

HOUSE BILL NO. 1124

Introduced by

Agriculture Committee

(At the request of the State Seed Commission)

1 A BILL for an Act to amend and reenact sections 4-09-01, 4-09-20.1, 4-10-01, 4-10-05,
2 4-10-12.1, and 4-42-11 of the North Dakota Century Code, relating to vendor responsibility for
3 data on seed labels, labeling requirements, and immunity from liability from contract or tort suits
4 for inspection, analysis, and certifications of agricultural and potato seed and crops; and to
5 repeal section 4-10-11 of the North Dakota Century Code, relating to inspector certificates.

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

7 **SECTION 1. AMENDMENT.** Section 4-09-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **4-09-01. Definitions.** In this chapter, unless the context otherwise requires:

- 10 1. "Advertisement" means any representation, other than representations made on
11 labels, which relates to seed.
- 12 2. "Agent", when used in connection with the commissioner, means the
13 commissioner's deputy, inspector, analyst, specialist, aide, agent, and employee,
14 when each is acting officially for the commissioner or performing any duty or duties
15 as provided in this chapter or in the rules adopted to implement this chapter.
- 16 3. "Agricultural seed" means the seed of grass, forage, cereal, fiber, oil crops, Irish
17 potato seed tubers, and any other kind of seeds commonly recognized within this
18 state as agricultural seed, lawn seed, and mixture of these seeds.
- 19 4. "Blend" means seed consisting of more than one variety of a kind, each in excess
20 of five percent by weight of the whole.
- 21 5. "Brand" means a word, name, or symbol, number, or design used to identify seed
22 of one person to distinguish that seed from seed of another person.
- 23 6. "Certified" means the agricultural seed was randomly inspected and found to meet
24 the rules of the department. Certification does not mean or constitute any warranty

- 1 or representation that the agricultural seed is of the variety or selection identified
2 on the label, merchantable, disease-free, fit for a particular purpose, or anything
3 other than that the seed was inspected and that at the time of inspection met the
4 standards set forth in this chapter.
- 5 ~~7.~~ 7. "Commission" means the state seed commission.
- 6 ~~7.~~ ~~8.~~ 8. "Commissioner" means the state seed commissioner.
- 7 ~~8.~~ 9. "Conditioning" means drying, cleaning, scarifying, and other operations that may
8 change the purity or germination of the seed.
- 9 ~~9.~~ 10. "Department" means the seed department of this state.
- 10 ~~10.~~ 11. "Flower seed" includes a seed of a herbaceous plant grown for the bloom,
11 ornamental foliage, or other ornamental part, and commonly known and sold under
12 the name of flower or wildflower seed in this state.
- 13 ~~11.~~ 12. "Foundation seed", "registered seed", and "certified seed" means seed that has
14 been produced and labeled in accordance with the procedures and in compliance
15 with the rules of an officially recognized seed-certifying agency.
- 16 ~~12.~~ 13. "Germination" means the percentage of seed capable of producing normal
17 seedlings under ordinarily favorable conditions as determined by methods
18 prescribed under the rules established by the association of official seed analysts.
19 The percentage does not include seed that produces weak, malformed, or
20 obviously abnormal sprouts.
- 21 ~~13.~~ 14. "Hard seed" means a seed that remains hard at the end of the prescribed test
22 period because the seed has not absorbed water due to an impermeable seed
23 coat.
- 24 ~~14.~~ 15. "Inert matter" means all matter not seed and includes the broken seed, a sterile
25 floret, chaff, a fungus body, and a stone.
- 26 ~~15.~~ 16. "Kind" means one or more related species or subspecies which singly or
27 collectively is known by one common name, such as corn, oats, alfalfa, or timothy.
- 28 ~~16.~~ 17. "Labeler" means the person who furnishes the information required in sections
29 4-09-10, 4-09-11, 4-09-11.1, and 4-09-11.2.

- 1 United States secretary of agriculture to assure the genetic purity and identity
2 of the seed certified; or
- 3 b. An agency of a foreign country determined by the United States secretary of
4 agriculture to adhere to procedures and standards for seed certification
5 comparable to those adhered to generally by seed-certifying agencies under
6 subdivision a.
- 7 ~~22.~~ 23. "Pest" means any invertebrate animal, pathogen, parasitic plant, or similar
8 organism causing or capable of causing injury or damage to any plant or part of a
9 plant or any processed, manufactured, or other product of a plant.
- 10 ~~23.~~ 24. "Phytosanitary certificate" means a document issued or authorized by the
11 commissioner indicating that the seed or tubers were inspected and considered to
12 be free from quarantine pests and practically free from injurious pests according to
13 the sanitary requirements of the importing country.
- 14 ~~24.~~ 25. "Pure seed" means agricultural and vegetable seed, exclusive of inert matter, and
15 all other seed not of the kind or variety being considered.
- 16 ~~25.~~ 26. "Record" means all information relating to lot identification, source, origin, variety,
17 amount, processing, testing, labeling, distribution, and file sample of the seed.
- 18 27. "Selection" means a subgroup of a variety and commonly used terms include line
19 selection, clonal selection, or strain selection.
- 20 ~~26.~~ 28. "Stop-sale" means an administrative order provided by law restraining the sale,
21 use, disposition, and movement of a definite amount of seed.
- 22 ~~27.~~ 29. "Treated" means a seed has received an application of a substance, or a claim has
23 been made that the seed has been subjected to a process.
- 24 ~~28.~~ 30. "Tree and shrub seed" includes seed of woody plants commonly known and sold
25 as tree and shrub seed in this state.
- 26 ~~29.~~ 31. "Type" means a group of variety so nearly similar that the individual varieties
27 cannot be clearly differentiated except under special conditions.
- 28 ~~30.~~ 32. "Variety" means a subdivision of a kind that is distinct, uniform, and stable.
29 "Distinct" means the variety can be differentiated by one or more identifiable
30 morphological, physiological, or other characteristics from all varieties of public
31 knowledge. "Uniform" means the variations in essential and distinctive

1 characteristics are describable. "Stable" means the variety will remain unchanged
2 in its essential and distinctive characteristics and uniformity when reproduced or
3 reconstituted as required by the different categories of varieties.

4 ~~34.~~ 33. "Vegetable seed" means a seed of a crop that is grown in a garden or on a truck
5 farm, and which is generally known and sold under the name of vegetable seed
6 within this state.

7 ~~32.~~ 34. "Weed seed" means the seed of a plant generally recognized as a weed within this
8 state, including noxious weed seed.

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

11 **4-09-20.1. Liability of commission, department, commissioner, and certified or**
12 **noncertified agricultural seed producers.** ~~A warranty of any kind, either expressed or~~
13 ~~implied, including a warranty of~~

14 1. Certified or noncertified agricultural seed producers do not warrant or make any
15 representation concerning merchantability, fitness for a particular purpose, or
16 absence of disease, ~~is not made by the~~ but the vendor of the seed may not
17 disclaim warranty or responsibility for data on the label required by law.

18 2. The commission, the department, the commissioner, ~~or certified or and noncertified~~
19 agricultural seed producers and their employees make no warranty or
20 representation of any kind, either expressed or implied, including merchantability,
21 fitness for a particular purpose, absence of disease, or identity of variety, type, or
22 selection, as to the quantity or quality of the crop produced from the agricultural
23 seeds or as to other produce which is inspected and certified, ~~except as provided~~
24 in this section. ~~The sole warranty made is that the agricultural seeds or other~~
25 ~~produce were produced, graded, packed, and inspected under the rules of the~~
26 ~~department or United States department of agriculture~~ under this chapter. The
27 commissioner functions and serves only in an official regulatory manner, and this
28 chapter does not create a cause of action against the department, except if the
29 department is the vendor of the seed, then the department is responsible for data
30 supplied on the label.

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

3 **4-10-01. Definitions.** In this chapter, unless the context otherwise requires:

- 4 1. "Agent" or "agents", when used to indicate or refer to the commissioner's agent or
5 agents, means the commissioner's deputies, inspectors, representatives, agents,
6 or other assistants as the case requires.
- 7 2. "Certified" means the potatoes were randomly inspected and found to meet the
8 rules and regulations of the ~~state~~ seed department. Certification does not mean or
9 constitute any warranty or representation that the potatoes are of the variety or
10 selection identified on the label, merchantable, disease-free, fit for a particular
11 purpose, or anything other than that the potato crop was inspected and that at the
12 time of inspection met the standards set forth in this chapter.
- 13 3. "Closed container", or its plural form, means any container which shall be sewed,
14 tied, sealed, glued, nailed, or otherwise closed in a practical or secure manner for
15 handling.
- 16 4. "Commissioner" means the state seed commissioner.
- 17 5. "Inspection" means a random sample of potato plants or potato tubers were
18 examined according to the rules of the ~~state~~ seed department or according to the
19 instructions of the United States department of agriculture, food safety and quality
20 service.
- 21 6. "Label", and its various grammatical forms, when used as a noun means any tag,
22 label, brand, or device attached to, or written, stamped, printed, or stenciled on,
23 any container and carrying a term or terms setting forth the grade, condition,
24 quality, weight, variety, or class of the potatoes or other produce therein contained,
25 and when used as a verb means the act or the fact of the use of the aforesaid
26 labeling items and methods in connection with potatoes or other produce, and
27 when used as an adjective, its descriptive meaning must be interpreted from its
28 use and meaning as a noun and verb as herein prescribed.
- 29 7. "Other produce" means natural products of the farm, garden, and orchard,
30 exclusive of grain, true seeds, livestock, and livestock products.
- 31 8. "Potatoes" means what is commonly called and known as white or Irish potatoes.

1 9. "Selection" means a subgroup of a variety of potato and is commonly referred to as
2 line selection, clonal selection, or strain selection.

3 10. "State seed department" means the seed department of the state of North Dakota.

4 40- 11. "Variety" means a plant group within a single botanical taxon of the lowest-known
5 rank which, without regard to whether the conditions for plant variety protection are
6 met, can be defined by the expression of the characteristics resulting from a given
7 genotype or combination of genotypes, distinguished from any other plant grouping
8 by the expression of at least one characteristic, and considered as a unit with
9 regard to the suitability of the plant grouping for being propagated unchanged. A
10 variety may be represented by seed, transplants, plants, tubers, tissue culture,
11 plantlets, and other matter.

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

14 **4-10-05. Labeling, branding, tagging potatoes in closed containers.**

15 1. Every ~~closed~~ container packed with potatoes grown in North Dakota, being
16 transported, or offered for sale or consignment must bear ~~upon the outside thereof,~~
17 either by brand, tag, or label, in plain letters and figures, the net weight when
18 packed and correct grade designation. Potatoes being shipped for processing or
19 repacking are exempt of this requirement.

20 2. When an individual shipment is made from such towns or stations at which regular
21 inspection service is not maintained, and when such shipments cannot be so
22 routed as to be stopped in transit for inspection at a town or station at which
23 inspection service can be provided, or when due to unforeseen circumstances
24 which make it physically impossible for an inspector to perform such inspection,
25 then the commissioner, or ~~his~~ the commissioner's agent, may waive the inspection
26 and labeling requirements provided in this section for such individual shipment.

27 3. The commissioner shall, by regulation, prescribe the general location of the
28 labeling on the container and the minimum and maximum size of the letters and
29 figures used in the labeling of the potatoes as herein provided.

30 4. After the grade inspection of the potatoes has been completed, if the official
31 inspector finds that they are labeled properly according to the provisions of this

1 chapter, the inspector shall furnish to the shipper or owner of the potatoes a signed
2 certificate indicating that the shipment of potatoes is correctly labeled.

3 5. A vendor of seed may not use on seed labels or tags, or use or attach to literature,
4 any statement designed as a disclaimer or nonwarranty clause with the intent to
5 disclaim responsibility for the data on the label required by law.

6 6. A person in this state may not sell, offer for sale, transport for sale, or store with
7 intent to sell potato seed within this state:

8 a. That is not labeled in accordance with this chapter, or bears false or
9 misleading labeling;

10 b. If there has been false or misleading advertising in connection with the seed;
11 or

12 c. If the seed is designated, offered, represented, or advertised under any name
13 or identification other than the name by which the seed was originally known.

14 **SECTION 5. AMENDMENT.** Section 4-10-12.1 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **4-10-12.1. Liability - Potato crop quantity and quality.** ~~The state seed commission,~~
17 ~~state seed department, commissioner and the commissioner's employees, certified~~

18 1. Certified seed potato producers, and wholesale potato dealers licensed under
19 chapter 4-11 make no warranty or representation of any kind, expressed or implied
20 as to the quantity or quality of the crop produced from the seed potatoes or through
21 other produce inspected and certified, including merchantability, fitness for a
22 particular purpose, or absence of disease, but the vendor of the seed may not
23 disclaim warranty or responsibility for data on the label required by law. The only
24 representation is that the potatoes or other produce were produced, graded,
25 packed, and inspected under the rules of the state seed department or United
26 States department of agriculture.

27 2. The seed commission, seed department, commissioner, and the commissioner's
28 employees make no warranty or representation of any kind, expressed or implied
29 as to the quantity or quality of the crop produced from the seed potatoes or through
30 other produce inspected and certified, including merchantability, fitness for a
31 particular purpose, absence of disease, or identity of variety or selection. The

1 commissioner and the commissioner's employees function and serve only in an
2 official regulatory manner, and this chapter does not create a cause of action
3 against the department except if the department is the vendor of the seed, then the
4 department is responsible for the data on the label.

5 **SECTION 6. AMENDMENT.** Section 4-42-11 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **4-42-11. Warranties regarding seeds or crops.** The commission, the commissioner,
8 and the department make no warranties or representations of any kind, either expressed or
9 implied, including warranties of merchantability, fitness for a particular purpose, ~~or~~ absence of
10 disease, or identity of variety or selection, as to seed or crop that is inspected, analyzed, or
11 verified under this chapter.

12 **SECTION 7. REPEAL.** Section 4-10-11 of the North Dakota Century Code is repealed.