Sixty-first
Legislative Assembly
of North Dakota

SENATE BILL NO. 2125

Introduced by

Agriculture Committee

(At the request of the State Seed Department)

A BILL for an Act to amend and reenact subsection 21 of section 4-09-01, subsection 1 of section 4-09-02, subsection 2 of section 4-09-03, sections 4-09-13, 4-09-17, 4-09-17.1, 4-09-25, 4-10-14, and 4-11-21 of the North Dakota Century Code, relating to the seed department's revolving fund and to the functions and responsibilities of the seed commission, seed department, and seed labelers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 21 of section 4-09-01 of the North Dakota Century Code is amended and reenacted as follows:

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~~ rhaponticum 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.~~ stoebe L. subsp. micranthos), hoary cress (~~cardaria draba (l.) desv.~~ lepidium chalepense), 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~~ calystegia sepium l.), wild oats (avena fatua l.), and quackgrass (~~agropyron~~ elymus repens ~~(l.) beauv.~~ subsp. repens).

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.

SECTION 2. AMENDMENT. Subsection 1 of section 4-09-02 of the North Dakota Century Code is amended and reenacted as follows:

1. There must be maintained a seed department of the state of North Dakota, which is designated as the official seed certification agency of the state. The department's headquarters, main offices, and other principal operating facilities and equipment must be located at the North Dakota state university of agriculture and applied science. The commissioner, subject to the approval and supervision of the commission, shall provide and maintain necessary laboratories and facilities properly equipped to make analyses, tests, and variety and disease determinations of seeds and plants, and to do work and effect other results as may be necessary to carry out this chapter. For these purposes, the commissioner may utilize the premises, space, and equipment at North Dakota state university as may be assigned to the commissioner by the university. The commissioner shall permit the facilities and services of the official laboratories to be used by the university at convenient times.

SECTION 3. AMENDMENT. Subsection 2 of section 4-09-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The commission consists of a representative of the North Dakota crop improvement association, a representative of the North Dakota certified seed potato growers association, a representative of the North Dakota dry edible bean seed growers association, a representative of the North Dakota agricultural association, an elected member of the North Dakota potato council selected by the North Dakota potato council, a representative of the Red River valley potato growers association who is a North Dakota resident, a representative of the North Dakota grain dealers association selected by the association's board of directors

who operates a state-approved seed conditioning plant, and the agriculture commissioner, or the commissioner's designee, who shall serve as chairman. The ~~associate dean and~~ director of the experiment station, or the director's designee, of the college of agriculture of the North Dakota state university of agriculture and applied science is a voting member of the commission.

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

4-09-13. Tolerances. The tolerances used in determining correctness and accuracy in labeling seed as described in this chapter must be those tolerances used under the Federal Seed Act of August 9, 1939 [53 Stat. 1275; 7 U.S.C. 1551 et seq.], and subsequent amendments as of June 30, ~~2005~~ 2009, except that the tolerance for yellow starthistle must be zero and the commissioner may, by rule, establish tolerances that are more strict than the Federal Seed Act tolerances.

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

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

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

4-09-17.1. Plant Variety Protection Act. Any seed advertised, offered for sale, or sold by variety name and for which a certificate of plant variety protection has been issued under the Plant Variety Protection Act, as amended [Pub. L. 91-577; 84 Stat. 1551; 7 U.S.C. 2481 et seq., effective as of July 1, ~~2007~~ 2009], as being for sale only as a class of certified seed must be

certified by an official seed certifying agency in order for the seed to be advertised, offered for sale, or sold by variety name in the state of North Dakota. Seed from a certified lot may be labeled as to variety name when used in a blend or mixture by or with approval of the owner of the variety.

SECTION 7. AMENDMENT. Section 4-09-25 of the North Dakota Century Code is amended and reenacted as follows:

4-09-25. Plant and seed records - Exempt. The following records of the state seed commission are exempt from section 44-04-18:

1. Records of any plant or seed inspection, analysis, or testing and germination, purity, variety, or disease ~~determination~~ determinations conducted by the state seed department on a fee-for-service basis for nonpublic entities or persons.
2. Information received by the seed commission under chapter 4-09, 4-10, or 4-42 from a nonpublic entity or person that the nonpublic entity or person determines is proprietary information or a trade secret.

SECTION 8. AMENDMENT. Section 4-10-14 of the North Dakota Century Code is amended and reenacted as follows:

4-10-14. Misbranding potatoes and other produce. No person, either while acting in that person's own behalf or while acting as agent or servant for any other person, shall sell, consign for sale, offer or expose for sale, have in possession or storage for sale, deliver within this state, or convey or cause to be conveyed out of this state, any potatoes or other produce which are mislabeled within the meaning of this chapter or the regulations thereunder, or which are labeled, represented, or advertised falsely in any respect, whether they are in closed containers, open containers, or in bulk regardless of the quantity. The correctness and accuracy of seed labeling is the sole responsibility of the labeler under state and federal seed laws.

SECTION 9. AMENDMENT. Section 4-11-21 of the North Dakota Century Code is amended and reenacted as follows:

4-11-21. Fees and collections - Revolving fund - ~~Continuing appropriation~~ Appropriation. The commissioner shall deposit all moneys arising from the collection of fees and other charges under this chapter with the state treasurer for credit to the seed department revolving fund. Moneys in this fund must be disbursed upon order of the commissioner, with

the approval of the office of management and budget, and funds so approved by the office of management and budget ~~are appropriated on a continuing basis~~ and must be disbursed within limits of legislative appropriations.