

Introduced by

1 A BILL for an Act to create and enact nine new sections to chapter 4-28, relating to the wheat  
2 commission districts, elections, members, and duties; to amend and reenact sections 4-28-02,  
3 4-28-03, 4-28-05, 4-28-06, 4-28-07.1, 4-28-08, and 4-28-09 of the North Dakota Century Code,  
4 relating to the wheat commission, powers, member compensation, and the levying of a tax on  
5 wheat; to repeal section 4-28-01 of the North Dakota Century Code, relating to a statement  
6 declaring public policy; to provide a penalty, and to provide a continuing appropriation.

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

8 **SECTION 1. AMENDMENT.** Section 4-28-02 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **4-28-02. Definitions.** As used in this chapter:

11 1. "Commercial channels" means the sale of wheat ~~for any use, when sold by the a~~  
12 ~~producer to any commercial buyer, dealer, processor, cooperative, or to any~~  
13 ~~person, firm, corporation, limited liability company, association, or partnership who~~  
14 ~~resells any wheat or any product produced therefrom~~ from wheat.

**NOTE:** NDCC Section 1-01-49 defines a person as a human being, foreign or domestic  
association, business trust, corporation, enterprise, estate, joint venture, limited liability  
company, limited liability partnership, limited partnership, partnership, trust, any legal or  
commercial entity, government, political subdivision, or government agency or  
instrumentality.

15 2. "Commission" means the North Dakota ~~state~~ wheat commission.

16 3. ~~The term "final settlement" means the~~ "Final settlement" means:

17 a. The date ~~the~~ that wheat upon which a loan was obtained is sold to ~~the~~  
18 ~~elevator or to a private~~ a person other than a governmental entity or is  
19 assigned or transferred to ~~an agency of the~~ a United States government  
20 agency; or ~~the~~

- 1           b. The date upon which the payment for the wheat is actually made in instances  
2            when if the wheat is sold but payments are in accordance with the terms of a  
3            deferred payment contract.
- 4           4. "First purchaser" means any person, ~~firm, corporation, association, partnership,~~  
5            ~~agent, or broker~~ buying, accepting for sale, or otherwise acquiring, after harvest,  
6            the property in or to wheat from the ~~grower and~~ producer. The term includes a  
7            mortgagee, pledgee, lienor, or other ~~claimant~~ person having a claim against the  
8            producer, ~~when~~ if the actual or constructive possession of wheat is taken as part  
9            payment or in satisfaction of ~~such a~~ a mortgage, pledge, lien, or claim.
- 10          5. "Producer" means any landowner or tenant engaged in growing wheat and  
11          receiving, in such capacity, any portion of the crop produced.
- 12          6. "Sale" includes any pledge or mortgage of wheat, after harvest, to any person;  
13          ~~firm, corporation, limited liability company, association, or partnership.~~
- 14          7. "Wheat" includes all ~~varieties of hard red spring wheat, durum, and winter wheats~~  
15          classes of wheat.

**NOTE:** In subsection 4, the term "grower" is used. It has been changed to "producer," because that is the term defined in subsection 5.

16          **SECTION 2.** A new section to chapter 4-28 of the North Dakota Century Code is  
17          created and enacted as follows:

18          **Wheat commission - State districts.** The state consists of the following six wheat  
19          commission districts:

- 20          1. Golden Valley, Billings, Dunn, Mercer, Oliver, Stark, Morton, Slope, Hettinger,  
21          Grant, Sioux, Bowman, and Adams Counties;
- 22          2. Divide, Burke, Renville, Williams, Mountrail, Ward, and McKenzie Counties;
- 23          3. McLean, Sheridan, Wells, Eddy, Burleigh, Kidder, Stutsman, Foster, Emmons,  
24          Logan, and McIntosh Counties;
- 25          4. Bottineau, Rolette, Towner, McHenry, Pierce, Benson, and Ramsey Counties;
- 26          5. Griggs, Steele, Traill, Barnes, Cass, LaMoure, Dickey, Ransom, Sargent, and  
27          Richland Counties; and
- 28          6. Cavalier, Pembina, Walsh, Nelson, and Grand Forks Counties.

**NOTE:** NDCC Section 4-28-04. Because this section established the six wheat commission districts, it is recommended that it be placed before the sections pertaining to the election of wheat commission members.

1       **SECTION 3. AMENDMENT.** Section 4-28-03 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **4-28-03. Wheat commission - Members - Terms of office.**

- 4       1. The North Dakota state wheat commission consists of ~~seven members. One one~~  
5 member ~~must be appointed or elected~~ from each of the six wheat commission  
6 districts ~~of the state established by this chapter~~ and one at-large member ~~must be~~  
7 ~~appointed or elected from the state at large.~~ Each member, except the member  
8 from the state at large, ~~must be a resident of and a qualified elector in the district~~  
9 ~~the member represents and must have farming operations in the district.~~ The  
10 member from the state at large ~~must have similar qualifications except as limited~~  
11 ~~by district lines.~~ An individual is not eligible to be a member of the wheat  
12 commission if that individual requested a refund under section 4-28-07 during the  
13 twelve-month period before the date on which the term sought by the individual  
14 would commence. This ineligibility does not apply to an individual who requested a  
15 refund because of an overpayment, as provided in subdivision c of subsection 2 of  
16 section 4-28-07. Each member of the wheat commission must be actively  
17 engaged in the production of wheat. A member of the wheat commission who  
18 elects not to plant wheat for one growing cycle may continue to serve on the  
19 commission if the member continues to be actively involved in farming. If a  
20 member elects not to plant wheat for more than one growing cycle, the member is  
21 deemed to have resigned and the commission shall declare the member's office  
22 vacant. A member of the wheat commission is not eligible to receive a refund  
23 under section 4-28-07; however, a member may request a refund because of an  
24 overpayment, as provided in subdivision c of subsection 2 of section 4-28-07. The  
25 commission may declare a member's position vacant if the member fails to attend  
26 two consecutive commission meetings.
- 27       2. Not more than sixty days prior to expiration of the term of the member from the  
28 state at large, a nominating committee consisting of the agriculture commissioner,  
29 the president of the North Dakota crop improvement association, the director of the

1           ~~North Dakota agricultural experiment station, the director of the North Dakota state~~  
2           ~~university extension service, the president of the North Dakota farm bureau, the~~  
3           ~~president of the North Dakota farmers union, the president of the North Dakota~~  
4           ~~grain dealers association, the president of the North Dakota grain growers~~  
5           ~~association, and an individual who is a resident of this state and a member of the~~  
6           ~~United States durum growers association, or their duly authorized representatives,~~  
7           ~~shall submit to the governor a list of three names and within sixty days after~~  
8           ~~expiration of the term the governor shall appoint, from the nominees so named, the~~  
9           ~~member at large to the commission.~~

10          3. ~~Each member of the commission shall hold office for a term of four years and until~~  
11          ~~the member's successor has been selected and has qualified except that the~~  
12          ~~commissioners elected and serving from the first and fourth districts shall hold~~  
13          ~~office for terms ending on June 30, 1984; the commissioners elected and serving~~  
14          ~~from the second and fifth districts shall hold office for terms ending on June 30,~~  
15          ~~1985; and the commissioners elected and serving from the third and sixth districts~~  
16          ~~shall hold office for terms ending on June 30, 1982; and the commissioner~~  
17          ~~appointed and serving as the state at large member shall hold office for a term~~  
18          ~~ending on June 30, 1983. No producer is entitled to serve more than three terms.~~

19          4. ~~At least sixty days prior to the expiration of the term of office of a commissioner~~  
20          ~~representing any district, a meeting of producers must be held in each county in~~  
21          ~~the district for the purpose of electing a county representative. The county agent~~  
22          ~~shall call such meeting by publishing notice in the official newspaper of the county~~  
23          ~~for two successive weeks, the last publication to be not less than five nor more~~  
24          ~~than ten days prior to the meeting. The meeting must be held at a central location~~  
25          ~~within the county and must be called to order by the county agent. The county~~  
26          ~~agent, in cooperation with the cooperative extension service, shall conduct all~~  
27          ~~elections under this section in each county in the manner the county agent deems~~  
28          ~~fair and reasonable, except that a producer may vote only in the producer's county~~  
29          ~~of residence. Votes must be canvassed by the county agent and certified by the~~  
30          ~~county agent with the name and post office address of the elected county~~  
31          ~~representative to the director of the North Dakota state university extension service~~

1           ~~who shall thereupon, as expeditiously as possible, call a meeting of the county~~  
2           ~~representatives of the district. Notice of such meeting must be sent to each county~~  
3           ~~representative by registered or certified mail not less than five days prior to the~~  
4           ~~meeting which must be held at a central location within the district. At such district~~  
5           ~~meeting, the county representatives shall elect one of their number as the district~~  
6           ~~member of the commission. The ballots at such meeting must be canvassed by~~  
7           ~~the North Dakota state university extension service and the result of election~~  
8           ~~certified to the governor by the director. To be eligible to hold the position of~~  
9           ~~county representative, an individual must be actively engaged in the production of~~  
10           ~~wheat. A county representative who elects not to plant wheat for one growing~~  
11           ~~cycle may continue to serve as a county representative if the individual continues~~  
12           ~~to be actively involved in farming. If a county representative elects not to plant~~  
13           ~~wheat for more than one growing cycle, the member is deemed to have resigned~~  
14           ~~and the commission shall declare the member's position vacant. Additional~~  
15           ~~meetings of county representatives may be called by the state wheat commission~~  
16           ~~for the purpose of promoting its programs. All expenses of all such meetings and~~  
17           ~~elections must be paid from commission funds. County representatives must be~~  
18           ~~reimbursed for expenses necessarily incurred in attending meetings and~~  
19           ~~performing other official duties on the same basis as other state officers.~~  
20           5. ~~Any vacancy occurring on the commission other than by expiration of term of office~~  
21           ~~must be filled by the county representatives who shall elect one of their number as~~  
22           ~~the district member of the commission for the remainder of the unexpired term. If~~  
23           ~~the vacancy is from the state at large, appointment must be made from three~~  
24           ~~nominations submitted by the nominating committee as in the case of the original~~  
25           ~~appointment. The term of office for members of the wheat commission is four~~  
26           ~~years. A district member must serve until the member's successor has been~~  
27           ~~elected and qualified and the member at large must serve until the member's~~  
28           ~~successor has been appointed. A member may not serve more than three terms.~~

**NOTE:** NDCC Section 4-28-03(1) and (3).

29           **SECTION 4.** A new section to chapter 4-28 of the North Dakota Century Code is  
30           created and enacted as follows:

1           **Wheat commission district member - Election.**

- 2           1. At least sixty days before the term of a wheat commission member, other than the  
3           member at large, is to expire, the extension agent for each county in that member's  
4           district shall hold a meeting of wheat producers for the purpose of electing a county  
5           representative.
- 6           2. The county extension agent shall publish notice of the meeting in the official  
7           newspaper of the county for two consecutive weeks. The latest notice must be  
8           published no fewer than five days nor more than ten days before the meeting.
- 9           3. The meeting must be held at a central location within the county.
- 10          4. At the meeting the county extension agent, in cooperation with the cooperative  
11          extension service, shall conduct the election. The county extension agent shall  
12          canvass the votes and shall certify the name and post-office address of the newly  
13          elected county representative to the director of the North Dakota state university  
14          extension service.
- 15          5. Upon receiving the certification, the director shall call a meeting of the county  
16          representatives from the member's district.
- 17          6. The director shall notify each county representative of the meeting, by registered or  
18          certified mail, at least five days before the date of the meeting. The meeting must  
19          be held at a central location within the district.
- 20          7. At the meeting, the county representatives shall elect one from among themselves  
21          to serve as the wheat commission member from that district.
- 22          8. The director of the North Dakota state university extension service shall canvass  
23          the votes and shall certify the name and post-office address of the newly elected  
24          wheat commission member to the governor.

**NOTE:** NDCC Section 4-28-03(4). With respect to subsection 6, Section 1-02-36 provides that throughout the century code "registered mail" means "registered or certified mail."

25           **SECTION 5.** A new section to chapter 4-28 of the North Dakota Century Code is  
26 created and enacted as follows:

27           **County representative - Eligibility Requirements.**

- 28           1. To become a county representative an individual must be actively engaged in the  
29           production of wheat.

- 1           2. If a county representative elects not to plant wheat for one growing cycle, the  
2                    individual may continue to serve as a county representative if the individual  
3                    remains actively involved in farming.
- 4           3. If a county representative elects not to plant wheat for more than one growing  
5                    cycle, the member is deemed to have resigned and the commission shall declare  
6                    the member's office vacant.

**NOTE:** NDCC Section 4-28-03(4). This section requires an individual to be "actively engaged" in the production of wheat, in order to become a county representative. The phrase "actively engaged" is used more than 30 times in the NDCC, but it is defined only in one section that pertains to a microbusiness income tax credit. There it means "involved on a continuous basis in the daily management and operation of the business." What does the phrase mean in this section?

7           **SECTION 6.** A new section to chapter 4-28 of the North Dakota Century Code is  
8 created and enacted as follows:

9           **County representative - Additional duties - Compensation.**

- 10           1. In addition to the election duties set forth in this chapter, county representatives  
11                    may be called by the wheat commission to attend meetings or perform other duties  
12                    as directed by the wheat commission.
- 13           2. The commission shall pay the expenses of all such meetings and elections from  
14                    commission funds.
- 15           3. The commission shall reimburse county representatives for all actual and  
16                    necessary expenses incurred in attending meetings and performing other official  
17                    duties at the same rate as that established for other state officers.

**NOTE:** NDCC Section 4-28-03(4). Current law provides that additional "meetings of county representatives may be called by the state wheat commission for the purpose of promoting its programs." The rewrite provides that county representatives may be called by the wheat commission "to attend meetings or perform other duties as directed by the wheat commission." This clarifies the intent that county representatives may be asked to do more than merely attend a meeting.

Subsection 2 is a reiteration of current law. It is recommended that this language be moved to the section pertaining to duties of the commission.

18           **SECTION 7.** A new section to chapter 4-28 of the North Dakota Century Code is  
19 created and enacted as follows:

20           **Wheat commission member at large - Appointment.**

- 21           1. No sooner than sixty days before the term of the wheat commission's member at  
22                    large is to expire, a nominating committee shall submit to the governor the names

1           of three individuals who are qualified to serve as a member at large. No later than  
2           sixty days after the member's term expires, the governor shall appoint one of the  
3           three individuals to serve as the member at large.

4           2. The nominating committee required by this section consists of the following  
5           individuals or their designees:

6           a. The agriculture commissioner;

7           b. The president of the North Dakota crop improvement association;

8           c. The director of the North Dakota agriculture experiment station;

9           d. The director of the North Dakota state university extension service;

10          e. The president of the North Dakota farm bureau;

11          f. The president of the North Dakota farmers union;

12          g. The president of the North Dakota grain dealers association;

13          h. The president of the North Dakota grain growers association; and

14          i. A resident of this state who is a member of the United States durham growers  
15          association.

**NOTE:** NDCC Section 4-28-03(2).

16          **SECTION 8.** A new section to chapter 4-28 of the North Dakota Century Code is  
17          created and enacted as follows:

18          **Wheat commission district members - Eligibility requirements.** Each wheat  
19          commission district member must be a resident of and a qualified elector in the district the  
20          member represents and must have farming operations in the district.

**NOTE:** NDCC Section 4-28-03(1).

21          **SECTION 9.** A new section to chapter 4-28 of the North Dakota Century Code is  
22          created and enacted as follows:

23          **Wheat commission members - Eligibility requirements.**

24          1. An individual is not eligible to be a member of the wheat commission if that  
25          individual requested a refund under section 4-28-07 during the twelve-month  
26          period before the date on which the term sought by the individual would  
27          commence. This ineligibility does not apply to an individual who requested a  
28          refund because of an overpayment, as provided in subdivision c of subsection 2 of  
29          section 4-28-07.

- 1           2. Each member of the wheat commission must be actively engaged in the production  
2           of wheat.
- 3           3. If a member of the wheat commission elects not to plant wheat for one growing  
4           cycle, the member may continue to serve on the commission if the member  
5           continues to be actively involved in farming.
- 6           4. If a member elects not to plant wheat for more than one growing cycle, the member  
7           is deemed to have resigned and the commission shall declare the member's office  
8           vacant.
- 9           5. a. Except as otherwise provided in this subsection, a member of the wheat  
10           commission is not eligible to receive a refund under section 4-28-07.
- 11           b. A member may request and receive a refund because of an overpayment, as  
12           provided in subdivision c of subsection 3 of section 4-28-07.
- 13           6. If a member fails to attend two consecutive commission meetings, the commission  
14           may declare the member's office to be vacant.

15           **SECTION 10.** A new section to chapter 4-28 of the North Dakota Century Code is  
16 created and enacted as follows:

17           **Vacancies.**

- 18           1. If a vacancy occurs in the office of a wheat commission district member, the county  
19           representative shall elect one from among themselves to serve as the wheat  
20           commission district member for the remainder of the unexpired term. The director  
21           of the North Dakota state university extension service shall canvass the votes and  
22           shall certify the name and post-office address of the newly elected wheat  
23           commission member to the governor.
- 24           2. If a vacancy occurs in the office of the at-large wheat commission member, the  
25           governor shall appoint an individual to serve for the remainder of the unexpired  
26           term, following the same process as used for the original appointment.

**NOTE:** NDCC Section 4-28-03(5).

27           **SECTION 11. AMENDMENT.** Section 4-28-05 of the North Dakota Century Code is  
28 amended and reenacted as follows:

29           **4-28-05. Wheat commission - Meeting - Expenses Compensation - Legal adviser**  
30 **counsel.** ~~Upon call of the governor, the~~

- 1           1. ~~The~~ commission shall ~~first meet and organize by electing~~ elect from the  
2           ~~membership~~ its members a chairman and vice chairman, who shall hold office for  
3           one year and until their successors are elected and ~~have~~ qualified.
- 4           2. Thereafter, the commission shall meet at least once every calendar quarter at such  
5           times and places as determined by the commission ~~and may meet in.~~ The  
6           commission shall adopt rules setting forth the requirements for calling and holding  
7           special meetings ~~upon such call and notice as prescribed by rules adopted by the~~  
8           ~~commission.~~
- 9           3. The commission shall determine the amount of compensation payable to each  
10          member of the commission. The amount payable may not exceed seventy-five  
11          dollars per day plus reimbursement of expenses as provided by law for state  
12          officers; while attending meetings or performing other official duties directed by the  
13          commission.
- 14          4. The attorney general shall ~~act as legal adviser~~ provide legal counsel to the  
15          commission ~~or designate an assistant for that purpose and.~~ The commission,  
16          within the limit of ~~the funds~~ moneys available to ~~the commission~~ it, may employ  
17          other counsel to advise and represent ~~the commission~~ it in its affairs and  
18          proceedings.

**NOTE:** NDCC Section 4-28-05. It is suggested that the language governing the compensation of commission members be placed in a separate section.

19          It is suggested that the language authorizing the employment of additional legal counsel  
20          be placed in the section governing the commission's powers.

21          **SECTION 12. AMENDMENT.** Section 4-28-06 of the North Dakota Century Code is  
22          amended and reenacted as follows:

23                 **4-28-06. Wheat commission - ~~Duties and powers~~ Powers.** ~~In the administration of~~  
24          ~~this chapter, the commission has the following powers, authority, and duties~~ The commission  
25          may:

- 26                 1. ~~To foster and promote programs aimed at increasing the sale, utilization, and~~  
27                 ~~development of wheat, both at home and abroad.~~
- 28                 2. ~~To publish and disseminate reliable information on the value of wheat and wheat~~  
29                 ~~products for any purpose for which they are valuable and useful to both processor~~  
30                 ~~and consumer.~~

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Legislative Assembly

- 1       ~~3. To search for and promote new uses of wheat and wheat products.~~
- 2       4. ~~To contract and cooperate~~ Contract with any person, firm, corporation, limited  
3       liability company, or association, or with any local, state, or federal department or  
4       agency for executing or carrying on a program or programs for the provision of  
5       research, education, and publicity.
- 6       ~~5. To lease~~
- 7       2. Lease, purchase, own, equip, and maintain, and operate a commission office.
- 8       ~~6. To appoint, employ, bond, discharge, fix the compensation, and prescribe the~~  
9       duties of such administrative, clerical, technical, and other personnel, employees,  
10       and agents as it may deem necessary to conduct the business and affairs of the  
11       commission
- 12       3. Employ, compensate, and bond necessary personnel.
- 13       ~~7. To accept~~
- 14       4. Accept gifts, grants, or donations of funds money, property, and services or other  
15       assistance, financial or otherwise, from federal, state, and other public or private  
16       sources for the purpose of aiding and promoting the work and objectives of the  
17       commission, depositing all funds so received in the state wheat commission fund in  
18       the state treasury.
- 19       ~~8. To provide market maintenance and development services, utilization research,~~  
20       transportation research, and education.
- 21       ~~9. To address trade and domestic issues.~~
- 22       10. ~~To seek improvement in the export quality of wheat.~~
- 23       11. ~~To exercise all express and implied rights, powers, and authority that may be~~  
24       necessary to perform and carry out the expressed purposes of this chapter and all  
25       of the purposes reasonably implied incidentally thereto or lawfully connected  
26       therewith and to adopt, rescind, modify, and amend all necessary and proper  
27       orders, resolutions, rules, and regulations for the procedure and exercise of its  
28       powers and the performance of its duties.
- 29       12. ~~To prosecute in the name of the state of North Dakota any suit or action to enforce~~  
30       collection or assure payment of the tax or assessment authorized by the provisions  
31       of this chapter, and to sue and be sued in the name of the commission.

- 1        ~~43.~~ ~~To engage~~
- 2        5. Sue and be sued.
- 3        6. Do all things necessary to carry out this chapter.
- 4        7. Engage in any other related lawful activities except those which constitute a
- 5                competitive business expertise.

**NOTE:** NDCC Section 4-28-06(5), (6), (11), (12), and (13). In order to clarify which activities were required versus authorized, the content of Section 4-28-06 was separated into two sections.

In subsection 12 of the current law, the commission is authorized to "prosecute in the name of the state of North Dakota any suit or action to enforce collection or assure payment of the tax or assessment authorized by the provisions of this chapter, and to sue and be sued in the name of the commission." In the proposed rewrite, subsections 5 and 6 authorize the commission to sue and be sued and to do all things necessary and proper to carry out this chapter. This would include taking legal action to enforce the payment requirements set forth in the chapter.

Subsection of the proposed rewrite authorizes the commission to accept gifts, grants, and donations. Subsection 7 of current law allows this acceptance only for aiding and promoting the work and objectives of the commission. The rewrite proposes to eliminate the limitation on the acceptance of gifts, grants, and donations because the commission is already statutorily limited in what it is authorized to do.

6        **SECTION 13.** A new section to chapter 4-28 of the North Dakota Century Code is  
7 created and enacted as follows:

8        **Wheat commission - Duties.** The commission shall:

- 9        1. Promote the increased sale, utilization, and development of wheat.
- 10       2. Provide information regarding the value of wheat and wheat products.
- 11       3. Research and promote new uses for wheat and wheat products.
- 12       4. Operate a commission office.
- 13       5. Forward all moneys received to the state treasurer for deposit in the wheat
- 14                commission fund.
- 15       6. Provide market maintenance and development services, utilization research,
- 16                transportation research, and education.
- 17       7. Address trade and domestic issues.
- 18       8. Seek improvement in the export quality of wheat.

**NOTE:** NDCC Section 4-28-06(1), (2), (3), (4), (7), (8), (9), and (10). In order to clarify which activities were required versus authorized, the content of Section 4-28-06 was placed into two separate sections. Even with some reworking of the verbiage, the section remains redundant. It charges the commission with:

- \*: Promoting the increased sale, utilization, and development of wheat.
- \*: Researching and promoting new uses for wheat
- \*: Providing market maintenance and development services
- \*: Providing utilization research
- \*: Providing transportation research
- \*: Providing education
- \*: Addressing trade and domestic issues
- \*: Improving the export quality of wheat

In the alternative, perhaps the commission could be authorized to "do all things necessary and proper to increase the sale of wheat domestically and internationally."

1       **SECTION 14. AMENDMENT.** Section 4-28-07.1 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **4-28-07.1. (Effective after June 30, 2009) Wheat tax levy.**

- 4       1.   a.   A tax of twelve mills per bushel [35.24 liters] by weight ~~must be~~ is levied and  
5           imposed upon all wheat grown in this state, delivered into this state, or sold  
6           through commercial channels to a first purchaser in this state.
- 7           b.   The tax ~~must be levied and~~ assessed at the time of sale and deducted by the  
8           purchaser from the price paid, ~~or in.~~ In the case of a lien, pledge, or  
9           mortgage, ~~the tax must be~~ deducted from the proceeds of the loan or claim  
10          secured, subject to adjustment at the time of settlement in the event the  
11          number of bushels [liters] is not accurately determined at the time of the lien,  
12          pledge, or mortgage.
- 13          c.   At the time of sale, the first purchaser in this state shall issue and deliver to  
14          the producer or seller a record of the transaction in the manner prescribed by  
15          the commission.
- 16       2.   a.   ~~Any producer who sells wheat to a first purchaser in this state and who is~~  
17           ~~subject to the deduction provided for in this chapter, within~~ To receive a  
18           refund of any tax paid in accordance with section 4-28-07.1, a producer shall  
19           submit to the commission a personal letter requesting an application for  
20           refund. The producer shall file the request with the commission no later than  
21           sixty days following after the date of the deduction or final settlement, ~~may~~

- 1                   ~~make application by personal letter to the wheat commission for a refund~~  
2                   ~~application blank.~~
- 3                   b. ~~Upon the return of the blank, properly executed by the producer,~~  
4                   ~~accompanied by~~ The producer shall complete the application and return it to  
5                   ~~the commission, together with~~ a record of the deduction by the purchaser, ~~the~~  
6                   ~~producer must be refunded.~~ The commission then shall provide to the  
7                   ~~producer~~ the net amount of the deduction that had been collected.
- 8                   c. ~~If no request~~ a producer does not submit a completed application for refund  
9                   ~~has been made~~ to the commission within the prescribed time period  
10                  ~~prescribed in this subsection,~~ the producer is presumed to have agreed to the  
11                  deduction. A
- 12                  d. If a producer ~~that, for any reason,~~ has paid the tax more than once on the  
13                  same wheat, upon furnishing proof of that payment to the commission, ~~is~~  
14                  ~~entitled to a~~ shall refund ~~of~~ the overpayment.
- 15                  3. ~~To inform the producer, the~~ The commission shall develop and disseminate  
16                  information and instructions relating to the purpose of the wheat tax and manner in  
17                  which refunds may be claimed ~~and to this extent shall cooperate with state and~~  
18                  ~~federal agencies and private businesses engaged in the purchase of wheat.~~
- 19                  4. a. The commission shall expend an amount at least equal to that raised by two  
20                  mills of the levy provided for in this section to contract for activities related to  
21                  domestic wheat policy issues, wheat production, promotion, and sales.
- 22                  b. The contracts may be with no more than two trade associations that are  
23                  incorporated in this state and which have as their primary purpose the  
24                  representation of wheat producers.
- 25                  c. The contracts must require that any trade association receiving money under  
26                  this section pay from the money all dues required as a condition of the trade  
27                  association's membership in any national trade association.
- 28                  d. The contracts also must prohibit any trade association receiving money under  
29                  this section from eliminating any dues required as a condition of membership  
30                  in that trade association or from reducing such dues below the amount  
31                  required for membership as of January 1, 2005.

- 1           5.    When the wheat commission presents the report required by section 4-24-10, the  
2                    commission shall present a separate report detailing the nature and extent of the  
3                    commission's efforts to address trade and domestic policy issues. The  
4                    commission may invite other entities with which it has contracted to assist in the  
5                    presentations.
- 6           6.    At the time the wheat commission presents the report required by section 4-24-10,  
7                    each trade association with which the wheat commission has contracted under  
8                    subsection 4 also shall present a report detailing all activities in which the trade  
9                    association engaged under the provisions of the contract.

**NOTE:** NDCC Section 4-28-07.1. It is recommended that Section 4-28-07.1 be redrafted using several separate sections, i.e., the wheat tax levy, the wheat tax refund, double payment, contracts with trade associations, and commission reports regarding contract activities.

Subsection 3 of current law provides that a producer has 60 days (following the deduction or final settlement) within which to send a personal letter to the commission asking for a refund application. The subsection does not set a time period within which that application must be returned to the commission.

Subsection 3 directs the commission to "cooperate with state and federal agencies and private businesses engaged in the purchase of wheat." This phrase was removed because its purpose could not be discerned.

Subsection 5 of current law uses the phrase "trade and domestic policy issues" whereas subsection 4 references "activities related to domestic wheat policy issues, wheat production, promotion, sales." If this verbiage is calling for a check on the required contracts, the phraseology should be the same.

10           **SECTION 15. AMENDMENT.** Section 4-28-08 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12           **4-28-08. ~~State wheat~~ Wheat commission fund - Continuing appropriation.** ~~Each~~  
13 ~~first purchaser shall make quarterly reports and returns to the commission, on or before the~~  
14 ~~twentieth day of the month next succeeding each calendar quarterly period, commencing with~~  
15 ~~the calendar quarter ending September 30, 1995. The commission shall prescribe the forms to~~  
16 ~~be used. With each report and return, the first purchaser shall remit to the commission, in the~~  
17 ~~form of a remittance payable to the state treasurer, the tax due.~~

- 18           1.    No later than the twentieth day after the conclusion of each calendar quarter, each  
19                    first purchaser shall:
- 20                    a.   File a quarterly report with the commission in the manner prescribed by the  
21                        commission; and

- 1            b. Remit to the commission all taxes collected under this chapter.
- 2            2. The commission shall ~~transmit forward~~ all ~~such payments~~ moneys received under
- 3            this section to the state treasurer ~~to be deposited for deposit~~ in the ~~state treasury~~
- 4            ~~to the credit of a special revolving fund known as the "state wheat commission~~
- 5            ~~fund".~~
- 6            3. All money in the ~~state~~ wheat commission fund is appropriated on a continuing
- 7            basis to the commission for carrying out the purposes of this chapter.
- 8            4. Expenditures from the fund may be made upon vouchers duly approved by the
- 9            commission to carry out this chapter. ~~Regular audits of the commission's accounts~~
- 10           ~~must be conducted in accordance with chapter 54-10.~~

**NOTE:** NDCC Section 4-28-08. Because Chapter 54-10 sets forth the state's audit requirements, the final sentence is not necessary.

11           **SECTION 16. AMENDMENT.** Section 4-28-09 of the North Dakota Century Code is

12 amended and reenacted as follows:

13           **4-28-09. Penalty.** Any person violating ~~any of the provisions of~~ this chapter is guilty of

14 a class B misdemeanor.

15           **SECTION 17. REPEAL.** Section 4-28-01 of the North Dakota Century Code is

16 repealed.

**NOTE:** Because NDCC Section 4-28-01 is a statement of public policy, it is recommended that it be repealed. However, the section also contains a prohibition against the Wheat Commission engaging in competitive business enterprises. That prohibition is now included in the rewrite of Section 4-28-06.