

# AGRICULTURE

## CHAPTER 56

### HOUSE BILL NO. 1382

(Representatives L. Meier, Haas, Weiler)  
(Senator Dever)

## COUNTY ELECTION FILING DATES

AN ACT to amend and reenact sections 4-08-06 and 44-02-07 of the North Dakota Century Code, relating to county election filing dates.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 4-08-06 of the North Dakota Century Code is amended and reenacted as follows:

**4-08-06. Filing date of petitions for election.** No board of county commissioners may place the question of extension work on a ballot without having received a notification from the county auditor that the petitions, as provided for in this chapter, have been filed at least ~~thirty~~ sixty days before the date of election.

**SECTION 2. AMENDMENT.** Section 44-02-07 of the North Dakota Century Code is amended and reenacted as follows:

**44-02-07. Brief vacancy not to be filled - Exception.** If a vacancy occurs within ~~thirty~~ sixty days previous to an election at which it may be filled, no appointment may be made unless it is necessary to carry out such election and the canvass of the same according to law. In such case an appointment may be made at any time previous to such election to hold until after such election or until the appointee's successor is elected and qualified.

Approved March 6, 2007

Filed March 7, 2007

## CHAPTER 57

### HOUSE BILL NO. 1124

(Agriculture Committee)

(At the request of the State Seed Commission)

### SEED LABELING AND INSPECTIONS

AN ACT to amend and reenact sections 4-09-01, 4-10-01, 4-10-05, and 4-42-11 of the North Dakota Century Code, relating to labeling requirements and potato seed and crop warranties or representations; and to repeal section 4-10-11 of the North Dakota Century Code, relating to inspector certificates.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. "Advertisement" means any representation, other than representations made on labels, which relates to seed.
2. "Agent", when used in connection with the commissioner, means the commissioner's deputy, inspector, analyst, specialist, aide, agent, and employee, when each is acting officially for the commissioner or performing any duty or duties as provided in this chapter or in the rules adopted to implement this chapter.
3. "Agricultural seed" means the seed of grass, forage, cereal, fiber, oil crops, Irish potato seed tubers, and any other kind of seeds commonly recognized within this state as agricultural seed, lawn seed, and mixture of these seeds.
4. "Blend" means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.
5. "Brand" means a word, name, or symbol, number, or design used to identify seed of one person to distinguish that seed from seed of another person.
6. "Certified" means the agricultural seed was randomly inspected and found to meet the rules of the department at the time of inspection.
7. "Commission" means the state seed commission.
- ~~7.~~ 8. "Commissioner" means the state seed commissioner.
- ~~8.~~ 9. "Conditioning" means drying, cleaning, scarifying, and other operations that may change the purity or germination of the seed.
- ~~9.~~ 10. "Department" means the seed department of this state.

- ~~40.~~ 11. "Flower seed" includes a seed of a herbaceous plant grown for the bloom, ornamental foliage, or other ornamental part, and commonly known and sold under the name of flower or wildflower seed in this state.
- ~~44.~~ 12. "Foundation seed", "registered seed", and "certified seed" means seed that has been produced and labeled in accordance with the procedures and in compliance with the rules of an officially recognized seed-certifying agency.
- ~~42.~~ 13. "Germination" means the percentage of seed capable of producing normal seedlings under ordinarily favorable conditions as determined by methods prescribed under the rules established by the association of official seed analysts. The percentage does not include seed that produces weak, malformed, or obviously abnormal sprouts.
- ~~43.~~ 14. "Hard seed" means a seed that remains hard at the end of the prescribed test period because the seed has not absorbed water due to an impermeable seed coat.
- ~~44.~~ 15. "Inert matter" means all matter not seed and includes the broken seed, a sterile floret, chaff, a fungus body, and a stone.
- ~~45.~~ 16. "Kind" means one or more related species or subspecies which singly or collectively is known by one common name, such as corn, oats, alfalfa, or timothy.
- ~~46.~~ 17. "Labeler" means the person who furnishes the information required in sections 4-09-10, 4-09-11, 4-09-11.1, and 4-09-11.2.
- ~~47.~~ 18. "Labeling" means a tag or other device attached to or information written, stamped, or printed on any container or accompanying a lot of bulk seed that contains information required by this chapter.
- ~~48.~~ 19. "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform, within permitted tolerances, for the factors which appear in the labeling.
- ~~49.~~ 20. "Mixture" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.
- ~~20.~~ 21. "Noxious weed seed" is divided into three classes defined as:
- a. "Prohibited noxious weed seed" means a weed seed that is prohibited from being present in agricultural, vegetable, flower, tree, or shrub seed and is highly destructive and difficult to control by good cultural practices and the use of herbicides and includes a seed of leafy spurge (*euphorbia esula* L.), field bindweed (*convolvulus arvensis* L.), Canada thistle (*cirsium arvense* (L.) scop.), perennial sow thistle (*sonchus arvensis* L.), Russian knapweed (*centaurea repens* L.), absinth wormwood (*artemisia absinthium* L.), hemp (*cannabis sativa* L.) having more than three-tenths of one percent tetrahydrocannabinol, musk thistle (*carduus nutans* L.), spotted knapweed (*centaurea maculosa* lam.), hoary cress (*cardaria draba* (L.) desv.), and yellow starthistle (*centaurea solstitialis* L.).

- b. "Restricted noxious weed seed" means a seed that is objectionable in agricultural crops, lawns, and gardens in this state and can be controlled by good cultural practices or the use of herbicides and includes the seed of dodder (*cuscuta* species), hedge bindweed (*convolvulus sepium* L.), wild oats (*avena fatua* L.), and quackgrass (*agropyron repens* (L.) beauv.).
  - c. "Undesirable grass seed" means a seed of grass species declared by the commissioner to be a restricted noxious weed seed when found in lawn or turf seed.
- ~~24.~~ 22. "Official seed-certifying agency" means:
- a. An agency authorized under the laws of a state, territory, or possession to officially certify seed which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or
  - b. An agency of a foreign country determined by the United States secretary of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed-certifying agencies under subdivision a.
- ~~22.~~ 23. "Pest" means any invertebrate animal, pathogen, parasitic plant, or similar organism causing or capable of causing injury or damage to any plant or part of a plant or any processed, manufactured, or other product of a plant.
- ~~23.~~ 24. "Phytosanitary certificate" means a document issued or authorized by the commissioner indicating that the seed or tubers were inspected and considered to be free from quarantine pests and practically free from injurious pests according to the sanitary requirements of the importing country.
- ~~24.~~ 25. "Pure seed" means agricultural and vegetable seed, exclusive of inert matter, and all other seed not of the kind or variety being considered.
- ~~25.~~ 26. "Record" means all information relating to lot identification, source, origin, variety, amount, processing, testing, labeling, distribution, and file sample of the seed.
27. "Selection" means a subgroup of a variety and commonly used terms include line selection, clonal selection, or strain selection.
- ~~26.~~ 28. "Stop-sale" means an administrative order provided by law restraining the sale, use, disposition, and movement of a definite amount of seed.
- ~~27.~~ 29. "Treated" means a seed has received an application of a substance, or a claim has been made that the seed has been subjected to a process.
- ~~28.~~ 30. "Tree and shrub seed" includes seed of woody plants commonly known and sold as tree and shrub seed in this state.
- ~~29.~~ 31. "Type" means a group of variety so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

- ~~30-~~ 32. "Variety" means a subdivision of a kind that is distinct, uniform, and stable. "Distinct" means the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all varieties of public knowledge. "Uniform" means the variations in essential and distinctive characteristics are describable. "Stable" means the variety will remain unchanged in its essential and distinctive characteristics and uniformity when reproduced or reconstituted as required by the different categories of varieties.
- ~~34-~~ 33. "Vegetable seed" means a seed of a crop that is grown in a garden or on a truck farm, and which is generally known and sold under the name of vegetable seed within this state.
- ~~32-~~ 34. "Weed seed" means the seed of a plant generally recognized as a weed within this state, including noxious weed seed.

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

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

1. "Agent" or "agents", when used to indicate or refer to the commissioner's agent or agents, means the commissioner's deputies, inspectors, representatives, agents, or other assistants as the case requires.
2. "Certified" means the potatoes were randomly inspected and found to meet the rules ~~and regulations~~ of the ~~state~~ seed department at the time of inspection.
3. "Closed container", or its plural form, means any container which shall be sewed, tied, sealed, glued, nailed, or otherwise closed in a practical or secure manner for handling.
4. "Commissioner" means the state seed commissioner.
5. "Inspection" means a random sample of potato plants or potato tubers were examined according to the rules of the ~~state~~ seed department or according to the instructions of the United States department of agriculture, food safety and quality service.
6. "Label", and its various grammatical forms, when used as a noun means any tag, label, brand, or device attached to, or written, stamped, printed, or stenciled on, any container and carrying a term or terms setting forth the grade, condition, quality, weight, variety, or class of the potatoes or other produce therein contained, and when used as a verb means the act or the fact of the use of the aforesaid labeling items and methods in connection with potatoes or other produce, and when used as an adjective, its descriptive meaning must be interpreted from its use and meaning as a noun and verb as herein prescribed.
7. "Other produce" means natural products of the farm, garden, and orchard, exclusive of grain, true seeds, livestock, and livestock products.
8. "Potatoes" means what is commonly called and known as white or Irish potatoes.

9. "Selection" means a subgroup of a variety of potato and is commonly referred to as line selection, clonal selection, or strain selection.
10. "State seed department" means the seed department of the state of North Dakota.
- 40- 11. "Variety" means a plant group within a single botanical taxon of the lowest-known rank which, without regard to whether the conditions for plant variety protection are met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one characteristic, and considered as a unit with regard to the suitability of the plant grouping for being propagated unchanged. A variety may be represented by seed, transplants, plants, tubers, tissue culture, plantlets, and other matter.

**SECTION 3. AMENDMENT.** Section 4-10-05 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Every ~~closed~~ container packed with potatoes grown in North Dakota, being transported, or offered for sale or consignment must bear ~~upon the outside thereof~~, either by brand, tag, or label, in plain letters and figures, the net weight when packed and correct grade designation. Potatoes being shipped for processing or repacking are exempt of this requirement.
2. When an individual shipment is made from such towns or stations at which regular inspection service is not maintained, and when such shipments cannot be so routed as to be stopped in transit for inspection at a town or station at which inspection service can be provided, or when due to unforeseen circumstances which make it physically impossible for an inspector to perform such inspection, then the commissioner, or ~~his~~ the commissioner's agent, may waive the inspection and labeling requirements provided in this section for such individual shipment.
3. The commissioner shall, by regulation, prescribe the general location of the labeling on the container and the minimum and maximum size of the letters and figures used in the labeling of the potatoes as herein provided.
4. After the grade inspection of the potatoes has been completed, if the official inspector finds that they are labeled properly according to the provisions of this chapter, the inspector shall furnish to the shipper or owner of the potatoes a signed certificate indicating that the shipment of potatoes is correctly labeled.
5. A vendor of seed may not alter the label or certificate furnished by the inspector under subsection 4.
6. A person in this state may not sell, offer for sale, transport for sale, or store with intent to sell within this state certified potato seed that is not labeled in accordance with this chapter.

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

**4-42-11. Warranties or representations regarding seeds or crops.** The commission, the commissioner, and the department make no warranties or representations 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 5. REPEAL.** Section 4-10-11 of the North Dakota Century Code is repealed.

Approved March 28, 2007

Filed March 28, 2007

## CHAPTER 58

### SENATE BILL NO. 2128

(Agriculture Committee)

(At the request of the State Seed Commission)

### SEED REGULATION

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

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

#### **4-09-14. Prohibitions.**

1. A person may not 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:
  - a. Unless for agricultural seed, a test to determine the percentage of germination required under section 4-09-10 has been completed within a nine-month period, exclusive of the calendar month in which the test was completed or the seed is offered for sale beyond the sell by date exclusive of the calendar month in which the seed was to have been sold;
  - b. Unless for flower, vegetable, native grass, or forb seed, a test to determine the percentage of germination required under sections 4-09-10, 4-09-11, and 4-09-11.1 has been completed within a twelve-month period, exclusive of the calendar month in which the test was completed;
  - c. Unless for cool season lawn and turf grasses, including Kentucky bluegrass, red fescue, chewings fescue, hard fescue, tall fescue, perennial rye grass, intermediate rye grass, annual rye grass, colonial bent grass, creeping bent grass, and mixtures or blends of those grasses, a test to determine the percentage of germination has been completed within a fifteen-month period, exclusive of the calendar month in which the test was completed;



- d. Unless for tree, shrub, agricultural, flower, wildflower, or vegetable seed packaged in a hermetically sealed container under conditions as defined by the commissioner, a test to determine the percentage of germination has been completed within a thirty-six-month period after the last day of the month that the seed was tested for germination before packaging. However, if seed in a hermetically sealed container is offered for sale more than thirty-six months after the last day of the month in which the seed was tested before packaging, the seed must be retested within a twelve-month period, exclusive of the calendar month in which the retest was completed;
  - e. If the seed is not labeled in accordance with this chapter or bears false or misleading labeling;
  - f. If there has been false or misleading advertising in connection with the seed;
  - g. If the seed contains prohibited noxious weed seeds;
  - h. Unless for agricultural or vegetable seed, the seed is labeled to show the rate of occurrence of restricted noxious weed seeds, as required under sections 4-09-10 and 4-09-11;
  - i. If the seed is designated, offered, represented, or advertised under any variety name or identification other than the variety name by which the seed was known originally;
  - j. If the seed contains restricted noxious weed seeds in excess of twenty-five seeds per pound [453.59 grams]; or
  - k. If the percentage by weight of all weed seeds in the seed exceeds one percent.
2. ~~Any person 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 the seed, together with a proposed, distinctive name. The commissioner, within one year, shall make any test the commissioner considers necessary, and if the commissioner finds as a result of the test that the seed or plant is of a new variety, distinct from any known variety of the seed and that the proposed name will properly distinguish the seed from any and all other varieties, the commissioner shall issue to the applicant a permit to designate the seed by the proposed name.~~
  3. 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 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 this state in lieu of the labeling provided for in this chapter.
4. 3. A person in this state may not:

- a. Detach, alter, deface, or destroy any label provided for in this chapter or to alter or substitute seed in any manner with the intent to defeat the purpose of this chapter;
- b. Disseminate any false or misleading advertisement concerning agriculture or vegetable seed in any manner or by any means;
- c. Hinder or obstruct in any way any authorized person in the performance of the person's duties under this chapter;
- d. Fail to comply with a "stop-sale" order;
- e. Use on seed labels or tags, or to use or attach to literature, or to state in any manner or form of wording designed as a "disclaimer" or "nonwarranty" clause with the intent to disclaim responsibility of the vendor of the seed for the data on the label required by law;
- f. Use the words "type" or "trace" on any labeling in connection with the name and description of any agricultural and vegetable seed;
- g. Move or otherwise handle or dispose of any lot of seed held under a "stop-sale" order, except with the written permission of the commissioner and only for the purpose specified in this written permission;
- h. Use the name of the department or the name of the official laboratory for advertising purposes in connection with seed analyzed or tested by the department or official laboratory, except in the case of registered or certified seed; or
- i. Plant any seed labeled "for vegetative cover only" with the intent to harvest for seed or grain.

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

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

1. This chapter does not apply to:
  - a. Potatoes, whether sold or intended for food, manufacturing, or planting purposes.
  - b. Seed or grain that is not intended for planting purposes. The seller shall indicate on a form provided by the seller the purpose for which the seed or grain is purchased. The form must be available for inspection by the commissioner. It is unlawful for the seller or buyer to make a false representation as to the use of the seed or grain. A farmer selling the farmer's own seed or grain to a commercial establishment is exempt from the recordkeeping requirements of this subsection.
  - c. Seed stored by or consigned to a seed cleaning or conditioning plant for the purpose of cleaning or conditioning. However, any labeling or other representation made with respect to uncleaned or unconditioned seed is subject to the requirements of this chapter.

- d. A common carrier with respect to any seed transported or delivered for transportation in the ordinary course of business.
  - e. A farmer who grows the farmer's own seed and sells only the farmer's own seed and does not advertise or use a third party as an agent or broker to bring buyer and seller together. However, a variety for which a certificate plant variety protection has been applied for or issued is not exempt from this chapter. The sale or transfer of protected varieties between farmers for the purpose of planting without the approval of a variety owner or developer is prohibited.
2. A person is not subject to the penalties of this chapter for having sold, exposed for sale, or transported for sale in this state any agricultural, vegetable, flower, or tree and shrub seed that was incorrectly labeled or incorrectly represented as to kind, variety, or origin and which could not be identified through examination, unless the person has failed to obtain an invoice or grower's declaration stating the kind, or kind and variety, and origin, if required, or has failed to take other precautions as may have been necessary to ensure that the seed was properly identified.

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

**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 the seed for market.
2. ~~Designate~~ Accept for certification kinds, varieties, selections, 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. Accept from any person a sample of seed which the person claims to be a new variety, distinct from any commonly known variety of the seed, together with a proposed, distinctive name. The commissioner shall determine the eligibility of a variety for certification based on factors including whether:
  - a. The variety has been accepted into a certification program by a national-designated or state-designated certification authority according to established rule or regulation.
  - b. The variety or selection is sufficiently distinguishable from existing varieties to allow for seed certification.
  - c. The variety or selection has been released by a public or private industry breeding program through an acceptable release process or policy.

- d. Technical information regarding physical traits or genetic markers of the variety or selection has been provided to the commissioner for use in field and laboratory certification programs.
4. 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" seed, and shall specify what words, terms, or figures the labels, seals, certificates, or the containers of the seed must bear.
4. 5. 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" seed.
5. 6. 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. 7. Establish an equitable schedule of fees and charges, which must be uniform throughout the state, for inspecting, testing, analyzing, and recording the seed, and for other work and duties incident to the growing, handling, marketing, and certifying of North Dakota seed, and shall collect all the fees and charges.

**SECTION 5. 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 4, 2005~~ July 1, 2007], 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 6. AMENDMENT.** Section 4-42-02 of the North Dakota Century Code is amended and reenacted as follows:

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

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

**4-42-07. Identity preservation - Segregation - Traceability.** The commissioner ~~shall~~ may establish a procedure for the identity preservation,

segregation, and traceability of seeds or crops inspected or analyzed under this chapter.

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

Approved April 9, 2007  
Filed April 10, 2007

## CHAPTER 59

### HOUSE BILL NO. 1185

(Representatives Solberg, DeKrey, S. Meyer, Onstad)  
(Senators Heitkamp, O'Connell)

### DRY PEA AND LENTIL ASSESSMENT REFUNDS

AN ACT to amend and reenact section 4-10.7-07 of the North Dakota Century Code, relating to the powers and duties of the North Dakota dry pea and lentil council.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 4-10.7-07 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.7-07. Council powers and duties.** In the administration of this chapter, the council may:

1. Contract and cooperate with any person or with any governmental department or agency for research, education, publicity, promotion, and transportation for purposes of this chapter.
2. Expend funds collected pursuant to this chapter for its administration.
3. Appoint, employ, bond, discharge, fix the compensation for, and prescribe the duties of such administrative, clerical, technical, and other personnel as it deems necessary.
4. Accept donations of funds, property, services, or other assistance from public or private sources for the purpose of furthering the objectives of the council.
5. Investigate and prosecute in the name of the state any action or suit to enforce the collection or ensure payment of the taxes authorized by this chapter, and to sue and be sued in the name of the council.
6. Formulate the general policies and programs of markets and industries for the utilization of dry peas and lentils grown within the state.
7. Enter a reciprocal agreement with the governmental entity that is responsible for administration of the dry pea and lentil assessment in another state or province and provide for:
  - a. The return by that governmental entity of any assessment charged on dry peas and lentils grown in this state; and
  - b. The return by the council of any assessment charged on dry peas and lentils grown in another state or province.

Approved March 6, 2007

Filed March 7, 2007

## CHAPTER 60

### SENATE BILL NO. 2117

(Senator Wanzek)

(At the request of the North Dakota Potato Council)

## POTATO PRODUCTION CONTRACTING FAIR PRACTICES

AN ACT to provide for fair practices in potato production contracting; and to provide a penalty.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Buyer" means a person, group of persons, organization, or entity that in the ordinary course of business buys potatoes or potato byproducts grown in this state or who contracts with a potato producer to grow potatoes in this state.
2. "Potatoes" means potatoes or potato byproducts produced for use in or as food, seed, feed, or other byproducts of the farm for the same or similar use.
3. "Producer" means a person that produces or causes to be produced potatoes by contracting with a buyer or processor to provide management, labor, machinery, facilities, or any production input for the production of potatoes.

**SECTION 2. Unfair acts and practices prohibited.** A buyer may not engage in any of the following acts or practices, defined as unfair acts or practices in connection with a potato production contract or purchase involving potatoes:

1. Use of coercion, intimidation, the threat of retaliation or the threat of contract termination, cancellation, or nonrenewal to impose, demand, compel, or dictate terms, payment or manner of payment, or the signing of a contract by a potato producer.
2. Use of coercion, intimidation, the threat of retaliation, or the threat of contract termination, cancellation, or nonrenewal in order to require a producer to make capital improvements such as buildings or equipment.
3. To interfere, restrain, or coerce a producer in the exercise of the right to join, form, or assist a producer bargaining cooperative or association.
4. To refuse to deal with a producer because of the exercise of the right to join and belong to a producer bargaining cooperative or association.
5. To refuse to provide to the producer, upon request, the statistical information and the data used to determine compensation paid to the producer for settlement.

6. To refuse to allow a producer or the producer's designated representative to observe, by actual observation at the time of weighing, the weights and measures used to determine the producer's compensation at settlement.
7. To use the performance of any other producer to determine the settlement of a producer.
8. To refuse to bargain with an established producer bargaining cooperative or association formed for the purpose of negotiating contracts and agreements.

**SECTION 3. Civil liability for damages from violation.** A person who engages in an unfair act or practice as defined in this Act, is liable to a producer for all damages caused to the producer by the unfair act or practice.

**SECTION 4. Good faith - Damages for violation - Penalty.** There is an implied promise of good faith as defined in subsection 19 of section 41-09-11, by all parties to a potato production contract. In an action to recover damages, if the court or a jury finds that there has been a violation of this provision, in addition to other damages authorized by law, attorney fees and court costs may be awarded.

**SECTION 5. Recapture of capital investment required by a potato production contract.**

1. A contractor may not terminate or cancel a contract that requires a producer to make a capital investment in buildings or equipment that cost one hundred thousand dollars or more and have a useful life of five or more years until:
  - a. The producer has been given written notice of the intention to terminate or cancel the contract at least one hundred eighty days before the effective date of the termination or cancellation, or as provided in subsection 3; and
  - b. The producer has been reimbursed for damages incurred by an investment in buildings or equipment that was made for the purpose of meeting minimum requirements of the contract.
2. Except as provided in subsection 3, if a producer fails to comply with the provisions of a contract that requires a capital investment subject to subsection 1, a contractor may not terminate or cancel that contract until:
  - a. The contractor has given written notice with all the reasons for the termination or cancellation at least ninety days before termination or cancellation, or as provided in subsection 3; and
  - b. The recipient of the notice fails to correct the reasons stated for termination or cancellation in the notice within sixty days of receipt of the notice.
3. The one hundred eighty-day notice period under subsection 1, and the ninety-day notice period and the sixty-day notice period under subsection 2, are waived and the contract may be cancelled or



terminated immediately if the alleged grounds for termination or cancellation are:

- a. Voluntary abandonment of the contract relationship by the producer; or
- b. Conviction of the producer of an offense directly related to the business conducted under the contract.

Approved April 12, 2007

Filed April 13, 2007

## CHAPTER 61

### HOUSE BILL NO. 1164

(Representatives Kingsbury, Aarsvold, Herbel)  
(Senators Olafson, Wanzek)

## NORTHERN CROPS COUNCIL MEMBERSHIP

AN ACT to amend and reenact section 4-14.2-02 of the North Dakota Century Code, relating to membership of the northern crops council.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 4-14.2-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **4-14.2-02. Northern crops council - Establishment - Chairman - Meetings - Compensation.**

1. The northern crops council is established. The council shall establish policies for the operation of the northern crops institute. The council consists of:
  - a. The president of North Dakota state university of agriculture and applied science or the president's designee.
  - b. A representative selected by the North Dakota wheat commission.
  - c. A representative selected by the North Dakota oilseed council.
  - d. A representative selected by the North Dakota barley council.
  - e. A representative selected by the North Dakota soybean council.
  - f. The agriculture commissioner or the commissioner's designee.
  - g. ~~Four~~ Five to five seven producers of northern crops selected by the members designated in subdivisions a through f.
  - h. Up to ~~two~~ four representatives of industries that process northern crops selected by the members designated in subdivisions a through f.
2. The term of office for each member of the council, except the president of North Dakota state university of agriculture and applied science and the agriculture commissioner, is three years, and those members are limited to two 3-year terms. Each term of office begins with the first reorganizational meeting after the date of appointment.
3. The chairman of the council must be a member of the council elected annually by a majority vote of the council. Provided, the members designated in subdivisions a and f of subsection 1 are not eligible to serve as chairman.

4. The council shall meet at least three times annually at such times and places as must be determined by the council and may meet in special meeting upon such call and notice as may be prescribed by rules adopted by the council. A council member unable to attend a meeting of the council may be represented by a person who has a written proxy from the member.

Approved March 28, 2007

Filed March 28, 2007

**CHAPTER 62****HOUSE BILL NO. 1066**

(Appropriations Committee)

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

**STATE FORESTER RESERVE ACCOUNT BALANCE**

AN ACT to amend and reenact section 4-19-01.2 of the North Dakota Century Code, relating to the balance in the state forester reserve account.

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

<sup>22</sup> **SECTION 1. AMENDMENT.** Section 4-19-01.2 of the North Dakota Century Code is amended and reenacted as follows:

**4-19-01.2. State forester reserve account.** The state forester reserve account is established as a special account in the state treasury. All moneys received for charges in excess of the cost of production of seedlings from the state nursery must be deposited in the reserve account. The state forester may use the reserve account after receiving approval from the legislative council's budget section and within limits of legislative appropriations for expenses relating to nursery seedling losses or other unanticipated events requiring additional funding as determined necessary by the state forester. If the balance of the state forester reserve account exceeds ~~five hundred thousand~~ one million dollars, charges for state nursery seedlings must not exceed estimated production costs until the account balance is less than ~~two~~ seven hundred thousand dollars, at which time the state forester may charge one hundred ten percent of production costs.

Approved March 7, 2007

Filed March 8, 2007

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<sup>22</sup> Section 4-19-01.2 was also amended by section 1 of Senate Bill No. 2028, chapter 63.

## CHAPTER 63

### SENATE BILL NO. 2028

(Legislative Council)  
(Budget Section)

#### BUDGET SECTION REPORTING ELIMINATION

AN ACT to amend and reenact sections 4-19-01.2, 15.1-02-14, 49-21-31, 54-59-19, 54-60-10, and 65-02-05.1 of the North Dakota Century Code, relating to budget section approval of state forester reserve account spending and remove required reports to the budget section and the legislative audit and fiscal review committee.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>23</sup> **SECTION 1. AMENDMENT.** Section 4-19-01.2 of the North Dakota Century Code is amended and reenacted as follows:

**4-19-01.2. State forester reserve account.** The state forester reserve account is established as a special account in the state treasury. All moneys received for charges in excess of the cost of production of seedlings from the state nursery must be deposited in the reserve account. The state forester may use the reserve account ~~after receiving approval from the legislative council's budget section~~ and within limits of legislative appropriations for expenses relating to nursery seedling losses or other unanticipated events requiring additional funding as determined necessary by the state forester. If the balance of the state forester reserve account exceeds five hundred thousand dollars, charges for state nursery seedlings must not exceed estimated production costs until the account balance is less than two hundred thousand dollars, at which time the state forester may charge one hundred ten percent of production costs.

**SECTION 2. AMENDMENT.** Section 15.1-02-14 of the North Dakota Century Code is amended and reenacted as follows:

**15.1-02-14. Duplicative payments - Transfer - Distribution - ~~Report to budget section.~~** If the superintendent of public instruction receives any federal or other moneys to pay programmatic administrative expenses for which the superintendent received a state general fund appropriation, the superintendent shall transfer the moneys to the state tuition fund. This section does not apply if the superintendent is required by federal law or by the terms of a grant to employ additional personnel. ~~The superintendent shall report annually to the budget section of the legislative council regarding any transfers under this section.~~

**SECTION 3. AMENDMENT.** Section 49-21-31 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>23</sup> Section 4-19-01.2 was also amended by section 1 of House Bill No. 1066, chapter 62.

**49-21-31. Performance assurance fund - Continuing appropriation - Report to budget section.** The performance assurance fund is a special fund in the state treasury. The commission shall deposit payments received by the commission under the performance assurance plan in the performance assurance fund until the balance of the fund equals one hundred thousand dollars. Up to one hundred thousand dollars per biennium of moneys in the fund are appropriated on a continuing basis to the commission to monitor the operation and effect of the performance assurance plan. All the payments received by the commission in excess of the one hundred thousand dollars balance in the performance assurance fund must be deposited in the general fund. ~~The commission shall report annually to the budget section of the legislative council with respect to the payments received under the plan and the expenditures from the performance assurance fund.~~

<sup>24</sup> **SECTION 4. AMENDMENT.** Section 54-59-19 of the North Dakota Century Code is amended and reenacted as follows:

**54-59-19. Information technology department annual report.** The department shall prepare and present an annual report to the information technology committee. In addition to the presentation of the annual report to the information technology committee, the department shall present a summary of the annual report to the budget section ~~and to the legislative audit and fiscal review committee.~~ The report must contain:

1. A list of major projects started, ongoing, and completed during the year including related budgeted and actual costs and the estimated implementation date for each project as well as the actual implementation date for completed projects.
2. A list of all projects for which financing agreements have been executed.
3. Information regarding evaluations of cost-benefit analyses for completed projects.
4. A comparison of the department's rates charged for services compared to rates charged for comparable services in other states and in the private sector.
5. Information regarding the information technology plans including the department's plan review process, the number of plans reviewed, and the number of plans approved.
6. A description of the benefits to the state resulting from its investment in information technology.

<sup>25</sup> **SECTION 5. AMENDMENT.** Section 54-60-10 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>24</sup> Section 54-59-19 was also amended by section 5 of Senate Bill No. 2037, chapter 491, and section 2 of Senate Bill No. 2118, chapter 492.

<sup>25</sup> Section 54-60-10 was repealed by section 9 of House Bill No. 1137, chapter 493.

**54-60-10. Career guidance and job opportunities - Internet web site - Fees - Continuing appropriation.** The department may provide career guidance and job opportunity services through an internet web site. If the department contracts with a third party for the provision of internet web site services under this section, upon the expiration of that contract the department shall request bids for the maintenance of this internet web site and shall give consideration to bids of North Dakota businesses. The department shall deposit in the department's operating fund any moneys received by the department as subscriptions, commissions, fees, or other revenue from the internet web site. Moneys deposited in the operating fund under this section of up to one hundred thirty thousand dollars per biennium are appropriated to the department on a continuing basis for payment of expenses related to administration of the internet web site. Any additional amounts deposited in the operating fund during a biennium under this section may be spent pursuant to legislative appropriations or with budget section approval. ~~The department shall report annually to the budget section of the legislative council regarding moneys spent under this section.~~

**SECTION 6. AMENDMENT.** Section 65-02-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-02-05.1. Building maintenance account - Continuing appropriation.** There is a building maintenance account within the workforce safety and insurance fund, to which the organization shall deposit all building rental proceeds if the organization builds a building that includes rental space for other state entities. The moneys in the account are appropriated on a continuing basis to the organization to pay bond principal and interest payments, operating, maintenance, repair, and payments in lieu of taxes expenses of the building and grounds. This account may be used only for the purposes identified in this section. The organization may either hire or contract for building maintenance and repair services anticipated by this section. ~~The organization shall report to the budget section of the legislative council on a biennial basis on all revenues deposited into this account and expenditures made from the account.~~

Approved March 7, 2007

Filed March 8, 2007

## CHAPTER 64

### SENATE BILL NO. 2105

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

## DAIRY PRODUCTS REGULATION

AN ACT to amend and reenact sections 4-30-18, 4-30-20, 4-30-36, 4-30-36.2, 4-30-36.3, and 4-30-36.4 of the North Dakota Century Code, relating to dairy products regulations.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 4-30-18 of 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 ~~seventeenth~~ eighteenth 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 2. AMENDMENT.** Section 4-30-20 of 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 ~~seventeenth~~ eighteenth 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.

**SECTION 3. AMENDMENT.** Section 4-30-36 of 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, ~~2003~~ 2005 Revision, Public Health Service, Food and Drug Administration" which includes provisions from the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey - Supplement 1 to the Grade A PMO"



and all supplements added thereto. 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 4. AMENDMENT.** Section 4-30-36.2 of 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 Shippers - ~~2003~~ 2005 Revision, Edition" and the sampling of milk and dairy products must be in accordance with the guidelines recommended in the ~~seventeenth~~ eighteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association.

**SECTION 5. AMENDMENT.** Section 4-30-36.3 of 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 ~~seventeenth~~ eighteenth 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 - ~~4995~~ 2005 Edition".

**SECTION 6. AMENDMENT.** Section 4-30-36.4 of 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, ~~2003~~ 2005 Revision, Public Health Service, Food and Drug Administration" and its supplements and follow the standards set by the "Procedures Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, ~~2003~~ 2005 Revision".

Approved April 5, 2007

Filed April 5, 2007

**CHAPTER 65****SENATE BILL NO. 2107**

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

**AGRICULTURAL EXPORT CERTIFICATION FEES**

AN ACT to amend and reenact section 4-33-12 of the North Dakota Century Code, relating to deposit of fees for agricultural export certification services.

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

**SECTION 1. AMENDMENT.** Section 4-33-12 of the North Dakota Century Code is amended and reenacted as follows:

**4-33-12. Authority for domestic and export certification.** The commissioner may inspect any plant and plant product, when offered for export or shipment from within the state and to certify to shippers and interested parties as to the freedom of such products from injurious pests according to the ~~sanitary~~ phytosanitary requirements of other states and foreign countries. Authority for inspection and certification under this section is not limited to plants defined in section 4-33-01. The commissioner may make reasonable charges and use any means necessary to accomplish this objective. A portion of the fees collected may be deposited in the commissioner's operating fund equivalent to the amount that the United States department of agriculture assesses the department for federal plant export certificates issued by the commissioner. A certificate may be withheld or not issued if the product does not meet ~~sanitary~~ phytosanitary or import requirements and if all North Dakota licensing and bonding requirements have not been met. Consignee names and addresses on phytosanitary certificates are confidential.

Approved March 5, 2007

Filed March 6, 2007

## CHAPTER 66

### SENATE BILL NO. 2095

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

### PESTICIDE DEFINITIONS

AN ACT to amend and reenact section 4-35-05 of the North Dakota Century Code, relating to pesticide definitions; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 4-35-05 of 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 humans and other mammals, birds, fish, and shellfish.
2. "Antidote" means a practical treatment in case of poisoning and includes first-aid treatment.
3. "Applicator" means any person who applies a pesticide to land.
4. "Beneficial insects" means those insects that, during their life cycle, are effective pollinators of plants, are parasites, or predators of pests.
5. "Certified applicator" means any individual who is certified under this chapter as authorized to use or supervise the use of any pesticide that is classified for restricted use.
6. "Commercial applicator" ~~means an applicator, whether or not the applicator is a private applicator with respect to some uses, who uses or supervises the use of a pesticide, whether classified as restricted or general use, for any purpose or on any property, other than as provided by subsection 26~~ means a person who by contract or for hire engages in the business of applying pesticides for compensation to the land of another by aerial, ground, hand, or any other equipment. The term "commercial applicator" does not include a person using a pesticide for a private agricultural purpose unless that person is being compensated for the pesticide application.
7. "Dealer" means any person who sells a pesticide to an end user.
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.
9. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.

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 human and other than bacteria, virus, or other micro-organism on or in living humans or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.
11. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply pesticides in this state.
12. "Environment" includes water, air, land, and all plants and humans and other animals living therein, and the interrelationships which exist among these.
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. 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.
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 humans or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
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.
16. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
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.
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.
19. "Mixture" means a diluted pesticide combination.
  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.
  21. "Person" means any individual, partnership, association, fiduciary, corporation, limited liability company, or any organized group of persons, whether or not incorporated.
  22. "Pest" means:
    - a. Any insect, snail, slug, rodent, nematode, fungus, or 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 humans or other living animals which are annoying or otherwise injurious or harmful to agriculture, health, and the environment.
  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.
  24. "Pesticide dealer" means any person who distributes restricted use pesticides.
  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.
  27. "Protect health and the environment" means protection against any unreasonable adverse effects on public health and the environment.
  28. "Public applicator" means a ~~certified~~ an applicator who applies pesticides as an employee of a state or federal agency, municipal

corporation, public utility, hospital, privately owned golf course, nursery, greenhouse, or other governmental agency. Persons using only ready-to-use pesticides are exempt from this requirement.

29. "Ready-to-use pesticide" means a pesticide that is applied directly from its original container consistent with label directions, such as an aerosol spray can, a ready-to-use spray container, bait packs, or other types of containers that do not require mixing or loading before application.
30. "Restricted use pesticide" means any pesticide formulation which is classified for restricted use by the United States environmental protection agency. The term also includes a pesticide formulation classified for restricted use by the agriculture commissioner under section 19-18-05.
- ~~30.~~ 31. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
- ~~34.~~ 32. "Snail" or "slug" includes every harmful mollusk.
- ~~32.~~ 33. "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.
- ~~33.~~ 34. "Unreasonable adverse effects on the environment" means any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
- ~~34.~~ 35. "Weed" means any plant which grows where not wanted.
- ~~35.~~ 36. "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including mammals, birds, and aquatic life.

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

Approved March 5, 2007  
Filed March 6, 2007

**CHAPTER 67****SENATE BILL NO. 2228**

(Senator Klein)  
(Representative DeKrey)

**PESTICIDE DAMAGE NOTIFICATION**

AN ACT to create and enact a new section to chapter 4-35 of the North Dakota Century Code, relating to notification of alleged pesticide damage; to repeal sections 4-35-21, 4-35-21.1, and 4-35-21.2 of the North Dakota Century Code, relating to reports of loss resulting from pesticide application; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 4-35 of the North Dakota Century Code is created and enacted as follows:

**Pesticide application - Alleged property damage - Notification of applicator.**

1. a. Before a person may file a civil action seeking reimbursement for property damage allegedly stemming from the application of a pesticide, the person shall notify by certified mail the pesticide applicator of the alleged damage within the earlier of:
  - (1) Twenty-eight days from the date the person first knew or should have known of the alleged damage; or
  - (2) Before twenty percent of the crop or field allegedly damaged is harvested or destroyed.
- b. Subdivision a does not apply if the person seeking reimbursement for property damage was the applicator of the pesticide.
2. Upon notifying the applicator as required under subsection 1, the person seeking reimbursement for the alleged property damage shall permit the applicator and up to four representatives of the applicator to enter the person's property for the purpose of observing and examining the alleged damage. If the person fails to allow entry, the person is barred from asserting a claim against the applicator.

**SECTION 2. REPEAL.** Sections 4-35-21, 4-35-21.1, and 4-35-21.2 of the North Dakota Century Code are repealed.

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

Approved April 11, 2007  
Filed April 13, 2007

## CHAPTER 68

### HOUSE BILL NO. 1085

(Agriculture Committee)

(Representatives Aarsvold, D. Johnson)

(Senators Heckaman, Flakoll)

(At the request of the Agriculture Commissioner)

## PESTICIDE AND CONTAINER DISPOSAL PROGRAM

AN ACT to create and enact a new section to chapter 4-35.2 of the North Dakota Century Code, relating to a report by the agriculture commissioner on the status of the pesticide container disposal program; to amend and reenact sections 4-35.2-01, 4-35.2-02, and 4-35.2-03 of the North Dakota Century Code, relating to making permanent law of the agricultural pesticide and pesticide container disposal program; and to provide an effective date.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 4-35.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**4-35.2-01. (~~Effective through July 31, 2007~~) 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 commissioner shall continue to implement the project authorized by section 1 of chapter 77 of the 2001 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 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. AMENDMENT.** Section 4-35.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**4-35.2-02. (~~Effective through July 31, 2007~~) Project scope and evaluation.** The project described in section 4-35.2-01 must occur in areas to be determined by the agriculture commissioner in consultation with the advisory board under subsection 2 of section 4-35.2-01.

**SECTION 3. AMENDMENT.** Section 4-35.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**4-35.2-03. (~~Effective through July 31, 2007~~) Project safe send pesticide and pesticide container collection - User fees.** The agriculture commissioner, in consultation with the advisory board for the project safe send pesticide and pesticide container disposal program, may charge a fee for collection of rinsate. The fees must be established at a level that will generate enough revenue to cover the cost of disposal associated with the rinsate that is collected. Collections from this fee must be deposited in the environment and rangeland protection fund.

**SECTION 4.** A new section to chapter 4-35.2 of the North Dakota Century Code is created and enacted as follows:

**Report on pesticide container disposal program.** The agriculture commissioner shall submit a biennial report to a joint meeting of the house of representatives and senate agriculture committees on the status of the pesticide container disposal program.

Approved March 6, 2007  
Filed March 7, 2007

## CHAPTER 69

### SENATE BILL NO. 2099

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

### INDUSTRIAL HEMP PROCESSING

AN ACT to amend and reenact subsections 1 and 3 of section 4-41-02 of the North Dakota Century Code, relating to industrial hemp; to provide a continuing appropriation; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>26</sup> **SECTION 1. AMENDMENT.** Subsections 1 and 3 of section 4-41-02 of the North Dakota Century Code are amended and reenacted as follows:

1. Any person desiring to grow or process industrial hemp for commercial purposes shall apply to the agriculture commissioner for a license on a form prescribed by the commissioner. The application for a license must include the name and address of the applicant and the legal description of the land area to be used to produce or process industrial hemp. Except for employees of the state seed department, the agricultural experiment station, or the North Dakota state university extension service involved in research and extension related activities, the commissioner shall require each applicant for initial licensure to submit to a statewide and nationwide criminal history check. The nationwide criminal history check must be conducted in the manner provided in section 12-60-24. All costs associated with the background check are the responsibility of the applicant. Criminal history records provided to the commissioner under this section are confidential. The commissioner may use the records only in determining an applicant's eligibility for licensure. Any person with a prior criminal conviction is not eligible for licensure. If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license, which is valid for a period of one year. Any person licensed under this section is presumed to be growing or processing industrial hemp for commercial purposes.
3. The commissioner shall adopt rules to allow the industrial hemp to be tested during growth for tetrahydrocannabinol levels and to allow for supervision of the industrial hemp during its ~~growth and harvest~~ growing, harvesting, and processing. To provide sufficient funds to pay costs associated with monitoring and testing industrial hemp in the state, the commissioner shall assess each applicant a fee of five dollars per acre. The minimum fee assessed must be one hundred fifty dollars per applicant. Collections from this fee must be deposited in the ~~attorney general's~~ commissioner's operating fund and are ~~hereby~~

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<sup>26</sup> Section 4-41-02 was also amended by section 7 of House Bill No. 1020, chapter 20.

appropriated to the ~~attorney general~~ commissioner to be used to enforce this chapter.

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

Approved March 5, 2007

Filed March 6, 2007

## CHAPTER 70

### HOUSE BILL NO. 1490

(Representatives Monson, S. Meyer, Nelson)  
(Senators Klein, Wanzek)

## INDUSTRIAL HEMP IMPORTATION AND SALE

AN ACT to create and enact a new section to chapter 4-41 of the North Dakota Century Code, relating to the sale of industrial hemp seed; to amend and reenact subdivision b of subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to criminal history record checks; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 4-41 of the North Dakota Century Code is created and enacted as follows:

Industrial hemp seed - Authority to import and sell. North Dakota state university and any other person licensed under this chapter may import and resell industrial hemp seed that has been certified as having no more than three-tenths of one percent tetrahydrocannabinol.

<sup>27</sup> **SECTION 2. AMENDMENT.** Subdivision b of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- b. The agriculture commissioner for each applicant for a license to grow or process industrial hemp under section 4-41-02.

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

Approved March 5, 2007  
Filed March 6, 2007

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<sup>27</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1313, chapter 374, section 1 of House Bill No. 1455, chapter 367, section 1 of Senate Bill No. 2037, chapter 491, section 3 of Senate Bill No. 2260, chapter 115, and section 4 of Senate Bill No. 2260, chapter 115.