

**Fifty-ninth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2044  
(Legislative Council)  
(Public Services Committee)

AN ACT to amend and reenact sections 4-09-01, 4-09-02, 4-09-03, 4-09-04, 4-09-05, 4-09-06, 4-09-06.1, 4-09-07, 4-09-08, 4-09-10, 4-09-11, 4-09-11.1, 4-09-11.2, 4-09-12, 4-09-13, 4-09-14, 4-09-14.1, 4-09-14.4, 4-09-15, 4-09-16, 4-09-17.1, 4-09-18, 4-09-20.1, 4-09-20.2, 4-09.1-02, 4-09.1-04, 4-25-01, 4-25-02, 4-25-03, and 4-25-04 of the North Dakota Century Code, relating to the state seed department, seed labeling, and certified seed; and to repeal sections 4-09-03.1, 4-09-10.1, and 4-09-14.3 of the North Dakota Century Code, relating to the state seed arbitration board and labeling requirements for seed labeling permit fees.

**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 or ~~subject matter~~ 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 ~~state seed~~ commissioner, means the commissioner's ~~deputies~~ deputy, ~~inspectors~~ inspector, ~~analysts~~ analyst, ~~specialists~~ specialist, ~~and any other aides~~ aide, ~~agents~~ agent, and ~~employees of the commissioner and the seed department~~ employee, when ~~they are~~ each is acting officially for the commissioner or performing any duty or duties as provided in this chapter or in the rules ~~duly adopted under to implement~~ adopted to implement this chapter.
3. "Agricultural ~~seeds~~ seed" means the ~~seeds~~ 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 ~~seeds~~ seed, lawn ~~seeds~~ seed, and mixture of ~~such~~ 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. "Commission" means the state seed commission.
7. "Commissioner" means the state seed commissioner.
8. "Conditioning" means drying, cleaning, scarifying, and other operations that may change the purity or germination of the seed.
9. "Department" means the seed department of this state.
10. "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.

- 5- 11. "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.
- 6- 12. "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, ~~but not including.~~ The percentage does not include seed which that produces weak, malformed, or obviously abnormal sprouts.
- 7- 13. ~~"Hard seed" means the percentage of seed which, because of hardness or impermeability, does not absorb moisture or germinate under prescribed test but remains hard during the period prescribed for germination of the kind of seed concerned as determined by methods prescribed under the rule established by the association of official seed analysts~~ 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.
- 8- ~~"Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining:~~
- a. ~~Two or more inbred lines;~~
  - b. ~~One inbred or a single cross with an open pollinated variety; or~~
  - c. ~~Two varieties or species, except open pollinated varieties of corn (Zea mays).~~
- ~~The second generation or subsequent generations from such crosses must not be regarded as hybrids. Hybrid designations must be treated as variety names.~~
14. "Inert matter" means all matter not seed and includes the broken seed, a sterile floret, chaff, a fungus body, and a stone.
- 9- 15. "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.
- 40- 16. "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.
- 44- 17. ~~"Labeling" means all labels and other written, printed, or graphic representation in any form accompanying or pertaining to any seed, whether in bulk or in containers, including representations on invoices~~ 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.
- 42- 18. "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.
19. "Mixture" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.
- 43- 20. ~~"Noxious weed seeds seed" means the seeds of either of the following classifications is divided into three classes defined as:~~
- a. ~~"Prohibited noxious weed seeds seed" means the seeds of perennial weeds which reproduce by seed or spread by underground roots, stems, and other reproductive parts and which, when established, are highly destructive and difficult to control by ordinary good cultural practice including the seeds~~ 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 seeds seed" means the seeds of weeds which are highly objectionable in fields, lawns, and gardens, but which can be controlled by good cultural practices or other means, including the seeds~~ 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.

44. 21. "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.

~~15. "Person" means any individual, partnership, corporation, limited liability company, company, society, or association.~~

~~16. 22.~~ "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.

~~17. 23.~~ "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.

~~18. 24.~~ "Pure seed" means agricultural and vegetable seed, exclusive of inert matter, and all other seed not of the kind or variety being considered.

~~19. 25.~~ "Record" means all information relating to lot identification, source, origin, variety, amount, processing, testing, labeling, distribution, and file sample of the seed.

~~20. "Seed department" means the seed department of this state.~~

~~21. "Seizure" means the legal process carried out by court order against a definite amount of seed.~~

~~22. 26.~~ "Stop-sale" means an administrative order provided by law restraining the sale, use, disposition, and movement of a definite amount of seed.

~~23. 27.~~ "Treated" means ~~that the~~ a seed has received an application of a ~~seed protectant pesticide which is designed to reduce, control, or repel certain disease organisms, insects, or other~~

~~pests attacking such seeds or seedlings growing therefrom~~ substance, or a claim has been made that the seed has been subjected to a process.

28. "Tree and shrub seed" includes seed of woody plants commonly known and sold as tree and shrub seed in this state.
29. "Type" means a group of variety so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.
24. 30. "Variety" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristic by which it can be differentiated from other plants of the same 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.
25. 31. "Vegetable seeds seed" means the seeds a seed of these crops which are a crop that is grown in gardens and a garden or on a truck farms farm, and which are is generally known and sold under the name of vegetable seeds seed within this state.
26. 32. "Weed seeds seed" means the seeds seed of all plants a plant generally recognized as weeds a weed within this state, including noxious weed seeds seed.

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

**4-09-02. Seed department - Offices and laboratories.**

1. There must be maintained a state seed department to be known as the seed department of the state of North Dakota. ~~Its~~ 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.
2. The ~~state seed~~ commission may locate and establish branch offices and laboratories at other locations in this state as in the commissioner's judgment are necessary to carry out properly and effectively the provisions of this or other chapters in which the seed department is charged with duties and responsibilities.

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

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

1. The ~~state seed~~ commission is the governing board of the seed department ~~and shall adopt rules and regulations pursuant to chapter 28-32 to effectuate the purposes of this section.~~
2. The ~~state seed~~ commission consists of a representative of the North Dakota crop improvement association, a representative of the North Dakota certified seed potato growers association, a representative of the North Dakota dry edible bean seed growers

association, a representative of the North Dakota agricultural association, an elected member of the North Dakota potato council selected by the North Dakota potato council, a representative of the Red River valley potato growers association who is a North Dakota resident, a representative of the North Dakota grain dealers association selected by the association's board of directors who also operates a state-approved seed conditioning plant selected by the board of directors of the North Dakota grain dealers association, and the agriculture commissioner, or the commissioner's designee, who shall serve as chairman. The associate dean and director of the experiment station, or the director's designee, of the college of agriculture of the North Dakota state university of agriculture and applied science is a voting member of the commission.

3. The commission shall meet a minimum of two times each calendar year and may hold special meetings at the call of the chairman or by request of any two members of the commission. ~~Members of the commission must be reimbursed for mileage and travel as specified in section 54-06-09 and expenses as specified in section 44-08-04 for attendance at regular and special meetings.~~ Each member of the commission is entitled to receive compensation at the rate of seventy-five dollars per day and reimbursement for expenses, as provided by law for state officers, for attending commission meetings. Compensation under this section may not be paid to any member who receives compensation or salary as a regular state employee or official. A commission member unable to attend a meeting of the commission may be represented by a proxy who has written authorization from ~~such~~ the absent commission member.
4. The commission shall appoint a qualified manager of the seed department who must be known as the state seed commissioner. The commission shall fix the salary of the commissioner within legislative appropriation ~~therefor~~. The commissioner's appointment must be reviewed annually by the commission, and the commissioner is subject to removal for cause. In the event of a vacancy in the office of ~~seed~~ the commissioner, the commission may appoint a temporary ~~state seed~~ commissioner to serve until ~~such time as the appointment of a permanent commissioner is appointed~~. The ~~state seed~~ commissioner has responsibility for preparing the biennial budget and annual salary schedules ~~which~~ that must be approved by the commission ~~prior to~~ before submission to the state budget director. The commissioner is directly responsible to the commission and shall make semiannual reports to the commission and ~~such~~ any other reports as requested by the commission.

**SECTION 4. AMENDMENT.** Section 4-09-04 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-04. Official seal.** The official seal of the ~~seed~~ department as recorded in the office of the secretary of state must be used exclusively in connection with the affairs of the ~~seed~~ department. The use of ~~such~~ the seal contrary to ~~the provisions of~~ this chapter or the commissioner's regulations is punishable as provided in section 4-09-24.

**SECTION 5. AMENDMENT.** Section 4-09-05 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-05. ~~Rules and regulations—Authority to make~~ Rulemaking and delegating authority.** The commissioner may adopt rules ~~in conformance with the provision of~~ as authorized by chapter 28-32. The commissioner may delegate any duty or power of the commissioner to an agent.

**SECTION 6. AMENDMENT.** Section 4-09-06 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-06. Examination of seed by commissioner - Right of access to premises - ~~Publication of reports—~~ "Stop-sale" order.**

1. The commissioner, ~~or the commissioner's agents, shall~~ may inspect, examine, ~~make analysis of~~ analyze, and test any seed sold, offered, or exposed for sale, held, or distributed within this state for planting purposes, at ~~such a~~ a time and place, and to ~~such an~~ an extent, as determined by the commissioner ~~may determine~~. The
2. At a reasonable time, the commissioner and the commissioner's agents, at all reasonable times, have has the right of free access to the premises or structures controlled, owned, or operated by any person who may be, or whose seed, or the seed the person may be holding or storing or transporting, may be, investigated or proceeded against, and to any premises or structures or any kind of vehicle or conveyance where any seed may be located or in the process of transportation within the state, ~~when not prohibited by interstate commerce laws and rules, for the purpose of inspecting to inspect, examining examine, and sampling sample~~ any seed or seed plants plant.
3. Any person involved in any way in the handling, transportation, storage, buying, or selling of seed shall cooperate with the commissioner ~~and the commissioner's agents~~ and shall render all possible assistance to aid the commissioner ~~and the commissioner's agents~~ in the carrying out and enforcement of this chapter ~~and the rules adopted under this chapter. The commissioner may publish, or cause to be published, the results of the examination, analyses, and tests of any samples of seed or mixtures of seed, together with any information the commissioner may deem advisable.~~
4. The commissioner ~~or the commissioner's agent~~ may issue and enforce a written ~~or printed~~ "stop-sale" order to the owner or custodian of any lot of agricultural ~~or vegetable~~ seed ~~which that the commissioner or the commissioner's agent finds to be in violation of this chapter, which.~~ The order shall prohibit further sale, conditioning, and movement of ~~such the~~ seed until the commissioner ~~or the commissioner's agent~~ has evidence that the law has been complied with and has issued a release ~~from such "stop sale" order has been issued. Provided, that in respect to seeds which have.~~ As to seed that has been denied sale, conditioning, and movement ~~as provided in this section~~, the owner or custodian of ~~such~~ seeds has the right to appeal from the order to a court of competent jurisdiction in the locality in which the ~~seeds are~~ seed is found, praying for a judgment as to the justification of the order and for the discharge of ~~the seed from the order prohibiting the sale, conditioning, and movement~~ in accordance with the findings of the court. This ~~section subsection~~ does not limit the right of the commissioner ~~or the commissioner's agent~~ to proceed as authorized by other sections of this chapter.

**SECTION 7. AMENDMENT.** Section 4-09-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-06.1. Inspection - Export certification - Fees.** The commissioner ~~or the commissioner's authorized representative~~ may inspect agricultural seed, flower seed, vegetable seed, tree and shrub seed, and Irish potato tubers when the seed or tubers are offered for export. The commissioner may issue a phytosanitary certificate to plant quarantine officials and may make reasonable charges for this service. ~~Certificates~~ The commissioner may ~~be withheld~~ withhold the certificate if the product does not meet sanitary requirements and if all state licensing and bonding requirements ~~have not been met~~. The name and address of the consignee on the phytosanitary certificate is confidential.

**SECTION 8. AMENDMENT.** Section 4-09-07 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-07. Official laboratories—Location— Certificates and reports - Publication.** The commissioner, ~~subject to the approval and supervision of the state seed commission, shall provide and maintain under the commissioner's direction necessary laboratories and facilities properly equipped to make analyses, tests, and variety and disease determinations of seeds and plants, and to effect such other results and work as may be necessary to carry out this chapter. For these purposes, the commissioner may utilize such premises, space, and equipment at the North Dakota state university of~~

~~agriculture and applied science as may be assigned to the commissioner by the state board of higher education. The commissioner, subject to the approval of the state board of higher education, shall permit the facilities and services of the official laboratories to be used by the university at convenient times.~~

- ~~1. When a report or certificate relating to the findings and determinations made in a laboratory is issued and signed by the commissioner or a duly authorized agent, it, the document must be accepted as prima facie evidence of the statements therein contained in the document, but the commissioner or the commissioner's analysts are is subject to court order for a review of findings as set forth by such certificates or reports in the document.~~
2. The commissioner may publish reports or explanatory material concerning seed or inspections, tests, analyses, or other determinations made by the commissioner and may ~~enlarge~~ expand the same with material setting forth the value or condition of the seed stocks which are produced in this state or in which North Dakota persons are interested. The commissioner also may publish lists of certified seed.

**SECTION 9. AMENDMENT.** Section 4-09-08 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-08. Public laboratory service - Fees for tests.** The commissioner shall accept samples submitted ~~to the state laboratory~~ for testing and shall determine the types of tests to be conducted on the samples. The commissioner, with the approval of the ~~seed~~ commission, shall establish and charge fees for laboratory tests and services.

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

**4-09-10. Labeling requirements for agricultural seed.**

- ~~1. Each container of agricultural seed which is sold, offered for sale, exposed for sale, transported for sale, or held in storage with the intent to sell for planting purposes within this state must bear thereon or have attached thereto in a conspicuous place, or there must be properly delivered with bulk sales or movements of said agricultural seed; a conspicuous, plainly written or printed label or tag in the English language giving with the following information required by this section, which statement may not be modified or denied in the labeling or on another label attached to the container.~~
- ~~1-a.~~ 2. In ~~seeds~~ seed of wheat, durum, barley, oats, rye, soybeans, field pea, dry beans, and flax, the label must contain the commonly accepted name of the kind and variety of each agricultural seed component in excess of five percent of the whole and the percentage by weight of each. Variety identification is not required for seeds labeled "for vegetative cover only". Seed listed in this subsection may be sold by brand if the true variety name or number is clearly stated on the label in a type size equal to or greater than the brand.
- ~~b.~~ 3. In ~~seeds~~ seed of canola, the label must contain a statement that the seed must be is certified by the commissioner as meeting the standards of this chapter or have been certified by another state or province having certification standards for canola which meet or exceed standards adopted by this chapter.
- ~~e.~~ 4. In all other ~~seeds~~ seed not named in ~~subdivisions~~ subsections 2 and b 3, the label must contain the commonly accepted name of the kind or the kind and variety of each agricultural seed component in excess of five percent of the whole and the percentage of weight of each.
- ~~d.~~ 5. When more than ten percent of the whole consists of an aggregate of agricultural seed components, each present in an amount not exceeding five percent of the whole, the label

~~must contain~~ each component in excess of one percent of the whole ~~must be~~ named together with the percentage by weight of each. ~~All components~~ Each component must be listed in the order of ~~their~~ its predominance. ~~Where~~ When more than one component is named, the word "mix", "mixed", "mixture", or ~~the word "mixed"~~, "blend" must be ~~shown conspicuously on the label~~ appropriately stated with the name of the mixture or blend.

2. 6. For each container of agricultural seed, the label must contain:
  - a. Lot number or other lot identification.
  3. b. ~~Origin~~ The origin, state or foreign country, where grown. If the origin is unknown, that fact must be stated.
  4. c. ~~Percentage~~ The percentage by weight of all weed seeds seed.
  5. d. The name and rate of occurrence per pound [453.59 grams] of each kind of restricted noxious weed ~~seeds~~ seed present, if the restricted noxious weed ~~seeds are~~ seed is present singly or collectively in amounts:
    - a. ~~In~~ in seeds of grasses and small seeded legumes; in excess of thirteen seeds per pound [453.59 grams]; ~~and, or~~
    - b. ~~In~~ in other agricultural seeds, including the cereals, oil seed crops, millets, and seeds of similar size, in excess of five seeds per pound [453.59 grams].
  6. e. ~~Percentage~~ The percentage by weight of agricultural seed ~~which~~ that may be designated as crop seed, other than those required to be named on the label.
  7. f. ~~Percentage~~ The percentage by weight of inert matter.
  8. ~~For each agricultural seed:~~
    - a. g. ~~Percentage~~ The percentage of germination for each agricultural seed, exclusive of hard seed. ~~Total; the percentage of hard seed if present for each agricultural seed; and if desired the total germination and hard seed may be stated as such, if desired for each agricultural seed.~~
    - b. ~~Percentage of hard seed, if present. Total germination and hard seed may be stated as such, if desired.~~
    - e. ~~The~~ In addition, the calendar month and year the test was completed to determine ~~such~~ these percentages.
  9. h. The full name and address of the person who labeled ~~said~~ the seed; or who sells, offers for sale, or exposes ~~said~~ the seed for sale within this state.
  10. i. ~~For~~ If the seed is treated ~~seeds as defined in this chapter,~~ for which a separate label may be used:
    - a. A, a word or statement indicating that the seed has been treated;
    - b. ~~The~~ the commonly accepted, coined, chemical or abbreviated chemical (~~generic~~) name of the applied ~~seed protectant pesticide~~ substance; and
    - e. ~~If~~ if the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement ~~such as "Do not prohibiting use for food or, feed, or oil purposes".~~ The caution and for mercurials and similar toxic substances ~~must be~~ a poison statement or symbol. If the seed is treated with an inoculant, the label must contain the date beyond which the inoculant is not to be considered effective.

- 11. j. ~~That the~~ The seed container itself is a hermetically sealed container as defined by rules adopted by the commissioner.
- 12. k. ~~A disease test result for seedborne diseases. For the purpose of this subsection, the words "disease test result" have the meaning ascribed to them by rules adopted by the commissioner.~~

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

**4-09-11. Labeling requirements for vegetable seed.**

- 1. Each container of vegetable seed which is sold, offered for sale, exposed for sale, transported for sale, or held in storage with the intent to sell for ~~sowing~~ planting purposes within this state ~~shall~~ must bear ~~thereon~~, or have attached ~~thereto~~, in a conspicuous place ~~a~~, plainly written or printed label or tag in the English language with the information required by this section, which may not be modified or denied in the labeling.
- 4. 2. For vegetable seeds ~~seed~~ in containers of one pound [.45 kilograms] or less, such label or tag must give the following information packets as prepared for use in home gardens or household plantings or vegetable seed in preplanted containers, mats, tapes, or other planting devices:
  - a. The name of kind and variety of seed.
  - b. Lot identification by lot number or other means.
  - c. ~~For seeds which germinate~~ seed that germinates less than the ~~standards as set forth in section 201.31 of the rules and regulations under the Federal Seed Act, "Service and Regulatory Announcement No. 156", and subsequent revisions:~~
    - (1) Percentage standard established by the commissioner, the percentage of germination, exclusive of hard seed:
    - (2) Percentage; the percentage of hard seed, if present:
    - (3) The calendar month and year the test was completed.
    - (4) The; and the words "below standard" in not less than eight point eight-point type.
  - e. d. The ~~full~~ name and address of the person who labeled said the seed; or who sells, offers for sale, or exposes ~~said the~~ the seed for sale within this state.
  - d. ~~For treated seed as defined in this chapter for which a separate label may be used:~~
    - (1) ~~A word or statement indicating that the seed has been treated.~~
    - (2) ~~The commonly accepted, coined, chemical or abbreviated chemical (generic) name of the applied substance.~~
    - (3) ~~If the substance in the amount present with the seed is harmful to human or other vertebrate animals a caution statement such as "Do not use for food or feed or oil purposes". The caution for mercurials and similar toxic substances must be a poison statement or symbol.~~
  - e. ~~That the seed container itself is a hermetically sealed container. For the purposes of this subsection, the words "hermetically sealed container" have the meaning ascribed to them by regulation promulgated by the state seed commissioner. The calendar month and year the germination test was completed and a statement stating the sell~~

by date that may be no more than twelve months from the date of test, exclusive of the month of test, or the percentage germination and the calendar month and year the test was completed to determine the percentage if the germination test was completed within twelve months, exclusive of the month of test.

f. For seeds placed in a germination medium, mat, tape, or other device in a way as to make it difficult to determine the quantity of seed without removing the seed, a statement to indicate the minimum number of seeds in the container.

2- 3. For vegetable seeds seed in containers of more than one pound [.45 kilograms], such label or tag must give the following information other than packets prepared for use in home gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices:

a. The name of each kind and variety of vegetable seed present in excess of five percent and the percentage by weight of each in order of its predominance.

b. Lot number or other lot identification.

c. Origin, meaning the state or foreign country where grown. If the origin is unknown, that fact must be stated.

d. The name and rate of occurrence per pound [.45 kilograms] of each kind of restricted noxious weed seeds present.

e. For each named vegetable seed:

(1) Percentage, the percentage of germination, exclusive of hard seed. Total, and the percentage of hard seed if present, and if desired, the total germination and hard seed may be stated as such, if desired.

(2) Percentage of hard seed, if present. Total germination and hard seed may be stated as such, if desired.

(3) The In addition, the calendar month and year the test was completed to determine such these percentages.

f. d. The full name and address of the person who labeled said the seed, or who sells, offers for sale, or exposes said seed for sale within this state.

e. The labeling requirements for vegetable seed in a container of more than one pound [.45 kilogram] are satisfied if the seed is weighed from a properly labeled container in the presence of the purchaser.

g- 4. For vegetable seed in any size container, the label for treated seed as defined in this chapter, for which a separate label may be used:

(1) A, must contain a word or statement indicating that the seed has been treated-

(2) The; the commonly accepted, coined, chemical or abbreviated chemical (generic) name of the applied substance-

(3) If; and if the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement such as "Do not prohibiting use for food or, feed, or oil purposes". The caution and for mercurials and similar toxic substances shall be a poison statement or symbol. If the seed is treated with an inoculant, the label must contain the date beyond which the inoculant is not to be considered effective.

- h. ~~5.~~ The labeling requirements for vegetable ~~seeds~~ seed in containers of more than one pound [~~.45 kilograms~~ kilogram] are deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser.
- i. ~~6.~~ ~~That~~ For vegetable seed in any size container, the label must state the seed container itself is a hermetically sealed container. ~~For the purposes of this subsection, the words "hermetically sealed container" have the meaning ascribed to them by regulation promulgated by the state seed commissioner.~~

**SECTION 12. AMENDMENT.** Section 4-09-11.1 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-11.1. Labeling requirements for flower ~~seeds~~ seed.**

- 1. Each container of flower ~~seeds~~ which seed that is sold, offered for sale, exposed for sale, or transported within this state for ~~sewing~~ planting purposes, ~~shall~~ must bear ~~thereon~~ or have attached ~~thereto~~ in a conspicuous place a, plainly ~~written or printed~~ written or printed label or tag in the English language, ~~giving with the following information required by this section, which statement may not be modified or denied in the labeling or on another label attached to the container.~~
- 4. ~~2.~~ For all flower ~~seeds~~:
  - a. ~~A seed, the label must contain a word or statement indicating whether the seed has been treated.~~
  - b. ~~The; the~~ commonly accepted coined, chemical, or abbreviated chemical (~~generic~~) name of the applied substance or description of the process used-
  - e. ~~If; and~~ if the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement ~~such as "Do not prohibiting use for food, feed, or oil purposes". The caution~~ and for mercurials and similarly toxic substances ~~must be~~ a poison statement and symbol.
  - d. If the seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective (~~date of expiration~~).
- 2. ~~3.~~ For flower ~~seeds~~ seed in packets prepared for use in home gardens or household plantings or flower ~~seeds~~ seed in preplanted containers, mats, tapes, or other planting devices, the label must contain:
  - a. For all kinds of flower ~~seeds~~:
    - (1) ~~The seed, the~~ name of the kind and variety or a statement of type and performance characteristics as ~~prescribed in the rules and regulations promulgated under the provisions of this chapter.~~
    - (2) ~~The~~ required by the commissioner, the calendar month and year the seed was tested or the year for which the seed was packaged-
    - (3) ~~The, and the~~ name and address of the person who labeled ~~said~~ the seed; or who sells, offers, or exposes ~~said~~ the seed for sale within this state.
  - b. For ~~seeds~~ seed of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard last established under ~~the provisions of this chapter:~~
    - (1) ~~Percentage,~~ the percentage of germination exclusive of hard seeds-

~~(2)~~ ~~The~~ and the words "below standard" in not less than eight-point type.

c. For ~~seeds~~ seed placed in a germination medium, mat, tape, or other device ~~in such a way so~~ as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container.

~~3.~~ 4. For flower ~~seeds~~ seed in containers other than packets prepared for use in home flower gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices the label must contain:

a. The name of the kind and variety or a statement of type and performance characteristics as prescribed in rules and regulations promulgated under the provisions of this chapter.

b. The lot number or other lot identification.

c. The calendar month and year that the seed was tested or the year for which the seed was packaged.

d. The name and address of the person who labeled ~~said~~ the seed or who sells, offers, or exposes ~~said~~ the seed for sale within this state.

e. For those kinds of seed for which standard testing procedures are prescribed:

~~(1)~~ Percentage, the percentage germination exclusive of hard seed:

~~(2)~~ Percentage and the percentage of hard seed, if present.

**SECTION 13. AMENDMENT.** Section 4-09-11.2 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-11.2. Labeling requirements for tree and shrub seeds.**

1. Each container of tree and shrub seed which is sold, offered for sale, or exposed for sale, or transported within this state for ~~sewing~~ planting purposes, must bear ~~thereon~~ or have attached ~~thereto~~ in a conspicuous place a, plainly written or printed label or tag in the English language, giving the ~~following~~ information required by this section, which ~~statement must~~ may not be modified or denied in the labeling ~~or on another label attached to the container~~, except that labeling of seed supplied under a contractual agreement may be by invoice accompanying the shipment or by an analysis tag attached to ~~said~~ the invoice if each ~~bag or other~~ container is clearly identified by a lot number stenciled on the container or if the seed is in bulk. ~~Each bag or container that is not so identified must carry complete labeling:~~

~~4.~~ 2. For all tree and shrub ~~seeds~~ seed, the label must contain:

a. A word or statement indicating whether the seed has been treated:-

~~b.~~ The; the commonly accepted coined, chemical, or abbreviated chemical ~~(generic)~~ name of the applied substance or description of the process used:-

~~c.~~ If; and if the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement ~~such as "Do not prohibiting use for food or, feed, or oil purposes".~~ The caution and for mercurials and similarly toxic substances ~~must be~~ a poison statement and symbol.

~~d.~~ If the seed has been treated with an inoculant, the date beyond which the inoculant is not to be considered effective ~~(date of expiration)~~.

2. ~~For all tree and shrub seeds subject to this chapter:~~
- a. ~~b.~~ ~~Common~~ The common name of the species of seed (and subspecies, if appropriate).
  - b. ~~c.~~ The scientific name of the genus and species (and subspecies, if appropriate).
  - c. ~~d.~~ ~~Lot~~ The lot number or other lot identification.
  - d. ~~Origin:~~
  - (1) e. ~~For~~ The origin for seed collected from a predominately indigenous stand; as identified by the area of collection the trees are growing and collected given by latitude and longitude, or geographic description, or political subdivision such as state or county.
  - (2) ~~For and for~~ seed collected from other than a predominantly indigenous stand; identify as identified by the area of collection and the origin of the stand place from which the seeds or plants were originally introduced or state "origin not indigenous".
  - e. f. The elevation or the upper and lower limits of elevations within which ~~said~~ the seed was collected.
  - f. g. Purity The purity as a percentage of pure seed by weight.
  - g. h. For those species for which standard germination testing procedures are prescribed, the following:
    - (1) Percentage percentage germination exclusive of hard seed-
    - (2) Percentage; the percentage of hard seed, if present-
    - (3) ~~The; and the~~ calendar month and year test was completed to determine such the percentages.
  - h. In lieu of ~~paragraphs 1, 2, and 3 of this~~ subdivision g, the seed may be labeled "Test is in process, results will be supplied upon request".
  - i. For those species for which standard germination testing procedures have not been prescribed, the calendar year in which the seed was collected.
  - j. i. The name and address of the person who labeled ~~said~~ the seed or who sells, offers, or exposes ~~said~~ the seed for sale within this state.

**SECTION 14. AMENDMENT.** Section 4-09-12 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-12. Invoice and records.** Each person whose name appears on the label ~~handling agricultural, vegetable, flower, or tree and shrub seeds subject to this chapter,~~ and handles seed shall keep for a period of ~~two~~ three years complete records of each lot of seed handled, and shall keep ~~for a period of one year~~ a file sample of each lot of seed for a period of one year after final disposition of ~~said the~~ lot. All records pertaining to the lot ~~or lots~~ involved must be accessible for inspection by the commissioner ~~or his agents~~ at any time during customary business hours.

**SECTION 15. 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 ~~December 31 June 30, 2002~~ 2005, 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 16. AMENDMENT.** Section 4-09-14 of the North Dakota Century Code is amended and reenacted as follows:

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

1. ~~It is unlawful for any~~ A person to ~~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 if:
  - a. ~~The~~ Unless for agricultural seed, a test to determine the percentage of germination required under sections section 4-09-10, 4-09-11, 4-09-11.1, and 4-09-11.2 has not been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to the sale, offering for sale, or transportation, provided that seeds contained in a hermetically sealed container, as defined by regulation issued by the seed commissioner, may be sold, transported for sale, or held for sale unless the test provided in this subdivision has not been completed within a thirty-six month period, exclusive of the calendar month in which the test was completed, immediately prior to the sale, offering for sale, or transportation for sale 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;
  - ~~b.~~ e. If the seed is not labeled in accordance with the provisions of this chapter or bears false or misleading labeling;
  - ~~c.~~ f. There If there has been false or misleading advertising in connection with the seed;
  - ~~d.~~ g. The If the seed contains prohibited noxious weed seeds;
  - ~~e.~~ h. With regard to Unless for agricultural or vegetable seed, the seed is not labeled to show the rate of occurrence of restricted noxious weed seeds, as required under sections 4-09-10 and 4-09-11;
  - ~~f.~~ i. The If the seed is designated, offered, represented, or advertised under any name or identification other than that the name by which it the seed was known originally;

- ~~g.~~ j. ~~The~~ If the seed contains restricted noxious weed seeds in excess of twenty-five seeds per pound [453.59 grams]; or
  - ~~h.~~ k. ~~The~~ If the percentage by weight of all weed seeds in the seed exceeds one percent.
2. Any person, ~~under rules adopted by the commissioner,~~ may submit to the commissioner a sample of any seed which the person claims to be a new variety, distinct from any commonly known variety of the seed, together with a proposed, distinctive name. The commissioner, within one year, shall make any ~~tests~~ test the commissioner considers necessary, and if the commissioner finds as a result of the ~~tests~~ 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.
2. 4. ~~It is unlawful for any~~ A person in this state ~~to~~ 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 ~~or the commissioner's agent,~~ and only for the purpose specified in ~~such~~ this written permission;
  - h. Use the name of the ~~state seed~~ 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 17. AMENDMENT.** Section 4-09-14.1 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-14.1. Seed sales - Seed labeling fee permit - Exception.** ~~No~~ A person may not label agricultural, vegetable, flower, or tree or shrub seed within, or for delivery within, this state unless a seed labeling fee permit has been obtained from the ~~seed department~~ commissioner and has been issued to the labeler pursuant to section 4-09-14.4.

**SECTION 18. AMENDMENT.** Section 4-09-14.4 of the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 19. AMENDMENT.** Section 4-09-15 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-15. Exemptions.** Sections ~~4-09-10, 4-09-11, 4-09-11.1, 4-09-11.2, 4-09-14.1, 4-09-14.2, 4-09-14.3, and 4-09-14.4~~ shall

1. This chapter does not apply to:
  1. a. Potatoes, whether sold or intended for food, manufacturing, or planting purposes.
  2. b. Seed or grain that is not intended for planting purposes.
    - a. 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 ~~seed department~~ commissioner.
    - b. It is unlawful for the seller or buyer to make a false representation as to the use of the seed or grain.
    - e. A farmer selling the farmer's own seed or grain to a commercial establishment is exempt from the recordkeeping requirements of this subsection.
  3. c. Seed stored by or consigned to a seed cleaning or conditioning plant for the purpose of cleaning or conditioning; ~~provided that.~~ However, any labeling or other representation which may be made with respect to uncleaned or unconditioned seed is subject to the requirements of this chapter.
  4. d. A common carrier with respect to any seed transported or delivered for transportation in the ordinary course of business.
  5. e. A farmer who grows ~~his~~ the farmer's own seed and sells only ~~his~~ 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. ~~No~~ However, a variety for which a certificate plant variety protection has been applied for or issued is not exempt from this chapter.
2. A person shall be 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 ~~seeds which were~~ seed that was incorrectly labeled or incorrectly represented as to kind, variety, or origin and which could not be identified ~~by~~ through examination ~~thereof~~, unless ~~such~~ 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 ~~such~~ other precautions as may have been necessary to ensure that the seed was properly identified.

**SECTION 20. 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 ~~such~~ the seed for market.
2. Designate kinds, varieties, and names of seed stocks, and establish standards of quality, degree of disease infection, and amounts of any admixtures, foreign seeds, noxious weeds, or other weed seeds that are allowed in any lot or stock of seed, which may be or become eligible for field inspection or for final certification of the seed crop.
3. Prescribe all labels, seals, certificates, or similar statements that must be used for, or in relation to, any seed, or the various kinds and qualities grown, handled, stored, held for sale, sold, or offered or exposed for sale in this state as "breeders", "foundation", "registered", or "certified" seed, and shall specify what words, terms, or figures ~~such~~ the labels, seals, certificates, or the containers of ~~such~~ the seed must bear.
4. Cooperate with the managers of any seed conditioning plants, or any commercially established seed firm, or any person within or outside of the state having proper facilities and equipment to store, condition, and otherwise handle seed which is eligible for certification, for the purposes of handling and marketing "breeders", "foundation", "registered", or "certified" seed.
5. Cooperate in the selection, testing, and growing of seed for certification purposes and in the arrangement for increase of foundation seed stocks suitable for the production of certified seed.
6. Establish an equitable schedule of fees and charges, which must be uniform throughout the state, for inspecting, testing, analyzing, and recording ~~such~~ the seed, and for other work and duties incident to the growing, handling, marketing, and certifying of North Dakota seed, and shall collect all ~~such~~ the fees and charges.

**SECTION 21. 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, ~~2004~~ 2005], 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 22. AMENDMENT.** Section 4-09-18 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-18. Certified seed standards.**

1. The rules and requirements for certification of crop seeds, other than potatoes, must be ~~those prescribed and set forth published in the state seed department bulletin number 51, published in March 1945, and subsequent announcements and revisions of the bulletin.~~ published in the state seed department bulletin number 51, published in March 1945, and subsequent announcements and revisions of the bulletin.
2. The rules and requirements for seed potato certification must be ~~those prescribed and set forth published in the state seed department bulletin number 49 as revised in August 1950, and subsequent announcements and revisions of the bulletin.~~ published in the state seed department bulletin number 49 as revised in August 1950, and subsequent announcements and revisions of the bulletin.

**SECTION 23. AMENDMENT.** Section 4-09-20.1 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-20.1. Liability of seed commission, seed department, commissioner, and certified or noncertified agricultural seed producers.** ~~No warranties~~ A warranty of any kind, either expressed or implied, including ~~warranties~~ a warranty of merchantability, fitness for a particular purpose, or absence of disease, ~~are~~ is ~~not~~ made by the ~~state seed~~ commission, the ~~seed~~ department, the commissioner ~~or the commissioner's employees~~, or certified or noncertified agricultural seed producers as to the quantity or quality of the crop produced from the agricultural seeds or as to other produce which is inspected and certified, except as provided in this section. The ~~only~~ sole warranty made is that the agricultural seeds or other produce were produced, graded, packed, and inspected under the rules of the ~~state seed~~ department or United States department of agriculture. The commissioner ~~and the commissioner's employees function~~ functions and ~~serve~~ serves only in an official regulatory manner.

**SECTION 24. AMENDMENT.** Section 4-09-20.2 of the North Dakota Century Code is amended and reenacted as follows:

**4-09-20.2. Seed arbitration board - Petition - Arbitration hearing.**

1. The state seed arbitration board consists of the agriculture commissioner, the state seed commissioner, the director of the North Dakota state university extension service, the director of the North Dakota agricultural experiment station, the chairman of the North Dakota seed trade committee of the North Dakota agriculture association, and a representative of a major North Dakota farm organization appointed by the agriculture commissioner or an authorized designee. Each board member is entitled to receive as per diem compensation sixty-two dollars and fifty cents, and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the board, except that compensation under this subsection may not be paid to any member who receives compensation or salary as a regular state employee or official. Compensation and expenses for board members who do not receive compensation or salary as a regular state employee or official must be paid by the department of agriculture.
2. A seed labeler, seed dealer, or seed customer may petition the agriculture commissioner in writing for a hearing to settle a dispute involving a seed transaction. The agriculture commissioner shall submit the dispute to the seed arbitration board, and the board shall arbitrate the dispute. The board, within thirty days after the hearing, shall make a nonbinding recommendation for the resolution of the dispute. Evidence presented to the board and any findings or recommendations by the board are admissible as evidence in any subsequent proceeding. The board shall adopt rules and procedures for arbitration proceedings, including a formula for reimbursement by the parties of the expenses of the arbitration process.

**SECTION 25. AMENDMENT.** Section 4-09.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**4-09.1-02. ~~Seed commissioner~~ Commissioner - Duties.** The commissioner may establish commodity grades and inspection services for the purpose of making inspection and otherwise providing for the proper handling and marketing of ~~the agricultural commodities defined in this chapter and may adopt rules necessary for and consistent with the provisions of this chapter.~~ The commissioner shall appoint a chief inspector and other ~~agents, inspectors, assistants, and clerical aides~~ employees as are necessary ~~to assist, represent, and act for the commissioner in carrying out the provisions of this chapter.~~ The commissioner shall fix the salaries of employees ~~of the commission~~ within the limits of legislative appropriations ~~therefor~~.

**SECTION 26. AMENDMENT.** Section 4-09.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**4-09.1-04. Cooperation with departments and bureaus.** The commissioner may cooperate with the United States department of agriculture or any bureau or division ~~thereof of the department,~~ and with a similar state inspection service ~~departments of the several states,~~ and with any person, ~~with the intent and purpose that the grade inspection service in this state, and so that any or all of the grade certificates issued on North Dakota the commodities, must be in this state are~~ officially recognized and accepted elsewhere in the United States, ~~and to protect and promote the interests of any and all persons~~ each person having an interest in the commodities grown or handled in this state, and to provide for any necessary joint arrangements to further the purpose of this chapter.

**SECTION 27. AMENDMENT.** Section 4-25-01 of the North Dakota Century Code is amended and reenacted as follows:

**4-25-01. Definitions Definition of agricultural seed.** In this chapter unless the context or subject matter otherwise requires:

1. ~~The, the~~ term "agricultural seed" includes seeds of grass, forage, cereals, fiber, and oil crops, and any other kinds of seeds commonly recognized within this state as agricultural or field seeds and mixtures of ~~such~~ these seeds for ~~sowing or~~ planting purposes.
2. "Person" ~~means any individual, partnership, corporation, limited liability company, company, society, or association, except a farmer resident of North Dakota who may sell seed of that person's own production.~~

**SECTION 28. AMENDMENT.** Section 4-25-02 of the North Dakota Century Code is amended and reenacted as follows:

**4-25-02. Prohibitions.** ~~It is unlawful for any~~

1. ~~A person in this state to~~ may not accept full or partial payment in connection with the sale of any agricultural seeds to be delivered to the buyer at a later date, unless each ~~and every~~ transaction is accompanied by a written sales agreement or contract ~~which must contain thereon~~ that contains the following provisions:
  1. a. The date and place of the transaction.
  2. b. The signature and address of the buyer and the seller or the agent acting for the seller.
  3. c. The number of units and the price per unit.
  4. d. The total value of the transaction.
  5. e. The total amount of the full or partial payment made to the seller by the buyer.
  6. f. The kind and variety of seed for wheat, durum, barley, oats, rye, flax, soybeans, field pea, and edible beans.
  7. g. The class of the seed to be delivered, and if the seed is not certified, then the minimum germination and seed purity percentages must be stated. If the seed is certified, the words "breeders", "foundation", "registered", or "certified", as the case may be, must be shown.
  8. h. The date of delivery or the latest date at which delivery is to be made.
  9. i. The place of delivery.
2. Any provision in any written order or contract, which is contrary to any of the provisions of this section hereby is declared to be against public policy and void.

**SECTION 29. AMENDMENT.** Section 4-25-03 of the North Dakota Century Code is amended and reenacted as follows:

**4-25-03. Penalty.** Any person violating ~~the provisions of sections 4-25-01 and~~ section 4-25-02 is guilty of a class B misdemeanor.

**SECTION 30. AMENDMENT.** Section 4-25-04 of the North Dakota Century Code is amended and reenacted as follows:

~~**4-25-04. Repurchase contracts — Bonding requirement for nonresident seed dealers**~~  
**Nonresident seed dealer license.** Any nonresident person or that person's agent shall pay an annual license fee of twenty five dollars to the commissioner before engaging in the business of selling any agricultural grain or grass seed and entering into any contract with a purchaser whereby that person agrees to purchase or retains an option to purchase the grain or grass seed or feed grain produced. The license is renewable annually on January first of each year. At the time of applying for a license, the applicant shall furnish a corporate surety bond to be approved by the commissioner in the penal sum of ten thousand dollars running to the state of North Dakota for the use and benefit of any such purchaser of seed or seller under a repurchase contract or option, who may have a claim for relief against any seller or repurchaser who fails to comply with the terms of the purchase or repurchase contract. All fees collected under this section must be deposited in the seed department revolving fund. Any nonresident person engaged in the business in selling agricultural seed directly to the consumer in this state shall submit an annual application for a nonresident seed dealer license and submit an annual license fee, in an amount determined by the commission, to the state seed commissioner. A list of agents representing the nonresident company in this state must accompany the application.

**SECTION 31. REPEAL.** Sections 4-09-03.1, 4-09-10.1, and 4-09-14.3 of the North Dakota Century Code are repealed.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2044.

Senate Vote:    Yeas    43        Nays    0        Absent    4

House Vote:    Yeas    91        Nays    0        Absent    3

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2005,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State