

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

HOUSE BILL NO. 1124
(Agriculture Committee)
(At the request of the State Seed Commission)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. "Advertisement" means any representation, other than representations made on labels, which relates to seed.
2. "Agent", when used in connection with the commissioner, means the commissioner's deputy, inspector, analyst, specialist, aide, agent, and employee, when each is acting officially for the commissioner or performing any duty or duties as provided in this chapter or in the rules adopted to implement this chapter.
3. "Agricultural seed" means the seed of grass, forage, cereal, fiber, oil crops, Irish potato seed tubers, and any other kind of seeds commonly recognized within this state as agricultural seed, lawn seed, and mixture of these seeds.
4. "Blend" means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.
5. "Brand" means a word, name, or symbol, number, or design used to identify seed of one person to distinguish that seed from seed of another person.
6. "Certified" means the agricultural seed was randomly inspected and found to meet the rules of the department at the time of inspection.
7. "Commission" means the state seed commission.
- ~~7.~~ 8. "Commissioner" means the state seed commissioner.
- ~~8.~~ 9. "Conditioning" means drying, cleaning, scarifying, and other operations that may change the purity or germination of the seed.
- ~~9.~~ 10. "Department" means the seed department of this state.
- ~~10.~~ 11. "Flower seed" includes a seed of a herbaceous plant grown for the bloom, ornamental foliage, or other ornamental part, and commonly known and sold under the name of flower or wildflower seed in this state.
- ~~11.~~ 12. "Foundation seed", "registered seed", and "certified seed" means seed that has been produced and labeled in accordance with the procedures and in compliance with the rules of an officially recognized seed-certifying agency.

- ~~42.~~ 13. "Germination" means the percentage of seed capable of producing normal seedlings under ordinarily favorable conditions as determined by methods prescribed under the rules established by the association of official seed analysts. The percentage does not include seed that produces weak, malformed, or obviously abnormal sprouts.
- ~~43.~~ 14. "Hard seed" means a seed that remains hard at the end of the prescribed test period because the seed has not absorbed water due to an impermeable seed coat.
- ~~44.~~ 15. "Inert matter" means all matter not seed and includes the broken seed, a sterile floret, chaff, a fungus body, and a stone.
- ~~45.~~ 16. "Kind" means one or more related species or subspecies which singly or collectively is known by one common name, such as corn, oats, alfalfa, or timothy.
- ~~46.~~ 17. "Labeler" means the person who furnishes the information required in sections 4-09-10, 4-09-11, 4-09-11.1, and 4-09-11.2.
- ~~47.~~ 18. "Labeling" means a tag or other device attached to or information written, stamped, or printed on any container or accompanying a lot of bulk seed that contains information required by this chapter.
- ~~48.~~ 19. "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform, within permitted tolerances, for the factors which appear in the labeling.
- ~~49.~~ 20. "Mixture" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.
- ~~20.~~ 21. "Noxious weed seed" is divided into three classes defined as:
- a. "Prohibited noxious weed seed" means a weed seed that is prohibited from being present in agricultural, vegetable, flower, tree, or shrub seed and is highly destructive and difficult to control by good cultural practices and the use of herbicides and includes a seed of leafy spurge (*euphorbia esula* L.), field bindweed (*convolvulus arvensis* L.), Canada thistle (*cirsium arvense* (L.) Scop.), perennial sow thistle (*sonchus arvensis* L.), Russian knapweed (*centaurea repens* L.), absinth wormwood (*artemisia absinthium* L.), hemp (*cannabis sativa* L.) having more than three-tenths of one percent tetrahydrocannabinol, musk thistle (*carduus nutans* L.), spotted knapweed (*centaurea maculosa* Lam.), hoary cress (*cardaria draba* (L.) Desv.), and yellow starthistle (*centaurea solstitialis* L.).
 - b. "Restricted noxious weed seed" means a seed that is objectionable in agricultural crops, lawns, and gardens in this state and can be controlled by good cultural practices or the use of herbicides and includes the seed of dodder (*cuscuta* species), hedge bindweed (*convolvulus sepium* L.), wild oats (*avena fatua* L.), and quackgrass (*agropyron repens* (L.) Beauv.).
 - c. "Undesirable grass seed" means a seed of grass species declared by the commissioner to be a restricted noxious weed seed when found in lawn or turf seed.
- ~~24.~~ 22. "Official seed-certifying agency" means:
- a. An agency authorized under the laws of a state, territory, or possession to officially certify seed which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or

- b. An agency of a foreign country determined by the United States secretary of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed-certifying agencies under subdivision a.
- ~~22.~~ 23. "Pest" means any invertebrate animal, pathogen, parasitic plant, or similar organism causing or capable of causing injury or damage to any plant or part of a plant or any processed, manufactured, or other product of a plant.
- ~~23.~~ 24. "Phytosanitary certificate" means a document issued or authorized by the commissioner indicating that the seed or tubers were inspected and considered to be free from quarantine pests and practically free from injurious pests according to the sanitary requirements of the importing country.
- ~~24.~~ 25. "Pure seed" means agricultural and vegetable seed, exclusive of inert matter, and all other seed not of the kind or variety being considered.
- ~~25.~~ 26. "Record" means all information relating to lot identification, source, origin, variety, amount, processing, testing, labeling, distribution, and file sample of the seed.
27. "Selection" means a subgroup of a variety and commonly used terms include line selection, clonal selection, or strain selection.
- ~~26.~~ 28. "Stop-sale" means an administrative order provided by law restraining the sale, use, disposition, and movement of a definite amount of seed.
- ~~27.~~ 29. "Treated" means a seed has received an application of a substance, or a claim has been made that the seed has been subjected to a process.
- ~~28.~~ 30. "Tree and shrub seed" includes seed of woody plants commonly known and sold as tree and shrub seed in this state.
- ~~29.~~ 31. "Type" means a group of variety so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.
- ~~30.~~ 32. "Variety" means a subdivision of a kind that is distinct, uniform, and stable. "Distinct" means the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all varieties of public knowledge. "Uniform" means the variations in essential and distinctive characteristics are describable. "Stable" means the variety will remain unchanged in its essential and distinctive characteristics and uniformity when reproduced or reconstituted as required by the different categories of varieties.
- ~~31.~~ 33. "Vegetable seed" means a seed of a crop that is grown in a garden or on a truck farm, and which is generally known and sold under the name of vegetable seed within this state.
- ~~32.~~ 34. "Weed seed" means the seed of a plant generally recognized as a weed within this state, including noxious weed seed.

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

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

1. "Agent" or "agents", when used to indicate or refer to the commissioner's agent or agents, means the commissioner's deputies, inspectors, representatives, agents, or other assistants as the case requires.
2. "Certified" means the potatoes were randomly inspected and found to meet the rules ~~and regulations~~ of the ~~state~~ seed department at the time of inspection.

3. "Closed container", or its plural form, means any container which shall be sewed, tied, sealed, glued, nailed, or otherwise closed in a practical or secure manner for handling.
4. "Commissioner" means the state seed commissioner.
5. "Inspection" means a random sample of potato plants or potato tubers were examined according to the rules of the ~~state~~ seed department or according to the instructions of the United States department of agriculture, food safety and quality service.
6. "Label", and its various grammatical forms, when used as a noun means any tag, label, brand, or device attached to, or written, stamped, printed, or stenciled on, any container and carrying a term or terms setting forth the grade, condition, quality, weight, variety, or class of the potatoes or other produce therein contained, and when used as a verb means the act or the fact of the use of the aforesaid labeling items and methods in connection with potatoes or other produce, and when used as an adjective, its descriptive meaning must be interpreted from its use and meaning as a noun and verb as herein prescribed.
7. "Other produce" means natural products of the farm, garden, and orchard, exclusive of grain, true seeds, livestock, and livestock products.
8. "Potatoes" means what is commonly called and known as white or Irish potatoes.
9. "Selection" means a subgroup of a variety of potato and is commonly referred to as line selection, clonal selection, or strain selection.
10. "State seed department" means the seed department of the state of North Dakota.
40. 11. "Variety" means a plant group within a single botanical taxon of the lowest-known rank which, without regard to whether the conditions for plant variety protection are met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one characteristic, and considered as a unit with regard to the suitability of the plant grouping for being propagated unchanged. A variety may be represented by seed, transplants, plants, tubers, tissue culture, plantlets, and other matter.

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

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

1. Every ~~closed~~ container packed with potatoes grown in North Dakota, being transported, or offered for sale or consignment must bear ~~upon the outside thereof,~~ either by brand, tag, or label, in plain letters and figures, the net weight when packed and correct grade designation. Potatoes being shipped for processing or repacking are exempt of this requirement.
2. When an individual shipment is made from such towns or stations at which regular inspection service is not maintained, and when such shipments cannot be so routed as to be stopped in transit for inspection at a town or station at which inspection service can be provided, or when due to unforeseen circumstances which make it physically impossible for an inspector to perform such inspection, then the commissioner, or ~~his~~ the commissioner's agent, may waive the inspection and labeling requirements provided in this section for such individual shipment.
3. The commissioner shall, by regulation, prescribe the general location of the labeling on the container and the minimum and maximum size of the letters and figures used in the labeling of the potatoes as herein provided.

4. After the grade inspection of the potatoes has been completed, if the official inspector finds that they are labeled properly according to the provisions of this chapter, the inspector shall furnish to the shipper or owner of the potatoes a signed certificate indicating that the shipment of potatoes is correctly labeled.
5. A vendor of seed may not alter the label or certificate furnished by the inspector under subsection 4.
6. A person in this state may not sell, offer for sale, transport for sale, or store with intent to sell within this state certified potato seed that is not labeled in accordance with this chapter.

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

4-42-11. Warranties or representations regarding seeds or crops. The commission, the commissioner, and the department make no warranties or representations of any kind, either expressed or implied, including warranties of merchantability, fitness for a particular purpose, or absence of disease, as to seed or crop that is inspected, analyzed, or verified under this chapter.

SECTION 5. REPEAL. Section 4-10-11 of the North Dakota Century Code is repealed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1124.

House Vote: Yeas 90 Nays 1 Absent 3

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

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