

**FIRST ENGROSSMENT
with House Amendments**

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2128

Introduced by

Agriculture Committee

(At the request of the State Seed Commission)

1 A BILL for an Act to amend and reenact subsection 3 of section 4-09-06 and sections 4-09-14,
2 4-09-15, 4-09-16, 4-09-17.1, 4-42-02, and 4-42-07 of the North Dakota Century Code, relating
3 to examination of seed, prohibitions, exemptions, plant variety protection, genetic identity, and
4 identity preservation; and to repeal section 4-11-10 of the North Dakota Century Code, relating
5 to potato dealer agent identification cards.

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

7 **SECTION 1. AMENDMENT.** Subsection 3 of section 4-09-06 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 3. Any person involved in any way in the handling, transportation, storage, planting,
10 buying, or selling of seed shall cooperate with the commissioner and shall render
11 all possible assistance to aid the commissioner in the carrying out and
12 enforcement of this chapter.

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

15 **4-09-14. Prohibitions.**

16 1. A person may not sell, offer for sale, expose for sale, transport for sale, or hold or
17 store with the intent to sell, any agricultural, vegetable, flower, or tree and shrub
18 seed within this state:

19 a. Unless for agricultural seed, a test to determine the percentage of
20 germination required under section 4-09-10 has been completed within a
21 nine-month period, exclusive of the calendar month in which the test was
22 completed or the seed is offered for sale beyond the sell by date exclusive of
23 the calendar month in which the seed was to have been sold;

- 1 b. Unless for flower, vegetable, native grass, or forb seed, a test to determine
2 the percentage of germination required under sections 4-09-10, 4-09-11, and
3 4-09-11.1 has been completed within a twelve-month period, exclusive of the
4 calendar month in which the test was completed;
- 5 c. Unless for cool season lawn and turf grasses, including Kentucky bluegrass,
6 red fescue, chewings fescue, hard fescue, tall fescue, perennial rye grass,
7 intermediate rye grass, annual rye grass, colonial bent grass, creeping bent
8 grass, and mixtures or blends of those grasses, a test to determine the
9 percentage of germination has been completed within a fifteen-month period,
10 exclusive of the calendar month in which the test was completed;
- 11 d. Unless for tree, shrub, agricultural, flower, wildflower, or vegetable seed
12 packaged in a hermetically sealed container under conditions as defined by
13 the commissioner, a test to determine the percentage of germination has
14 been completed within a thirty-six-month period after the last day of the month
15 that the seed was tested for germination before packaging. However, if seed
16 in a hermetically sealed container is offered for sale more than thirty-six
17 months after the last day of the month in which the seed was tested before
18 packaging, the seed must be retested within a twelve-month period, exclusive
19 of the calendar month in which the retest was completed;
- 20 e. If the seed is not labeled in accordance with this chapter or bears false or
21 misleading labeling;
- 22 f. If there has been false or misleading advertising in connection with the seed;
- 23 g. If the seed contains prohibited noxious weed seeds;
- 24 h. Unless for agricultural or vegetable seed, the seed is labeled to show the rate
25 of occurrence of restricted noxious weed seeds, as required under sections
26 4-09-10 and 4-09-11;
- 27 i. If the seed is designated, offered, represented, or advertised under any
28 variety name or identification other than the variety name by which the seed
29 was known originally;
- 30 j. If the seed contains restricted noxious weed seeds in excess of twenty-five
31 seeds per pound [453.59 grams]; or

- 1 k. If the percentage by weight of all weed seeds in the seed exceeds one
2 percent.
- 3 2. ~~Any person may submit to the commissioner a sample of any seed which the~~
4 ~~person claims to be a new variety, distinct from any commonly known variety of the~~
5 ~~seed, together with a proposed, distinctive name. The commissioner, within one~~
6 ~~year, shall make any test the commissioner considers necessary, and if the~~
7 ~~commissioner finds as a result of the test that the seed or plant is of a new variety,~~
8 ~~distinct from any known variety of the seed and that the proposed name will~~
9 ~~properly distinguish the seed from any and all other varieties, the commissioner~~
10 ~~shall issue to the applicant a permit to designate the seed by the proposed name.~~
- 11 3. The purchaser, vendor, or any person receiving any seed shipped into this state
12 from without the state shall have the same labeled in accordance with this chapter.
13 Certain standardized grades and labeling of seed in use elsewhere may be
14 permitted by the commissioner in connection with shipments of seed into this state
15 from points outside this state in lieu of the labeling provided for in this chapter.
- 16 4. 3. A person in this state may not:
- 17 a. Detach, alter, deface, or destroy any label provided for in this chapter or to
18 alter or substitute seed in any manner with the intent to defeat the purpose of
19 this chapter;
- 20 b. Disseminate any false or misleading advertisement concerning agriculture or
21 vegetable seed in any manner or by any means;
- 22 c. Hinder or obstruct in any way any authorized person in the performance of
23 the person's duties under this chapter;
- 24 d. Fail to comply with a "stop-sale" order;
- 25 e. Use on seed labels or tags, or to use or attach to literature, or to state in any
26 manner or form of wording designed as a "disclaimer" or "nonwarranty"
27 clause with the intent to disclaim responsibility of the vendor of the seed for
28 the data on the label required by law;
- 29 f. Use the words "type" or "trace" on any labeling in connection with the name
30 and description of any agricultural and vegetable seed;

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

10 **SECTION 3. AMENDMENT.** Section 4-09-15 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **4-09-15. Exemptions.**

- 13 1. This chapter does not apply to:
- 14 a. Potatoes, whether sold or intended for food, manufacturing, or planting
15 purposes.
- 16 b. Seed or grain that is not intended for planting purposes. The seller shall
17 indicate on a form provided by the seller the purpose for which the seed or
18 grain is purchased. The form must be available for inspection by the
19 commissioner. It is unlawful for the seller or buyer to make a false
20 representation as to the use of the seed or grain. A farmer selling the
21 farmer's own seed or grain to a commercial establishment is exempt from the
22 recordkeeping requirements of this subsection.
- 23 c. Seed stored by or consigned to a seed cleaning or conditioning plant for the
24 purpose of cleaning or conditioning. However, any labeling or other
25 representation made with respect to uncleaned or unconditioned seed is
26 subject to the requirements of this chapter.
- 27 d. A common carrier with respect to any seed transported or delivered for
28 transportation in the ordinary course of business.
- 29 e. A farmer who grows the farmer's own seed and sells only the farmer's own
30 seed and does not advertise or use a third party as an agent or broker to
31 bring buyer and seller together. However, a variety for which a certificate

1 plant variety protection has been applied for or issued is not exempt from this
2 chapter. The sale or transfer of protected varieties between farmers for the
3 purpose of planting without the approval of a variety owner or developer is
4 prohibited.

5 2. A person is not subject to the penalties of this chapter for having sold, exposed for
6 sale, or transported for sale in this state any agricultural, vegetable, flower, or tree
7 and shrub seed that was incorrectly labeled or incorrectly represented as to kind,
8 variety, or origin and which could not be identified through examination, unless the
9 person has failed to obtain an invoice or grower's declaration stating the kind, or
10 kind and variety, and origin, if required, or has failed to take other precautions as
11 may have been necessary to ensure that the seed was properly identified.

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

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

15 1. Establish a seed certification system for this state and adopt rules governing
16 application for service, acceptance of suitable seed stocks for the production of a
17 foundation, registered, certified, or inspected crop, field inspection, bin inspections,
18 harvesting, handling, storage, conditioning, and preparation and handling of the
19 seed for market.

20 2. ~~Designate~~ Accept for certification kinds, varieties, selections, and names of seed
21 stocks, and establish standards of quality, degree of disease infection, and
22 amounts of any admixtures, foreign seeds, noxious weeds, or other weed seeds
23 that are allowed in any lot or stock of seed, which may be or become eligible for
24 field inspection or for final certification of the seed crop.

25 3. Accept from any person a sample of seed which the person claims to be a new
26 variety, distinct from any commonly known variety of the seed, together with a
27 proposed, distinctive name. The commissioner shall determine the eligibility of a
28 variety for certification based on factors including whether:

29 a. The variety has been accepted into a certification program by a
30 national-designated or state-designated certification authority according to
31 established rule or regulation.

- 1 **b.** The variety or selection is sufficiently distinguishable from existing varieties to
2 allow for seed certification.
- 3 **c.** The variety or selection has been released by a public or private industry
4 breeding program through an acceptable release process or policy.
- 5 **d.** Technical information regarding physical traits or genetic markers of the
6 variety or selection has been provided to the commissioner for use in field
7 and laboratory certification programs.
- 8 **4.** Prescribe all labels, seals, certificates, or similar statements that must be used for,
9 or in relation to, any seed, or the various kinds and qualities grown, handled,
10 stored, held for sale, sold, or offered or exposed for sale in this state as "breeders",
11 "foundation", "registered", or "certified" seed, and shall specify what words, terms,
12 or figures the labels, seals, certificates, or the containers of the seed must bear.
- 13 ~~4.~~ **5.** Cooperate with the managers of any seed conditioning plants, or any commercially
14 established seed firm, or any person within or outside of the state having proper
15 facilities and equipment to store, condition, and otherwise handle seed which is
16 eligible for certification, for the purposes of handling and marketing "breeders",
17 "foundation", "registered", or "certified" seed.
- 18 ~~5.~~ **6.** Cooperate in the selection, testing, and growing of seed for certification purposes
19 and in the arrangement for increase of foundation seed stocks suitable for the
20 production of certified seed.
- 21 ~~6.~~ **7.** Establish an equitable schedule of fees and charges, which must be uniform
22 throughout the state, for inspecting, testing, analyzing, and recording the seed, and
23 for other work and duties incident to the growing, handling, marketing, and
24 certifying of North Dakota seed, and shall collect all the fees and charges.

25 **SECTION 5. AMENDMENT.** Section 4-09-17.1 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **4-09-17.1. Plant Variety Protection Act.** Any seed advertised, offered for sale, or
28 sold by variety name and for which a certificate of plant variety protection has been issued
29 under the Plant Variety Protection Act, as amended [Pub. L. 91-577; 84 Stat. 1551; 7 U.S.C.
30 2481 et seq., effective as of ~~July 1, 2005~~ July 1, 2007], as being for sale only as a class of
31 certified seed must be certified by an official seed certifying agency in order for the seed to be

1 advertised, offered for sale, or sold by variety name in the state of North Dakota. Seed from a
2 certified lot may be labeled as to variety name when used in a blend or mixture by or with
3 approval of the owner of the variety.

4 **SECTION 6. AMENDMENT.** Section 4-42-02 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **4-42-02. Commissioner - Genetic identity - Physical traits - Analysis and**
7 **verification.** The commissioner ~~shall~~ may establish procedures for inspecting, analyzing, and
8 verifying the genetic identity or physical traits of seeds or crops. The procedures ~~must~~ may
9 address the compilation of all necessary documentation and other administrative functions.

10 **SECTION 7. AMENDMENT.** Section 4-42-07 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **4-42-07. Identity preservation - ~~Segregation~~ - Traceability.** The commissioner ~~shall~~
13 may establish a procedure for the identity preservation, ~~segregation~~, and traceability of seeds
14 or crops inspected or analyzed under this chapter.

15 **SECTION 8. REPEAL.** Section 4-11-10 of the North Dakota Century Code is repealed.