and to update references to federal laws and regulations; and to repeal sections 4-30-19, 4-30-21, 4-30-22, 4-30-23, 4-30-24, 4-30-25, 4-30-26, and 4-30-42 of the North Dakota Century Code, relating to standards for production and sale of cream.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-30-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Approved laboratory" means a laboratory in which the entire facilities and equipment have been approved by the department as being adequate to perform the necessary official tests in accordance with the North Dakota laws and the rules of the department.
2. "Cheese factory" means a place where cheese is made for commercial purposes.
3. "Commissioner" means the agriculture commissioner ~~of agriculture~~ or the commissioner's designee.
4. "Composite sample" means a mixture of single samples of milk or milk products taken from different lots or deliveries, the amount taken each time being in proportion to the amount of milk or milk products delivered. Composite samples are usually taken for determining the butterfat content of a product and are tested at a frequency of not less than once every fifteen days. Preservatives may be added.
5. "Condensery" means a place where condensed or evaporated milk is produced or where milk is changed to a thick liquid by evaporation of a part of the water.
6. "~~Cream station~~" means ~~any place other than a creamery where deliveries of cream are weighed, graded, sampled, tested, or collected for purchase.~~
7. "~~Creamery~~" means a place where ~~butter~~ is made for commercial purposes.

- ~~8.~~ 8. "Dairy animal" means any mammal maintained for the commercial production of milk to be offered for sale for use in the processing or manufacturing of milk or dairy products.
- ~~9.~~ 7. "Dairy or dairy farm" means a place where one or more dairy animals are kept, a part or all of the milk or milk products from which is sold or offered for sale.
- ~~40.~~ 8. "Department" means the department of agriculture.
- ~~44.~~ 9. "Distributor" means a person who purchases milk or milk products and transports them to a retail dealer or a consumer.
- ~~42.~~ 10. "Drying plant" means a place which manufactures dry milk products obtained by the removal of water from milk or milk products.
- ~~43.~~ 11. "Filled dairy products" means any milk, cream, or skimmed milk, or any combination thereof, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured therefrom, to which has been added, or which has been blended or compounded with, any fat or oil other than milkfat so that the resulting product is in imitation or semblance of any dairy product, including but not limited to milk, cream, sour cream, butter cream, skimmed milk, ice cream, whipped cream, flavored milk or skim milk drink, dried or powdered milk, cheese, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk; provided, however, that this term shall not be construed to mean or include:
- a. Any distinctive proprietary food compound not readily mistaken for a dairy product, where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;
 - b. Any dairy product flavored with chocolate or cocoa, or the vitamin content of which has been increased, or both, where the fats or oils other than milkfat contained in such product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used and the food oil, not in excess of one-hundredths per centum of the weight of the finished product, used as a carrier of such vitamins; or
 - c. Oleomargarine.
- ~~44.~~ 12. "Grading" means the examination of milk or milk products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating the quality of the product.
- ~~45.~~ 13. "Ice cream plant" means a place where ice cream is made for commercial purposes.
- ~~46.~~ 14. "Ice milk plant" means a place where ice milk is made for commercial purposes.

- ~~47.~~ 15. "Imitation milk" or "imitation milk product" means a food product or food compound made to resemble milk or a milk product when any of the following occurs:
- a. The food physically resembles milk or a milk product. "Physical resemblance" means those characteristics relating to the composition of food, including fat and moisture content, nonfat solids content, and functional ingredient or food additive content such as emulsifiers, stabilizers, flavor, or color additives.
 - b. The packaging used resembles the packaging used for milk or for a milk product.
 - c. The food product or food compound is displayed in a retail establishment in the same manner as milk or a milk product.
 - d. Verbal or pictorial expressions are used on the food products or food compounds, labeling, or in advertisements or other similar devices used to promote the food products or food compounds that state or imply that the food is milk or a milk product.
 - e. The food product or food compound in any other way is manufactured, packaged, or labeled so as to resemble the identity, intended use, or physical and sensory properties of milk or a milk product. "Physical and sensory properties" means those characteristics relating to flavor, texture, smell, and appearance of a food product or food compound.
- ~~48.~~ 16. "Milk ~~or cream~~ hauler" means a person who owns vehicles used to transport raw milk from a dairy farm to a dairy facility.
- ~~49.~~ 17. "Milk plant or bottling plant" means a place where milk or milk products are collected, handled, processed, stored, and prepared for distribution.
- ~~20.~~ 18. "Milk solids or total solids" means the total amount of solids in milk.
- ~~24.~~ 19. "Overrun" means the increase in volume of a manufactured product due to the incorporation of water, air, or other substance commonly used in the manufacturing processes.
- ~~22.~~ 20. "Pasteurization" as applied to milk or skim milk means the process of heating every particle of milk to at least one hundred forty-five degrees Fahrenheit [62.78 degrees Celsius] and cream and other milk products to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius], and holding it at such temperature continuously for at least thirty minutes; or heating every particle of milk to at least one hundred sixty-one degrees Fahrenheit [71.67 degrees Celsius] and cream and other milk products to at least one hundred sixty-six degrees Fahrenheit [74.44 degrees Celsius], and holding it at such temperature continuously for at least fifteen seconds in approved and properly operated equipment. When applied to cream for buttermaking, the cream shall be held at a temperature of not less than one hundred sixty-five degrees Fahrenheit [73.89 degrees Celsius] for at least thirty minutes or not less than one hundred eighty-five degrees Fahrenheit [85.00 degrees Celsius] for at least fifteen seconds. Nothing contained in this definition may be construed as barring any other process which

has been demonstrated to be equally efficient which assures proper pasteurization and keeping quality, which is consistent with the most desirable quality, and which is approved by the dairy commissioner.

- ~~23.~~ 21. "Peddler" means a person who purchases milk or milk products and sells them directly to consumers at any place other than from a store, stand, or other fixed place of business.
- ~~24.~~ 22. "Person" means individuals, firms, partnerships, associations, trusts, estates, corporations, and limited liability companies, and any and all other business units, devices, or arrangements.
- ~~25.~~ 23. "Processing or manufacturing" means the treatment of milk or milk products by pasteurizing, bottling, churning, adding flavors to, freezing, dehydrating, packaging, coagulating, or treating in any manner which changes the natural, physical, or chemical properties of the original product.
- ~~26.~~ 24. "Producer dairy" means a dairy farm which sells milk or cream to a dairy plant for processing or manufacturing.
- ~~27.~~ 25. "Producer-processor" or "producer-distributor" means a producer who is also a processor or distributor.
- ~~28.~~ 26. "Raw milk or raw milk products" means products which have not been treated by the process of pasteurization as defined in this section.
- ~~29.~~ 27. "Receiving and transfer station" means a place where milk or milk products are collected for shipment to a processing or manufacturing plant. This definition must not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.
- ~~30.~~ 28. "Retail" means the sale of milk or milk products directly to the consumer.
- ~~31.~~ 29. "Sampler" means a person, other than a milk producer or dairy plant employee, who transports samples for official use or raw milk or milk products from a dairy farm to a dairy facility.
- ~~32.~~ 30. "Sampling" means a procedure whereby a portion or specimen of milk or milk products is taken for the purpose of grading or testing.
- ~~33.~~ 31. "Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been removed.
- ~~34.~~ 32. "Testing" means an examination of milk, or milk products by sight, odor, taste, or laboratory analysis to determine the quality, wholesomeness, or composition thereof.
- ~~35.~~ 33. "3A Standards" means standards which have been established for certain equipment, utensils, and other items by the 3A Sanitary Standards Committee of the International Association of Milk and Food Sanitarians, Incorporated.
- ~~36.~~ 34. "Transfer station" means a place where milk or milk products are regularly transferred from one vehicle to another. This definition shall

not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.

- ~~37.~~ 35. "Wholesale" means the sale of milk or milk products to a retail dealer for purposes of resale.

SECTION 2. AMENDMENT. Section 4-30-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 3. AMENDMENT. Section 4-30-02.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-02.1. Records release required with application for licensure. A purchaser of milk ~~or cream~~ in North Dakota shall file with the license application a release authorizing the commissioner access to the applicant's financial records held by financial institutions, accountants, and others. The release must be in a form approved by the commissioner. The commissioner may use the release in the course of licensing or relicensing the applicant or in the course of an investigation of the applicant due to a complaint against the applicant or when based upon evidence establishing probable cause of a violation of this chapter. Information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to any state agency and to any prosecutorial official requiring the information for use in performing official duties.

SECTION 4. AMENDMENT. Section 4-30-03.1 of the North Dakota Century Code is amended and reenacted as follows:

4-30-03.1. Financial condition - Assurance of prompt payment. Each applicant for a license under section 4-30-02 who purchases milk ~~or cream~~ from a dairy producer shall have first satisfied the department that the applicant's financial condition is such as to reasonably assure prompt payment to the dairy producers for purchased milk ~~and cream~~.

SECTION 5. AMENDMENT. Section 4-30-03.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-03.2. Statement of business operations or financial condition - Filing - Review by Bank of North Dakota - Confidential - Audited. Each applicant for a license under section 4-30-02 who purchases milk ~~or cream~~ from a dairy producer shall annually file with the department an audited financial statement prepared by an independent certified public accountant or licensed public accountant in accordance with generally accepted accounting practices and principles, verified by the accountant as accurately representing business operations and financial conditions of the plant business for which the statement is rendered, prepared as of the close of the plant's most recent fiscal year. In lieu of filing an audited financial statement an applicant may file other forms of security as provided in section 4-30-03.3. All audited financial statements shall be reviewed by the Bank of North Dakota. All statements shall be confidential and shall not be open for public inspection. The department may require additional statements to be audited by a certified public accountant or a licensed public accountant.

SECTION 6. AMENDMENT. Section 4-30-03.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-03.3. Surety bond, trustee agreement, other security or assurances. In all cases where it appears that the financial condition of any applicant or licensee who purchases milk ~~or cream~~ from a dairy producer is not adequate to reasonably assure payment to dairy producers when due for the milk ~~or cream~~ to be purchased, or in lieu of annually filing with the department an audited financial statement as required in section 4-30-03.2, the department shall require from an applicant or licensee security or other assurances in one of the following forms:

1. The filing of a surety bond acceptable to the department. The amount of the surety bond must be determined on the basis of average purchases of milk ~~or cream~~ from dairy producers during the previous year. Where payment for milk ~~or cream~~ purchased from dairy producers is made on a weekly basis, the amount of the surety bond must be at least in an amount equal to the average weekly purchases of milk ~~or cream~~. Where payment for milk ~~or cream~~ purchased from dairy producers is made on a semimonthly basis, the amount of the surety bond must be at least in an amount equal to the average semimonthly purchases of milk ~~or cream~~. Where the period of payment for milk ~~or cream~~ purchased from dairy producers is made on a basis involving periods of time greater than semimonthly, the amount of the surety bond must be at least in an amount equal to the average purchases of milk ~~or cream~~ for that greater period of time. The amount of the bond for each period of payment must also include an amount equal to at least the average purchases for three days following the close of the period of payment. The amount of the surety bond of any licensee who pays assignments to creditors of a producer of milk ~~and cream~~ at a lesser frequency than the licensee pays the producer must also include an amount equal to the value of assignments from the prior payment period. The commissioner must be named as obligee, but the bond or draft must be held for the purpose of protecting, and for the benefit of, any dairy producer, and the full and complete payment to ~~the seller~~ that dairy producer for all milk ~~or cream~~ purchased by the licensee. The aggregate liability of the bonding company or the department to all dairy producers must in no event exceed the amount of the bond.

2. The providing of an amount of protection for dairy producers, from whom milk ~~or cream~~ is purchased, equal to the amount of protection provided in subsection 1, whereby the security is to be held by the department solely for the protection of dairy producers, in one or more of the following forms:
 - a. Cash deposited with a bank or trust company and held under an escrow agreement with the department.
 - b. Bonds of the United States deposited with the department.
 - c. Stocks, bonds, or other marketable securities at current market values, which securities have regularly reported quotations, deposited with the department.
 - d. A certified bank draft, certified check, irrevocable letter of credit, or certificate of deposit held in favor of the department.
3. The filing of an agreement providing for the complete control over all manufactured or processed milk and dairy products by a trustee to be selected at least annually by the dairy producers. The trustee shall make and file a trustee's bond and contracts signed by the owner or operator and the purchaser of the dairy products requiring that payment for all dairy products sold be made to the trustee. The trustee shall maintain a separate bank account for that purpose and shall at least annually render a true and correct account of trustee dealings to the department and to the dairy producers.

SECTION 7. AMENDMENT. Section 4-30-03.4 of the North Dakota Century Code is amended and reenacted as follows:

4-30-03.4. Financial basis for license - Statement to producer - Notification to department. All milk ~~or cream~~ purchasers licensed under section 4-30-02 shall inform producers delivering milk ~~and cream~~ of the financial basis on which the license was issued including the type and amount of security, if any, filed under section 4-30-03.3 by a written statement to each producer patron at least once every year. No person may receive milk ~~or cream~~ which will increase the amount due and accrued beyond the amount represented as a basis for the issuance of a license without first notifying the department.

SECTION 8. AMENDMENT. Section 4-30-03.5 of the North Dakota Century Code is amended and reenacted as follows:

4-30-03.5. Additional security. Whenever the department determines that the value of milk ~~or cream~~ purchased or received from producers has increased or that an increase may reasonably be anticipated, so that the total amount of security does not comply with the amount required by subsection 1 or 2 of section 4-30-03.3, the department shall require additional security as will afford producers the protection intended by section 4-30-03.3. The department may suspend or revoke any license if the licensee fails to provide the additional security required by the department pursuant to this section.

SECTION 9. AMENDMENT. Section 4-30-03.6 of the North Dakota Century Code is amended and reenacted as follows:

4-30-03.6. Filing of security before license year. Surety bonds or other security for the license year must be filed with the department not later than the first day of the month before the beginning of each license year. If any applicant or licensee who purchases or receives milk ~~or cream~~ from dairy producers has not filed a surety bond or other security, and has not been relieved from filing a surety bond or other security, by the first day of the month of the license year, the department shall notify producers selling milk ~~or cream~~ to the applicant or licensee that the applicant or licensee has not filed any security or made other provisions for assuring payments for milk ~~or cream~~ purchases, for the license year.

SECTION 10. AMENDMENT. Section 4-30-03.7 of the North Dakota Century Code is amended and reenacted as follows:

4-30-03.7. Failure to file security - Notice to producers. Whenever an applicant or licensee fails to file a surety bond or other security within the time fixed by section 4-30-03.6 or the department's demand for additional security, the department shall publish in a newspaper or newspapers having circulation in the area or areas in which the producers whose milk ~~or cream~~ is sold or delivered to the applicant or licensee reside, a notice stating that the department made demand or request of the applicant or licensee; that the applicant or licensee has failed to comply; that the department does not have on file a surety bond or other security as demanded; and that adequate security to protect producers may not be available to them. In addition to published notice to producers, the department shall send by registered mail, a copy of the notice to each producer delivering milk ~~or cream~~ to the applicant or licensee as may be able to be determined from available records and the notice must be addressed to the producer's last known place of residence.

SECTION 11. AMENDMENT. Section 4-30-03.8 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-03.8. Out-of-state dealers, processors, or producers not exempt. Sections 4-30-03.1 through 4-30-03.10 apply to all milk ~~or cream~~ purchasers licensed under section 4-30-02 doing business in whole or in part within the state. The protection to producers afforded by sections 4-30-03.1 through 4-30-03.10 is available to the producers of any state selling milk ~~or cream~~ to any licensee licensed under section 4-30-02, but the surety bond or other security required by sections 4-30-03.3 and 4-30-03.5 is payable only for the benefit of producers who are located within this state.

SECTION 12. AMENDMENT. Section 4-30-13.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-13.1. Commissioner to investigate complaint. Upon receiving a ~~written~~ statement claiming that any provision of this chapter or the rules of the department have been violated, the commissioner shall investigate the complaint as thoroughly and as soon as possible and practicable. If the commissioner finds upon conducting such investigation that a provision of this chapter or the rules of the department have been violated, the commissioner may take any action deemed appropriate.

SECTION 13. AMENDMENT. Section 4-30-18 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-18. Sampling and testing procedures - Equipment - Supplies. The laboratory procedures, equipment, chemicals, and other apparatus or substances used in the sampling, hauling, or testing of milk or milk products must conform to that

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

SECTION 14. AMENDMENT. Section 4-30-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 15. AMENDMENT. Section 4-30-36 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-36. Standards for grade A milk and milk products - Adoption of amendments. Only grade A milk may be sold as fluid beverage for human consumption. The minimum standards for milk and milk products designated as grade A are the same as the minimum requirements of the "Grade A Pasteurized Milk Ordinance, ~~1989~~ 1999 Recommendations of the United States Public Health Service" including "Grade "A" Condensed and Dry Milk Ordinance 1995 Revision, Grade A Condensed and Dry Milk Products and Condensed and Dry Whey Supplement 1" and all supplements added thereto except that the minimum requirements for solids not fat in all grade A milk is eight and one-half percent and the butterfat content of grade A whole milk is three and one-fourth percent. The commissioner may adopt as department regulations other standards in addition to any amendments, supplements to, or new editions of the milk ordinance which are in the interest of public safety, wholesomeness of product, consumer interest, sanitation, good supply, salability, and promotion of grade A milk and milk products.

SECTION 16. AMENDMENT. Section 4-30-36.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-36.2. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines. The state milk sanitation rating and sampling surveillance officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service/food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Supplies - ~~1989~~ 1999 revision corrected Edition" and the sampling of milk and dairy products must be in accordance with the guidelines recommended in the ~~latest~~ sixteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association.

SECTION 17. AMENDMENT. Section 4-30-36.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-36.3. Milk laboratory evaluations officer - Duties - Guidelines. The milk laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy products laboratories within the state. Evaluations and certification of milk laboratories must be made in accordance with the ~~latest~~ sixteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association and the procedures outlined in the public health service/food and drug administration publication entitled "Evaluation of Milk Laboratories - ~~1989~~ 1995 Edition".

SECTION 18. AMENDMENT. Section 4-30-36.4 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-36.4. Grade A pasteurized milk ordinance. Dairy producers, processors, and manufacturers shall comply with the "Grade A Pasteurized Milk Ordinance of ~~1989~~ 1999" and its supplements and follow the procedures standards set by "Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments 1999 revisions".

SECTION 19. AMENDMENT. Section 4-30-37 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-37. Quality records to be kept - Term. Adequate records for testing and grading in conformance with this chapter and the rules ~~and regulations~~ of the department must be kept by each business sampling or testing milk ~~or cream~~ for at least twelve months in a manner approved by the commissioner.

SECTION 20. AMENDMENT. Section 4-30-38 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-38. Transportation of milk ~~and cream~~ for manufacturing, processing, or bottling purposes - Commissioner to adopt rules. The commissioner may adopt rules governing the transportation of milk ~~and cream~~ to be used for manufacturing, processing, or bottling purposes. No facility or vehicle ~~shall~~ may be used or operated in violation of these rules.

SECTION 21. AMENDMENT. Section 4-30-47 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-47. Dispute over test - Official test made - By whom - Other tests - Fees. If a disagreement between a seller and a buyer or the legal representatives of both or either arises over the percentage of butterfat contained in any quantity of milk ~~or cream~~ sold or offered for sale at the request of the owner and in the owner's presence, a sample of such milk ~~or cream~~ obtained as provided in ~~sections 4-30-19 and section~~ section 4-30-20 and mutually agreed upon by the interested parties as being a representative sample, must be sealed satisfactorily and mailed by the buyer to the office of the dairy commissioner. There must accompany each sample a statement giving the name and address of the seller and the buyer of the milk ~~or cream~~ in question, the net weight thereof, the percentage and amount of butterfat contained therein, the price per pound [.45 kilogram] for butterfat, and the amount of money paid or offered in payment for the same and bearing the signature of the seller and the buyer. The commissioner or the commissioner's agent shall determine the percentage of butterfat contained in the sample and shall make a report of the result

in triplicate, the original to be filed in the commissioner's office, one copy to be sent to the seller, and one to the buyer of the milk ~~or cream~~. The percentage of butterfat so determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made. The fee for the making of the official butterfat test and any other tests required must be in such amount as set by regulation of the dairy commissioner, considering the actual costs of making the test, and such fee must be mailed to the dairy commissioner at the time of forwarding the sample for such official butterfat or other test.

SECTION 22. AMENDMENT. Section 4-30-48 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-48. Failure to agree on sample for official test - Procedure to be followed. Whenever it is impossible to secure or mutually agree upon a sample of milk ~~or cream~~ as provided in section 4-30-47, then the party selling or offering for sale such milk ~~or cream~~ may require that the buyer or prospective buyer forward to the department the sample taken in compliance with sections 4-30-19 and 4-30-20. Each sample so forwarded must be accompanied by a statement in the form of an affidavit from the buyer or prospective buyer, stating that the sample was taken in compliance with the provisions of sections 4-30-19 and 4-30-20, and the statement also must contain all information required in section 4-30-47, except that the signature of the seller is not required thereon. Each sample must be tested and reported on as prescribed in section 4-30-47, and the percentage of butterfat so determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made.

SECTION 23. REPEAL. Sections 4-30-19, 4-30-21, 4-30-22, 4-30-23, 4-30-24, 4-30-25, 4-30-26, and 4-30-42 of the North Dakota Century Code are repealed.

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 73

SENATE BILL NO. 2172

(Senators Solberg, Nichols, Wanzek)
(Representatives Boehm, Huether, Nicholas)

BEEF PROMOTION AND BEEF COMMISSION

AN ACT to amend and reenact sections 4-34-01 and 4-34-03 of the North Dakota Century Code, relating to beef promotion and the qualifications of members of the North Dakota beef commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-34-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-34-01. Purposes. The purposes of this chapter are:

1. To provide and participate in programs to increase the consumption of domestic beef through such means as advertising, research, consumer information, industry information, sales promotion, and education, but at no time may false or unwarranted claims be made on behalf of the beef industry.
2. To support beef promotion, research, and education activities of the national beef promotion and marketing organizations ~~with not less than fifty percent of the assessments collected.~~
3. To initiate, encourage, and sponsor research designed to solve problems in the beef industry.
4. To enhance the sale and production of North Dakota beef cattle.

SECTION 2. AMENDMENT. Section 4-34-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-34-03. North Dakota beef commission - Appointments - Vacancies - Qualifications.

1. There is hereby created a North Dakota beef commission consisting of nine members who must be appointed by the governor. The commission must be composed of three beef producers, one cattle feeder, one dairy producer, one public livestock market representative, and three representatives at large. The commission may also appoint up to two nonvoting ex officio members.
2. Three initial members must be appointed for one year; three members must be appointed for two years; and three members must be appointed for three years. All subsequent members must be appointed for three years unless the appointment is to fill a vacancy in which case such appointment must be for the unexpired term. No members may serve more than two successive three-year terms. In the event a position on the commission becomes vacant for any reason, the unexpired term of

such position must be filled in the same mode and manner as the original appointments.

3. Each member must ~~be~~:
 - a. Be a United States citizen and a resident of this state, ~~must be or have been~~;
 - b. Be actually engaged in that phase of the cattle industry the member represents;
 - c. Have been actually engaged in that phase of the cattle industry for a period of five years, ~~;~~ and ~~must have~~
 - d. Have during that period derived a substantial portion of the member's income therefrom.

Approved March 21, 2001

Filed March 21, 2001

CHAPTER 74

SENATE BILL NO. 2167

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

PESTICIDE APPLICATORS

AN ACT to amend and reenact sections 4-35-05, 4-35-06, 4-35-08, 4-35-09, 4-35-13, 4-35-15, 4-35-19, and subsection 4 of section 4-35.1-01 of the North Dakota Century Code, relating to pesticide applicators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-35-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-05. Definitions. As used in this chapter:

1. "Animal" means all vertebrate and invertebrate species, including, ~~but not limited to, man~~ humans and other mammals, birds, fish, and shellfish.
2. "Antidote" means a practical treatment in case of poisoning and includes first aid treatment.
- ~~2.4.~~ 3. "Applicator" means any person who applies a pesticide to land.
- ~~3.~~ 4. "Beneficial insects" means those insects ~~which~~ that, during their life cycle, are effective pollinators of plants, are parasites, or predators of pests.
- ~~4. a.~~ 5. "Certified applicator" means any individual who is certified under this chapter ~~as authorized to use any restricted use pesticide covered by the applicator's certification.~~ The term includes a commercial applicator and a private applicator.
 - ~~b.~~ "Private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
 - ~~6.~~
6. "Commercial applicator" means a certified applicator, ~~whether or not the applicator is a private applicator with respect to some uses,~~ who uses any pesticide ~~which is classified for restricted use,~~ for any purpose or on any property, ~~other than as provided for by subdivision b~~ a private applicator.
- ~~5.~~ 7. "Dealer" means any person who sells a pesticide to an end user.

- 6- 8. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.
- 7- 9. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
- 8- 10. "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than ~~man~~ human and other than bacteria, virus, or other micro-organism on or in living ~~man~~ humans or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.
- 9- 11. "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.
- 40- 12. "Environment" includes water, air, land, and all plants and ~~man~~ humans and other animals living therein, and the interrelationships which exist among these.
- 44- 13. "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land, ~~but shall~~. The term does not include any pressurized hand-sized household apparatus used to apply any pesticide, or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.
- 42- 14. "Fungus" means any non-chlorophyll-bearing thallophytes, i.e., any non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living ~~man~~ humans or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
- 43- 15. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class of insecta, comprising six-legged, usually winged forms, and to other allied classes of arthropods whose members are wingless and usually have more than six legs.
- 44- 16. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
- 45- 17. "Labeling" means the label and all other written, printed, or graphic matter:
- a. Accompanying the pesticide or device; and
 - b. To which reference is made on the label or in literature accompanying or referring to the pesticide, except when accurate nonmisleading references are made to current official publications of the board; the United States environmental protection agency; the United States departments of agriculture and interior; the United States department of health and human services; state

agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

46. 18. "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.
47. 19. "Mixture" means a diluted pesticide combination.
48. 20. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be called nemas or eelworms.
49. 21. "Person" means any individual, partnership, association, fiduciary, corporation, limited liability company, or any organized group of persons, whether or not incorporated.
20. 22. "Pest" means:
- a. Any insect, snail, slug, rodent, nematode, fungus, weed; or
 - b. Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism, except viruses, bacteria, or other micro-organisms on or in living ~~man~~ humans or other living animals which are annoying or otherwise injurious or harmful to agriculture, health, and the environment.
24. 23. "Pesticide" means:
- a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
 - b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
22. 24. "Pesticide dealer" means any person who distributes restricted use pesticides.
23. 25. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.
26. "Private applicator" means a certified applicator who uses or supervises the use of any pesticide that is classified for restricted use, to produce any agricultural commodity on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

- ~~24.~~ 27. "Protect health and the environment" means protection against any unreasonable adverse effects on public health and the environment.
- ~~25.~~ 28. "Public operator" means a certified applicator who applies restricted use pesticides as an employee of a state agency, municipal corporation, public utility, or other governmental agency.
- ~~26.~~ 29. "Restricted use pesticide" means any pesticide formulation which is classified for restricted use by the board.
- ~~27.~~ 30. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
- ~~28.~~ 31. ~~"Snails or slugs" include all~~ "Snail" or "slug" includes every harmful mollusk mollusk.
- ~~29.~~ 32. "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.
- ~~30.~~ 33. "Unreasonable adverse effects on the environment" means any unreasonable risk to ~~man~~ humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
- ~~34.~~ 34. "Weed" means any plant which grows where not wanted.
- ~~32.~~ 35. "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including, ~~but not limited to,~~ mammals, birds, and aquatic life.

SECTION 2. AMENDMENT. Section 4-35-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-06. Pesticide control board to administer chapter and adopt regulations.

1. a. The pesticide control board shall administer ~~the provisions of this chapter and has authority to issue regulations in conformance with provisions of~~ may adopt rules in accordance with chapter 28-32 to ~~carry out the provisions of~~ implement this chapter. ~~Such regulations~~ The rules may prescribe methods to be used in the application of pesticides. ~~Where the board finds that such regulations are necessary to carry out the purpose and intent of this chapter, such regulations~~ The rules may relate to the time, place, manner, methods, materials, and amounts and concentrations, in connection with the application of the pesticide, and may restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the board deems necessary to prevent damage or injury by drift or misapplication to:
 - ~~a.~~ (1) Plants, including forage plants, on adjacent or nearby lands.
 - ~~b.~~ (2) Wildlife in the adjoining or nearby areas.

- e. (3) Fish and other aquatic life in waters in proximity to the area to be treated.
 - e. (4) Persons, animals, or beneficial insects.
 - b. In ~~issuing such regulations~~ adopting rules, the board shall give consideration to pertinent research findings and recommendations of other agencies of this state, the federal government, or other reliable sources.
2. For the purpose of uniformity, the board may adopt, ~~pursuant to chapter 28-32,~~ restricted use classifications as determined by the federal environmental protection agency. The board may also by ~~regulation~~ rule determine state restricted use pesticides for the state or designated areas within the state.
 3. The board, in adopting rules under this chapter, shall prescribe standards and requirements for the certification of applicators of ~~restricted use~~ pesticides. These standards and requirements must relate to the use and handling of pesticides. In determining these standards and requirements, the board shall take into consideration standards and requirements prescribed by the environmental protection agency.
 4. ~~Regulations~~ Rules adopted under this chapter may not permit any pesticide use which is prohibited by the Federal Insecticide, Fungicide, and Rodenticide Act or regulations or orders issued thereunder.
 5. In order to comply with section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act, the board ~~is authorized to~~ may make such reports to the United States environmental protection agency in such form and containing such information as that agency may from time to time require.
 6. ~~The board is authorized to make appropriate regulations, in accordance with chapter 28-32, for carrying out the provisions of this chapter, including, but not limited to, regulations providing~~ Rules to implement this chapter may provide for:
 - a. The collection, examination, and reporting of samples of pesticides.
 - b. The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.
 7. c. ~~The board may by regulation identify "pests" under the guidelines of the definition of the term "pest" contained within~~ The identification of pests under this chapter when ~~the board~~ finds particular organisms to be annoying or otherwise injurious or harmful to agriculture, health, and the environment.

SECTION 3. AMENDMENT. Section 4-35-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-08. Classification of certificates. The board may classify commercial certificates to be issued under this chapter. ~~Such~~ The classifications may include

pest control operators, wood treaters, ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any applicator to apply ~~restricted use~~ pesticides or to the use of ~~restricted use~~ pesticides to control insects and plant diseases, rodents, or weeds. Each classification of certification may be subject to separate testing procedures and training requirements; provided that a person may be required to pay an additional fee if ~~such~~ the person desires to be certified in one or more of the classifications provided for by the board under ~~the~~ authority of this section.

SECTION 4. AMENDMENT. Section 4-35-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-09. Commercial applicator's certification.

1. ~~No person who would be a~~ A commercial applicator if ~~certified~~ may not purchase or use a ~~restricted use~~ pesticide without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board.
2. An individual may be certified as a commercial applicator within a classification if the individual successfully completes an examination for the classification as prescribed by the board and administered by the North Dakota state university extension service or the service's designee. An application for certification must be on a form prescribed by the board and accompanied by a reasonable examination fee set by the board.
3. If the North Dakota state university extension service, or its designee, finds the applicant qualified to apply pesticides in the classifications ~~he~~ for which the applicant has applied for, after examination as the board requires, and the applicant meets all other requirements of this chapter, the North Dakota state university extension service shall issue a commercial applicator's certificate limited to the classifications in which the applicant is qualified ~~in~~.
4. If certification is not to be issued as applied for, the North Dakota state university extension service, or its designee, shall inform the applicant in writing of the reasons for not issuing the certification. Individuals certified pursuant to this section are deemed certified commercial applicators for the use of ~~restricted use~~ pesticides.

SECTION 5. AMENDMENT. Section 4-35-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-13. Application of act to governmental entities. All ~~federal agencies, state agencies, municipal corporations, and any other governmental agencies, or~~ and public utilities, are subject to this chapter and rules adopted ~~thereunder~~ concerning the application of restricted use pesticides to implement this chapter.

SECTION 6. AMENDMENT. Section 4-35-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-15. Unlawful acts - Grounds for denial, suspension, or revocation of a certification. The commissioner ~~may~~, after providing an opportunity for a hearing, may deny, suspend, revoke, or modify any provision of any certification

issued under this chapter, if the commissioner finds that the applicant or the holder of a the certification has committed any ~~of the acts enumerated~~ act listed in this section. Each of the following acts is a violation of this chapter, whether committed by an applicant, by the holder of the certification, or by any other person applying or using pesticides, if the person:

1. Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized, or advertised a pesticide without reference to its classification.
2. Made a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the board.
3. Applied materials known by that person to be ineffective or improper.
4. Operated faulty or unsafe equipment.
5. Operated in a faulty, careless, or negligent manner.
6. Neglected, or, after notice, refused to comply with ~~the provisions of this chapter, the rules adopted hereunder~~ to implement this chapter, or ~~of~~ any lawful order of the commissioner.
7. Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required.
8. Made false or fraudulent records, invoices, or reports.
9. Operated unlicensed equipment in violation of section 4-35-17.
10. Used fraud or misrepresentation in making an application for, or for renewal of, certification.
11. Refused or neglected to comply with any limitations or restrictions on or in a duly issued certification.
12. Aided or abetted a certified or an uncertified person to evade the provisions of this chapter, conspired with such a certified or an uncertified person to evade the provisions of this chapter, or allowed the person's certification to be used by another person.
13. Knowingly made false statements during or after an inspection or an investigation.
14. Impersonated ~~any~~ a federal, state, county, or city inspector or official.
15. Distributed any restricted use pesticide to any person who is required by law or rule to be certified to use or purchase ~~such~~ the restricted use pesticide unless ~~such~~ the person or ~~his~~ agent to whom distribution is made is certified to use or purchase that kind of restricted use pesticide.
16. Bought, used, or supervised the use of any ~~restricted use~~ pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted ~~therefrom~~.

17. Applied any economic poison ~~which~~ that is not registered pursuant to ~~the provisions of~~ chapter 19-18.

SECTION 7. AMENDMENT. Section 4-35-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-19. Exemptions.

1. The certification requirements of this chapter do not apply to ~~any a~~ competent person applying general use pesticides that are not classified for restricted use under the direct supervision of a commercial applicator, unless the pesticide label requires that a certified applicator personally apply the pesticide. A pesticide is deemed to be applied under the direct supervision of a commercial applicator if the pesticide is applied by a competent person acting under the instruction and control of a certified applicator who is physically available if needed. The certified applicator need not be present when the pesticide is applied. Direct supervision with respect to applications using aircraft requires that the pilot of the aircraft be appropriately certified.
2. ~~The provisions certification requirements of this chapter relating to certification requirements~~ do not apply to a competent person applying restricted use pesticides under the direct supervision of a private applicator, unless the pesticide ~~labeling~~ label requires that a certified applicator personally ~~applies~~ apply the particular pesticide. A pesticide is ~~considered~~ deemed to be applied under the direct supervision of a private applicator if it is applied by a competent person acting under the ~~instructions~~ instruction and control of a private applicator who is available if and when needed, even though ~~such~~ the private applicator is not physically present at the time and place that the pesticide is applied.
3. ~~2. Persons~~ The certification requirements of this chapter do not apply to any person conducting laboratory-type research using restricted use pesticides and doctors or to a doctor of medicine and doctors or a doctor of veterinary medicine applying pesticides as drugs a pesticide as a drug or as medication during the course of their normal practice.

SECTION 8. AMENDMENT. Subsection 4 of section 4-35.1-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Pesticide" means that term ~~as defined by subsection 24 of~~ in section 4-35-05.

Approved April 27, 2001
Filed April 27, 2001

CHAPTER 75

HOUSE BILL NO. 1328

(Representatives Brandenburg, D. Johnson, Nelson, Nicholas)
(Senators Christmann, Wanzek)

CROP PROTECTION PRODUCT HARMONIZATION AND REGISTRATION BOARD

AN ACT to create and enact a new section to chapter 4-35 of the North Dakota Century Code, relating to creation of a crop protection product harmonization and registration board; to amend and reenact sections 4-35-06.2 and 4-35-06.3 of the North Dakota Century Code, relating to funds received for expenses paid relating to the registration of pesticides and the minor use pesticide fund; to repeal section 11 of chapter 31 of the 1999 Session Laws, relating to the crop harmonization committee; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-35-06.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-06.2. Commissioner of agriculture - Pesticide control Crop protection product harmonization and registration board - Recovery of funds. ~~The commissioner of agriculture~~ crop protection product harmonization and registration board may accept, ~~on behalf of the pesticide control board,~~ funds received for expenses paid ~~by the pesticide control board~~ relating to the registration of pesticides or donations offered to or for the benefit of the ~~pesticide control board~~. All moneys received under this section must be deposited in the minor use pesticide fund to pay expenses relating to the registration of pesticides or for the specific purpose for which they are given. ~~The pesticide control board shall attempt,~~ whenever possible, to recover funds expended relating to the registration of pesticides and shall adopt rules to administer ~~provisions of this section.~~

SECTION 2. AMENDMENT. Section 4-35-06.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-06.3. Minor use pesticide fund - Continuing appropriation. The minor use pesticide fund is created as a special fund in the state treasury. All moneys in the fund are appropriated on a continuing basis to the ~~pesticide control~~ crop protection product harmonization and registration board for the purpose of conducting or commissioning studies, investigations, and evaluations regarding the registration and use of pesticides for minor crops, minor uses, and other uses as determined by the board.

³⁶ **SECTION 3.** A new section to chapter 4-35 of the North Dakota Century Code is created and enacted as follows:

³⁶ Section 4-35-30 was amended by section 3 of House Bill No. 1009, chapter 9.

Crop protection product harmonization and registration board - Duties -**Grants.**

1. The crop protection product harmonization and registration board consists of the governor or the governor's designee, the agriculture commissioner, the chairman of the house agriculture committee, the chairman of the senate agriculture committee, one crop protection product manufacturing industry representative appointed by the chairman of the legislative council, and two consumers of crop protection products appointed by the governor. The governor or the governor's designee shall serve as chairman of the board. The board shall:
 - a. Identify and prioritize crop protection product labeling needs;
 - b. Explore the extent of authority given to this state under the federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136a];
 - c. Identify the data necessary to enable registration of a use to occur in a timely manner;
 - d. Determine what research, if any, is necessary to fulfill data requirements for activities listed in this section;
 - e. Request the agriculture commissioner to pursue specific research funding options from public and private sources;
 - f. Request the North Dakota state university agricultural experiment station to pursue specific research to coordinate registration efforts; and
 - g. Pursue any opportunities to make more crop protection product options available to agricultural producers in this state through any means the board determines advisable.
2. The board may contract with a consultant to conduct studies or provide research or information regarding crop protection product registration and labeling needs.
3. The board may administer a grant program through which agriculture commodity groups established under this title may apply for funds to be used by the groups to address issues related to the registration of crop protection products. To be eligible for receipt of a grant, an applicant must submit an application to the board which requests a specific amount of funds, specifies the exact purposes for which the grant would be used, and provides a detailed timetable for the use of the grant funds. The board may impose any additional conditions it determines appropriate for grant recipients, including requiring periodic reports and furnishing of matching funds. The board may terminate funding of a previously approved grant at any time if the board is dissatisfied with the performance of the grant recipient.
4. The board may use not more than fifteen percent of the funds under its supervision for administrative purposes, including the cost of contracting for administrative services and reimbursement of board member expenses. The members of the board who are members of the

legislative assembly are entitled to compensation from the legislative council for attendance at board meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.

5. The board may adopt rules to implement this section.

SECTION 4. REPEAL. Section 11 of chapter 31 of the 1999 Session Laws is repealed.

SECTION 5. APPROPRIATION. There is appropriated out of any moneys in the environment and rangeland protection fund in the state treasury, not otherwise appropriated, the sum of \$250,000, or so much of the sum as may be necessary, and from special funds derived from grants or donation income, the sum of \$200,000, or so much of the sum as may be necessary, to the crop protection product harmonization and registration board for the purposes of addressing crop protection product registration and labeling needs and providing grants as provided in section 3 of this Act, for the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 18, 2001
Filed April 18, 2001

CHAPTER 76

SENATE BILL NO. 2419

(Senators Nichols, Kroeplin)

PESTICIDE APPLICATOR FINANCIAL RESPONSIBILITY

AN ACT to amend and reenact section 4-35-09.1 of the North Dakota Century Code, relating to proof of financial responsibility for commercial pesticide applicators; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-35-09.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-09.1. Proof of financial responsibility - Exceptions.

1. A commercial pesticide applicator certificate may not be issued or renewed unless the applicant furnishes proof of financial responsibility as provided in this section. A commercial pesticide applicator shall furnish proof of financial responsibility on demand to the agriculture commissioner as provided in this section. Minimum financial responsibility must be ~~demonstrated annually~~ maintained in the amount of one hundred thousand dollars, and may be demonstrated by a notarized letter from an officer of a financial institution or from a certified public accountant attesting to the existence of net assets equal to at least one hundred thousand dollars, a performance bond, or a general liability insurance policy. The performance bond or insurance policy must contain a provision requiring the issuing company to notify the agriculture commissioner at least ten days before the effective date of cancellation, termination, or other modification of the bond or insurance policy. The agriculture commissioner ~~must~~ shall immediately ~~request the suspension of~~ suspend the certification of a person who fails to maintain the minimum financial responsibility standards of this section. If there is any recovery against the certificate holder, the holder ~~must~~ shall demonstrate continued compliance with the minimum standards of this section. An employee of a commercial pesticide application business is not required to meet these standards separately if the business documents compliance with the minimum financial responsibility standards of this section. An application for reinstatement of a suspended certificate under this section must be accompanied by proof of satisfaction of any judgment previously rendered.
2. This section does not apply to:
 - a. A rancher who is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
 - b. A grazing association and its members if either the association or any member is required to obtain a commercial pesticide applicator

certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.

- c. A person required to be certified in the right-of-way category.
- d. An applicator who holds a commercial pesticide certificate and is controlling noxious weeds on grassland, land producing tame hay, or other lands not devoted to the production of an annual crop.

SECTION 2. LEGISLATIVE COUNCIL STUDY - FINANCIAL RESPONSIBILITY REQUIREMENTS FOR COMMERCIAL PESTICIDE APPLICATORS. The legislative council shall consider studying issues regarding financial responsibility requirements for commercial pesticide applicators. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the fifty-eighth legislative assembly.

Approved April 23, 2001
Filed April 23, 2001

CHAPTER 77

SENATE BILL NO. 2110

(Senators Wanzek, Tomac)

(Representatives Aarsvold, Nicholas)

(At the request of the Agriculture Commissioner)

PESTICIDE AND CONTAINER DISPOSAL PROGRAM

AN ACT to provide for the continuation of an agricultural pesticide and pesticide container disposal program; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Pesticide and pesticide container disposal program - Pesticide container management - Compensation.

1. The definitions contained in section 4-35-05 apply to this section.
2. In consultation with an advisory board consisting of the state health officer, director of the North Dakota state university extension service, two individuals representing agribusiness organizations, and two individuals representing farm organizations, all of whom must be selected by the agriculture commissioner, the agriculture commissioner shall continue to implement the project authorized by section 1 of chapter 63 of the 1999 Session Laws, which is known as project safe send. The purpose of the project is to:
 - a. Collect and either recycle or dispose of unusable pesticides and unusable pesticide containers. The commissioner shall provide for the establishment and operation of temporary collection sites for the pesticides and pesticide containers. The commissioner may limit the type and quantity of pesticides and pesticide containers acceptable for collection.
 - b. Promote proper pesticide container management. In consultation with the director of the North Dakota state university extension service, the commissioner shall evaluate and promote proper methods of pesticide container management, including information on the variety of pesticide containers available.
3. Any entity collecting pesticide containers or unusable pesticides shall manage and dispose of the containers and pesticides in compliance with applicable federal and state requirements. When called upon, any state agency shall assist the commissioner in implementing the project.
4. For services rendered in connection with the design and implementation of this project, the members selected by the agriculture commissioner are entitled to reimbursement for mileage and travel expenses in the same manner and for the same amounts provided for state employees and officials. Compensation and expense reimbursement must be paid from the environment and rangeland protection fund.

SECTION 2. PROJECT SCOPE AND EVALUATION - PROPOSED LEGISLATION. The project described in section 1 of this Act must occur in areas to be determined by the agriculture commissioner in consultation with the advisory board under subsection 2 of section 1 of this Act. Before December 12, 2002, the agriculture commissioner shall determine whether the project implemented and continued under section 1 of this Act should be continued. If the commissioner determines that the project should be continued or expanded, the commissioner shall introduce appropriate legislation in the fifty-eighth legislative assembly.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2003, and after that date is ineffective.

Approved March 14, 2001

Filed March 15, 2001

CHAPTER 78

HOUSE BILL NO. 1349

(Representatives Nelson, Nicholas, Onstad)
(Senators Tomac, Wanzek)

AGRICULTURE IN CLASSROOM COUNCIL COMPOSITION

AN ACT to amend and reenact section 4-37-02 of the North Dakota Century Code, relating to the agriculture in the classroom council; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-37-02 of the North Dakota Century Code is amended and reenacted as follows:

4-37-02. Agriculture in the classroom council. An agriculture in the classroom council is hereby established. The council consists of ~~twelve~~ sixteen members to be appointed by the agriculture commissioner ~~of agriculture~~. One member must be the agriculture commissioner ~~of agriculture~~ or the commissioner's designee, and one member must be the superintendent of public instruction or the superintendent's designee.

SECTION 2. APPROPRIATION - REFUND FUND TRANSFER. There is appropriated out of any moneys in the attorney general refund fund from lawsuit settlement collections in the state treasury, not otherwise appropriated, the sum of \$75,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of developing and expanding agriculture in the classroom curricula, for the biennium beginning July 1, 2001, and ending June 30, 2003. The funds appropriated from the attorney general refund fund must be transferred to the department of agriculture operating fund as requested by the agriculture commissioner.

Approved April 13, 2001
Filed April 16, 2001

CHAPTER 79

SENATE BILL NO. 2235 (Senators Wanzek, G. Nelson, Nichols) (Representatives Belter, Berg, Pollert)

SEED AND CROP INSPECTION

AN ACT to create and enact a new chapter to title 4 of the North Dakota Century Code, relating to the inspection, analysis, and verification of seeds and crops; and to provide for a report.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. "Analysis" means the laboratory examination of seeds, crops, or plant tissue to determine the genetic identity or physical traits of the seeds or crops.
2. "Commission" means the state seed commission.
3. "Commissioner" means the state seed commissioner.
4. "Department" means the state seed department.
5. "Inspection" means a visual field inspection of seeds or crops.

Commissioner - Genetic identity - Physical traits - Analysis and verification. The commissioner shall establish procedures for inspecting, analyzing, and verifying the genetic identity or physical traits of seeds or crops. The procedures must address the compilation of all necessary documentation and other administrative functions.

Inspection and analysis - Procurement of samples. The commissioner may inspect and analyze seed or crop grown, sold, or otherwise situated in this state to determine and verify the genetic identity or physical traits of the seed or the crop. The commissioner may procure samples of seed or crop grown in this state, sold in this state, or otherwise situated in this state or may accept for analysis and verification samples submitted from any public or nonpublic entity that is the owner of the seed or crop. The commissioner shall determine the size and nature of each sample to be submitted to the laboratory, the manner in which each sample is to be taken, the purposes for which each sample is to be taken, the manner in which each sample's identity is to be preserved, and the manner in which each sample is to be delivered to the laboratory.

Field inspections. The commissioner shall determine the criteria for field inspections.

Inspection and analysis - Fee. The commissioner, with the approval of the commission, shall establish and charge a fee for inspecting, analyzing, and performing any other services permitted by this chapter.

Laboratories and facilities. The commissioner shall provide and maintain laboratories and other facilities necessary to conduct the analyses authorized by this chapter and to effect any other work necessary to implement this chapter.

Identity preservation - Segregation - Traceability. The commissioner shall establish a procedure for the identity preservation, segregation, and traceability of seeds or crops inspected or analyzed under this chapter.

Labels - Documentation. The commissioner shall prescribe the type of labels and other identifying documentation to be affixed by the commissioner to seeds or crops inspected and analyzed under this chapter. All labels and other identifying documentation affixed by the commissioner must clearly bear the identification of the department and may be used only by the commissioner in conjunction with the verification services provided under this chapter.

Contract for services - Protection of growers. The commissioner may contract with any public or private entity to provide protection, inspection, analysis, or verification of seeds or crops, as provided by this chapter.

Deposit of fees - Investment. The commissioner shall deposit all moneys arising from the collection of fees under this chapter with the state treasurer for credit to the seed department revolving fund. At the direction of the commission, the state treasurer shall provide for the investment of available moneys from the revolving fund. The state treasurer shall deposit twenty percent of the income from the investment of the moneys in the general fund and the remaining eighty percent of the investment income in the seed department revolving fund.

Warranties regarding seeds or crops. The commission, the commissioner, and the department make no warranties of any kind, either expressed or implied, including warranties of merchantability, fitness for a particular purpose, or absence of disease, as to seed or crop that is inspected, analyzed, or verified under this chapter.

SECTION 2. STATE SEED COMMISSIONER - REPORT. Before July 1, 2002, the state seed commissioner shall present a report to the legislative council regarding the regional, national, and international status of genetically enhanced or modified seeds and crops, with attention to the ecological, environmental, health, and marketing aspects of genetically enhanced or modified seeds and crops.

Approved March 28, 2001
Filed March 28, 2001

CHAPTER 80

HOUSE BILL NO. 1417

(Representatives Kempenich, Boucher, Lemieux)
(Senator Tomac)

MEATPACKING PLANT BONDS

AN ACT to create and enact a new chapter to title 4 of the North Dakota Century Code, relating to a loan program and the issuance of revenue bonds or other evidences of indebtedness by the industrial commission of North Dakota for the establishment of meatpacking plants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. "Bank" means the Bank of North Dakota.
2. "Bonds" means revenue bonds or other evidences of indebtedness issued by the commission under this chapter.
3. "Commission" means the industrial commission.

Powers. The commission may:

1. Contract for the performance of its duties and functions under this chapter.
2. Sue and be sued.
3. Borrow money through the issuance and sale of bonds as provided under this chapter.
4. Invest proceeds of its bonds not needed for immediate disbursement, including any reserve funds, in securities the commission determines to be prudent, subject to any agreements with the holders of the commission's bonds.
5. Procure insurance, a guaranty, or a letter of credit for the payment of its bonds, including the payment of premiums or other fees, from any public or private entity.
6. Make loans to persons establishing meatpacking plants in this state through the loan program provided for under this chapter and charge the borrowers fees approved by the commission.
7. Prescribe and approve the forms and procedures for loan applications under this chapter by persons establishing a meatpacking plant in this state.

8. Prescribe the terms and conditions of loans to be made under this chapter.
9. Consent to any changes in the terms or provisions of its bonds, or of any other contract to which the commission is a party, subject to any contracts with the holders of the commission's bonds.
10. Purchase bonds issued under this chapter out of any funds available to the commission for such purpose and not pledged to or necessary for some other purpose, and hold, cancel, or sell the bonds, subject to any contracts with its bondholders.

Bank of North Dakota. The commission may delegate to the Bank, and the Bank is authorized to exercise, all administrative powers granted to the commission under this chapter, including processing and reviewing applications for, and closing and servicing loans made to, persons establishing meatpacking plants in this state.

Issuance and sale of bonds - Use of bond proceeds. The commission may issue its bonds in such principal amounts as the commission determines is necessary to provide sufficient funds to perform its powers under this chapter. The proceeds may not be used other than to make loans, pay the costs of bond issuance, pay accrued or capitalized interest or capitalized principal, and provide any reasonably required reserve funds. The bonds must be authorized by resolution of the commission and must bear such date, mature at such times, bear interest at such rates, be in such denominations, be payable from such sources, and be subject to such terms of redemption as may be provided by the resolution. The bonds may be sold by the commission at public or private sale at the times and at the prices allowed by the commission. The commission may provide for refunding or refinancing of the bonds.

Agreement with bondholders. Any resolution of the commission authorizing the issuance of bonds under this chapter may contain contractual provisions:

1. Setting aside of reserves or sinking funds.
2. Limiting the purposes to which the proceeds from the sale of bonds may be applied and pledging the proceeds to secure the payment of the bonds.
3. Limiting the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds.
4. Providing the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to such amendment or abrogation, and the manner in which the consent may be given.
5. Vesting in a trustee such property, rights, powers, and duties in trust as the commission may determine, and limiting or abrogating the right of bondholders to appoint a trustee, or limiting the rights, powers, and duties of the trustee.
6. Defining the acts or omissions, which constitute a default of the obligations and duties of the commission to the bondholders, and

providing for the rights and remedies of the bondholders in the event of a default, provided that the rights and remedies must be consistent with the laws of this state.

7. Including any other matter that affects the security or protection of the bondholders.

Reserve fund.

1. The commission shall establish and maintain a reserve fund for bonds issued under this chapter. The commission shall deposit in the reserve fund:
 - a. All bond proceeds required to be deposited in the reserve fund by the terms of any contract between the commission and the bondholders or by the terms of any resolution of the commission concerning the use of bond proceeds.
 - b. All moneys made available to the commission for deposit in the reserve fund.
2. Moneys in the reserve fund may not be used other than to make payments of the principal and interest on bonds, including any premium required to be paid when bonds are redeemed prior to maturity, and sinking fund installments as they become due and payable.
3. Moneys in the reserve fund may be withdrawn in accordance with the terms of any contract between the commission and the bondholders or any resolution of the commission concerning the use of bond proceeds.

Exemption from state and local taxes. All bonds issued under this chapter and the interest and income payable to and received by bondholders are exempt from taxation by the state or any political subdivision of the state.

Payment of bonds. Bonds issued under this chapter by the commission are not obligations or debt of the state, and are payable solely from revenues or other funds available to the commission under this chapter. The bonds do not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the commission or the Bank, other than the revenues and property pledged under this chapter. Each bond issued under this chapter must contain a statement that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or interest on the bond.

Legal investments. Bonds issued under this chapter by the commission are legal investments in which all public officers or public bodies of the state, its political subdivisions, and all banks organized under the laws of the state and engaged in the business of banking may invest funds.

Validity. Bonds issued under this chapter must be executed by a member of the commission or by facsimile signature and the manual signature of an authenticating agent. Any bond bearing the signature of a member of the commission in office on the date of execution is valid for all purposes for which it was issued. After issuance, all bonds issued under this chapter by the commission

are conclusively presumed to be fully authorized and issued under the laws of the state, and any person is estopped from questioning their authorization, issuance, execution, sale, or delivery by the commission.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 81**HOUSE BILL NO. 1338**

(Representatives Mueller, Brandenburg, Nelson)
(Senators Kroeplin, Urlacher)

GENETIC MODIFICATION STUDY

AN ACT to provide for a legislative council study of issues related to genetic modification.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY OF ISSUES RELATED TO GENETIC MODIFICATION. The legislative council shall consider studying issues related to genetic modification, including impacts on health, the environment, the food supply, product labeling, and actions by other jurisdictions regarding experimental medicine and research, and the promulgation of accurate information regarding genetic modification efforts that exist or are expected to exist in the near future. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved April 26, 2001

Filed April 26, 2001

CHAPTER 82

HOUSE BILL NO. 1390

(Representatives Gulleason, Brandenburg, Monson, Mueller, Nicholas)
(Senator Lindaas)

BIODIESEL FUEL STUDY

AN ACT to provide a legislative council study of biodiesel fuel and its integration into the agricultural economy of this state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY. The legislative council shall study the use of biodiesel fuel in this state. The study must include analysis of biodiesel fuel's operational impact on engines, its impact on engine warranties, its fuel economy, the impact its use would have on the state, the economic impact its use would have on the agricultural and general business communities, its environmental benefits, methods of better marketing biodiesel fuel by the agricultural and industrial communities, the potential for public use by the state and its political subdivisions, its benefit in cold flow conditions, microbial impacts of its usage, the demand for biodiesel fuel, tax incentives to promote the use of biodiesel fuel, and the current supply and potential for biodiesel plants in or near this state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 83**SENATE BILL NO. 2282**
(Senators Thane, Tallackson, Wanzek)
(Representatives Eckre, Koppang)**ETHANOL PRODUCTION AND CONSUMPTION STUDY**

AN ACT to provide for a legislative council study of methods to encourage production and consumption of ethanol.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying methods to encourage production and consumption of ethanol. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved April 23, 2001
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