

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2128
(Agriculture Committee)
(At the request of the State Seed Commission)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

4-09-14. Prohibitions.

1. A person may not sell, offer for sale, expose for sale, transport for sale, or hold or store with the intent to sell, any agricultural, vegetable, flower, or tree and shrub seed within this state:
 - a. Unless for agricultural seed, a test to determine the percentage of germination required under section 4-09-10 has been completed within a nine-month period, exclusive of the calendar month in which the test was completed or the seed is offered for sale beyond the sell by date exclusive of the calendar month in which the seed was to have been sold;
 - b. Unless for flower, vegetable, native grass, or forb seed, a test to determine the percentage of germination required under sections 4-09-10, 4-09-11, and 4-09-11.1 has been completed within a twelve-month period, exclusive of the calendar month in which the test was completed;
 - c. Unless for cool season lawn and turf grasses, including Kentucky bluegrass, red fescue, chewings fescue, hard fescue, tall fescue, perennial rye grass, intermediate rye grass, annual rye grass, colonial bent grass, creeping bent grass, and mixtures or blends of those grasses, a test to determine the percentage of germination has been completed within a fifteen-month period, exclusive of the calendar month in which the test was completed;
 - d. Unless for tree, shrub, agricultural, flower, wildflower, or vegetable seed packaged in a hermetically sealed container under conditions as defined by the commissioner, a test to determine the percentage of germination has been completed within a thirty-six-month period after the last day of the month that the seed was tested for germination before packaging. However, if seed in a hermetically sealed container is offered for sale more than thirty-six months after the last day of the month in which the seed was tested before packaging, the seed must be retested within a

twelve-month period, exclusive of the calendar month in which the retest was completed;

- e. If the seed is not labeled in accordance with this chapter or bears false or misleading labeling;
- f. If there has been false or misleading advertising in connection with the seed;
- g. If the seed contains prohibited noxious weed seeds;
- h. Unless for agricultural or vegetable seed, the seed is labeled to show the rate of occurrence of restricted noxious weed seeds, as required under sections 4-09-10 and 4-09-11;
- i. If the seed is designated, offered, represented, or advertised under any variety name or identification other than the variety name by which the seed was known originally;
- j. If the seed contains restricted noxious weed seeds in excess of twenty-five seeds per pound [453.59 grams]; or
- k. If the percentage by weight of all weed seeds in the seed exceeds one percent.

~~2. Any person may submit to the commissioner a sample of any seed which the person claims to be a new variety, distinct from any commonly known variety of the seed, together with a proposed, distinctive name. The commissioner, within one year, shall make any test the commissioner considers necessary, and if the commissioner finds as a result of the test that the seed or plant is of a new variety, distinct from any known variety of the seed and that the proposed name will properly distinguish the seed from any and all other varieties, the commissioner shall issue to the applicant a permit to designate the seed by the proposed name.~~

~~3.~~ The purchaser, vendor, or any person receiving any seed shipped into this state from without the state shall have the same labeled in accordance with this chapter. Certain standardized grades and labeling of seed in use elsewhere may be permitted by the commissioner in connection with shipments of seed into this state from points outside this state in lieu of the labeling provided for in this chapter.

4. 3. A person in this state may not:

- a. Detach, alter, deface, or destroy any label provided for in this chapter or to alter or substitute seed in any manner with the intent to defeat the purpose of this chapter;
- b. Disseminate any false or misleading advertisement concerning agriculture or vegetable seed in any manner or by any means;
- c. Hinder or obstruct in any way any authorized person in the performance of the person's duties under this chapter;
- d. Fail to comply with a "stop-sale" order;
- e. Use on seed labels or tags, or to use or attach to literature, or to state in any manner or form of wording designed as a "disclaimer" or "nonwarranty" clause with the intent to disclaim responsibility of the vendor of the seed for the data on the label required by law;
- f. Use the words "type" or "trace" on any labeling in connection with the name and description of any agricultural and vegetable seed;

- g. Move or otherwise handle or dispose of any lot of seed held under a "stop-sale" order, except with the written permission of the commissioner and only for the purpose specified in this written permission;
- h. Use the name of the department or the name of the official laboratory for advertising purposes in connection with seed analyzed or tested by the department or official laboratory, except in the case of registered or certified seed; or
- i. Plant any seed labeled "for vegetative cover only" with the intent to harvest for seed or grain.

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

4-09-15. Exemptions.

1. This chapter does not apply to:
 - a. Potatoes, whether sold or intended for food, manufacturing, or planting purposes.
 - b. Seed or grain that is not intended for planting purposes. The seller shall indicate on a form provided by the seller the purpose for which the seed or grain is purchased. The form must be available for inspection by the commissioner. It is unlawful for the seller or buyer to make a false representation as to the use of the seed or grain. A farmer selling the farmer's own seed or grain to a commercial establishment is exempt from the recordkeeping requirements of this subsection.
 - c. Seed stored by or consigned to a seed cleaning or conditioning plant for the purpose of cleaning or conditioning. However, any labeling or other representation made with respect to uncleaned or unconditioned seed is subject to the requirements of this chapter.
 - d. A common carrier with respect to any seed transported or delivered for transportation in the ordinary course of business.
 - e. A farmer who grows the farmer's own seed and sells only the farmer's own seed and does not advertise or use a third party as an agent or broker to bring buyer and seller together. However, a variety for which a certificate plant variety protection has been applied for or issued is not exempt from this chapter. The sale or transfer of protected varieties between farmers for the purpose of planting without the approval of a variety owner or developer is prohibited.
2. A person is not subject to the penalties of this chapter for having sold, exposed for sale, or transported for sale in this state any agricultural, vegetable, flower, or tree and shrub seed that was incorrectly labeled or incorrectly represented as to kind, variety, or origin and which could not be identified through examination, unless the person has failed to obtain an invoice or grower's declaration stating the kind, or kind and variety, and origin, if required, or has failed to take other precautions as may have been necessary to ensure that the seed was properly identified.

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

4-09-16. Certified seed. The commissioner shall:

1. Establish a seed certification system for this state and adopt rules governing application for service, acceptance of suitable seed stocks for the production of a foundation, registered, certified, or inspected crop, field inspection, bin inspections, harvesting, handling, storage, conditioning, and preparation and handling of the seed for market.

2. ~~Designate~~ Accept for certification kinds, varieties, selections, and names of seed stocks, and establish standards of quality, degree of disease infection, and amounts of any admixtures, foreign seeds, noxious weeds, or other weed seeds that are allowed in any lot or stock of seed, which may be or become eligible for field inspection or for final certification of the seed crop.
3. Accept from any person a sample of seed which the person claims to be a new variety, distinct from any commonly known variety of the seed, together with a proposed, distinctive name. The commissioner shall determine the eligibility of a variety for certification based on factors including whether:
 - a. The variety has been accepted into a certification program by a national-designated or state-designated certification authority according to established rule or regulation.
 - b. The variety or selection is sufficiently distinguishable from existing varieties to allow for seed certification.
 - c. The variety or selection has been released by a public or private industry breeding program through an acceptable release process or policy.
 - d. Technical information regarding physical traits or genetic markers of the variety or selection has been provided to the commissioner for use in field and laboratory certification programs.
4. Prescribe all labels, seals, certificates, or similar statements that must be used for, or in relation to, any seed, or the various kinds and qualities grown, handled, stored, held for sale, sold, or offered or exposed for sale in this state as "breeders", "foundation", "registered", or "certified" seed, and shall specify what words, terms, or figures the labels, seals, certificates, or the containers of the seed must bear.
4. 5. Cooperate with the managers of any seed conditioning plants, or any commercially established seed firm, or any person within or outside of the state having proper facilities and equipment to store, condition, and otherwise handle seed which is eligible for certification, for the purposes of handling and marketing "breeders", "foundation", "registered", or "certified" seed.
5. 6. Cooperate in the selection, testing, and growing of seed for certification purposes and in the arrangement for increase of foundation seed stocks suitable for the production of certified seed.
6. 7. Establish an equitable schedule of fees and charges, which must be uniform throughout the state, for inspecting, testing, analyzing, and recording the seed, and for other work and duties incident to the growing, handling, marketing, and certifying of North Dakota seed, and shall collect all the fees and charges.

SECTION 5. AMENDMENT. Section 4-09-17.1 of the North Dakota Century Code is amended and reenacted as follows:

4-09-17.1. Plant Variety Protection Act. Any seed advertised, offered for sale, or sold by variety name and for which a certificate of plant variety protection has been issued under the Plant Variety Protection Act, as amended [Pub. L. 91-577; 84 Stat. 1551; 7 U.S.C. 2481 et seq., effective as of ~~July 1, 2005~~ July 1, 2007], as being for sale only as a class of certified seed must be certified by an official seed certifying agency in order for the seed to be advertised, offered for sale, or sold by variety name in the state of North Dakota. Seed from a certified lot may be labeled as to variety name when used in a blend or mixture by or with approval of the owner of the variety.

SECTION 6. AMENDMENT. Section 4-42-02 of the North Dakota Century Code is amended and reenacted as follows:

4-42-02. Commissioner - Genetic identity - Physical traits - Analysis and verification.

The commissioner ~~shall~~ may establish procedures for inspecting, analyzing, and verifying the genetic identity or physical traits of seeds or crops. The procedures ~~must~~ may address the compilation of all necessary documentation and other administrative functions.

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

4-42-07. Identity preservation - ~~Segregation~~— Traceability. The commissioner ~~shall~~ may establish a procedure for the identity preservation, ~~segregation~~, and traceability of seeds or crops inspected or analyzed under this chapter.

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

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 Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2128.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 85 Nays 6 Absent 3

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,
at _____ o'clock _____ M.

Secretary of State