

September 2010

Introduced by

1 A BILL for an Act to create and enact....

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

3 **SECTION 1. Definitions.** In this chapter, unless the context otherwise requires:

4 1. "Agricultural seed" means:

5 a. The seed of cereal, fiber, forage, grass, or oil crops;

6 b. Irish potato seed tubers;

7 c. Lawn seed;

8 d. Any other seed designated by the seed commissioner as agricultural seed;  
9 and

10 e. Any mixture of seeds referenced in this subsection.

11 2. "Blend" means seed that consists of more than one variety, provided each variety  
12 constitutes of more than five percent of the whole, by weight.

13 3. "Brand" means a design, name, number, symbol, or word used to identify the seed  
14 of one person and distinguish the seed from that of another person.

15 4. "Certification" means a process that:

16 a. Is designed to maintain the genetic purity and varietal identity of crop  
17 cultivars; and

18 b. Requires a variety of components, including:

19 (1) An examination of records provided by the producer;

20 (2) An inspection of the field in which the plants producing seed for  
21 certification are growing; and

22 (3) The testing and grading of a representative sample.

23 5. "Certified" means a designation that the seed department has authorized a labeler  
24 to use on seed that met the requirements for certification.

- 1           6. "Conditioning" means any process to remove unwanted seeds or other matter from  
2           a seed lot in order to produce a uniform product.
- 3           7. "Flower seed" means the seed of a herbaceous plant grown for its bloom,  
4           ornamental foliage, or other ornamental part.
- 5           8. "Germination" means the physiological process of development and the  
6           emergence from the seed embryo of essential structures that are indicative of the  
7           ability to produce a normal plant under favorable conditions.
- 8           9. "Hard seed" means a seed that has an impermeable seed coat and has not  
9           absorbed water by the end of the prescribed test period.
- 10          10. "Inert matter" means anything other than unbroken seeds.
- 11          11. "Kind" means one or more related species or subspecies known singly or  
12          collectively by a common name.
- 13          12. "Label" means a device or tag attached to a seed container, printed or stamped  
14          information on a seed container, or written information accompanying a lot of bulk  
15          seed.
- 16          13. "Labeler" means the person identified by name and address on the label.
- 17          14. "Lot" means an identifiable quantity of seed that is uniform within permitted  
18          tolerances for the factors that appear on its label.
- 19          15. "Mixture" means seed consisting of more than one kind, each in excess of five  
20          percent of the whole, by weight.
- 21          16. "Official seed-certifying agency" means:
- 22            a. An agency that is authorized under the laws of a state, territory, or possession  
23            to officially certify seed and which has standards and procedures approved by  
24            the United States secretary of agriculture to assure the genetic purity and  
25            identity of any seed it certifies; or
- 26            b. An agency of a foreign country if the United States secretary of agriculture  
27            has determined that the agency adheres to seed certification procedures and  
28            standards that are comparable to those generally adhered to by a  
29            seed-certifying agency meeting the criteria set forth in subdivision a.
- 30          17. "Prohibited weed seed" means:

- 1           a. The seed or propagule of any weed designated as noxious by the agriculture  
2                   commissioner in accordance with section 4.1-47-05; or
- 3           b. The seed or propagule of any weed determined by the seed commissioner to  
4                   be highly destructive and difficult to control by good cultural practices or by  
5                   the use of herbicides.
- 6       18. "Pure seed" means a quantity of seed that belongs to a particular kind or variety  
7                   and which does not contain either inert matter or seeds of another kind or variety.
- 8       19. "Record" includes all information relating to origin or source, variety, lot  
9                   identification, quantity, inspection, processing, testing, labeling, distribution, and file  
10                   samples of the seed.
- 11       20. "Restricted weed seed" means a seed that is determined by the seed  
12                   commissioner to be:
- 13           a. Objectionable in agricultural seed, lawn or turf seed, vegetable seed, and  
14                   flower seed; and
- 15           b. Controllable by good cultural practices or the use of herbicides.
- 16       21. "Selection" means a subgroup of a variety and includes clones, lines, and strains.
- 17       22. "Treated" means a seed has received an application of a substance intended to  
18                   enhance the performance of the seed or alter a physiological process of the plant.
- 19       23. "Unbroken seed" means a seed that is more than fifty percent intact.
- 20       24. "Variety" means a subdivision of a kind that:
- 21           a. Can be differentiated by one or more identifiable morphological, physiological,  
22                   or other characteristics from other varieties of the same kind;
- 23           b. Has describable variations in essential and distinct characteristics; and
- 24           c. Will remain unchanged in its essential and distinct characteristics and  
25                   uniformity when reproduced or reconstituted, as required by the different  
26                   categories of varieties.

**SOURCE:** Section 4-09-01.

27       **SECTION 2. Seed department - Location.** The North Dakota seed department is the  
28 official seed-certifying agency of the state. The seed department must be located on the  
29 campus of North Dakota state university of agriculture and applied science.

**SOURCE:** Section 4-09-02.

1           **SECTION 3. Official seal.** The seed department shall have and use an official  
2 departmental seal that has been recorded in the office of the secretary of state.

**SOURCE:** Section 4-09-04.

3           **SECTION 4. Seed commission - Membership.** The seed commission is the  
4 governing board of the seed department. The seed commission consists of the following nine  
5 members:

- 6           1. An individual appointed by the North Dakota crop improvement association;
- 7           2. An individual appointed by the North Dakota certified seed potato growers  
8           association;
- 9           3. An individual appointed by the North Dakota dry edible bean seed growers  
10           association;
- 11           4. An individual appointed by the North Dakota agricultural association;
- 12           5. An individual who is a member of the North Dakota potato council, appointed by  
13           the North Dakota potato council;
- 14           6. A resident of this state appointed by the northern plains potato growers  
15           association;
- 16           7. An individual who operates a seed-conditioning plant approved by the seed  
17           department, appointed by the North Dakota grain dealers association;
- 18           8. The director of the agricultural experiment station or the director's designee; and
- 19           9. The agriculture commissioner or the agriculture commissioner's designee.

**SOURCE:** Section 4-09-03.

**NOTE:** With respect to subsection 5, was the specific limitation inserted intentionally or inadvertently?

20           **SECTION 5. Seed commission - Chairman - Meetings.**

- 21           1. The agriculture commissioner shall serve as the chairman of the seed commission.
- 22           2. The chairman shall call all regular meetings of the seed commission and shall call  
23           a special meeting within seven days if petitioned to do so by two members of the  
24           seed commission.
- 25           3. The seed commission shall hold at least two regular meetings each year.

**SOURCE:** Section 4-09-03.

1           **SECTION 6. Seed commission - Appointment of proxy.** If a member of the seed  
2 commission is unable to attend a meeting of the commission, the member may appoint a proxy.  
3 The appointment must be in writing and must be presented to the chairman. The vote of the  
4 proxy is final.

**SOURCE:** Section 4-09-03.

5           **SECTION 7. Seed commission - Members - Compensation.** Each member of the  
6 seed commission, except the agriculture commissioner and the director of the agricultural  
7 experiment station, is entitled to receive compensation at the rate of one hundred thirty-five  
8 dollars per day and reimbursement for expenses, as provided by law for state officers, if the  
9 member is attending a commission meeting or performing duties directed by the commission.

**SOURCE:** Section 4-09-03.

10          **SECTION 8. Seed commission - Powers.** The seed commission may:

- 11           1. Establish branch offices and laboratories at locations in this state, other than the  
12 campus of North Dakota state university of agriculture and applied science, if the  
13 seed commissioner determines that they are necessary to carry out the duties of  
14 the seed commission, the seed commissioner, or the seed department;
- 15           2. Dismiss the seed commissioner for cause; and
- 16           3. Appoint an acting seed commissioner if the position becomes vacant.

**SOURCE:** Sections 4-09-02 and 4-09-03.

17          **SECTION 9. Seed commissioner - Powers.** The seed commissioner may:

- 18           1. Contract with North Dakota state university of agriculture and applied science for  
19 the use of facilities and equipment;
- 20           2. Contract with any person for any lawful purpose;
- 21           3. Enter upon real property and access any structure and personal property, at any  
22 time, to:
  - 23           a. Inspect, sample, and test seed for compliance with this chapter; and
  - 24           b. Inspect records for compliance with this chapter; and
- 25           4. Collect royalty, research, and patent fees.

**SOURCE:** Sections 4-09-02(1), 4-09-06, 4-09-19, and 4-09-20.

**NOTE:** Section 4-09-19 provides that:

The commissioner may cooperate and enter into agreements with the United States department of agriculture and with the state departments and agricultural colleges of any of the states, and with organized agricultural fairs or exhibitions, or other organizations or persons in matters relating to the protection, inspection, analysis, testing, registering, and certifying of North Dakota seed, and the promotion and protection of the interests and welfare of North Dakota seed growers and crop producers. The commissioner may recognize and deal with growers, organizations, and institutions as agencies affiliating with the commissioner in pure seed matters.

Stating that the commissioner may "enter into agreements" is the statutory equivalent of authorizing the commissioner to contract. Rather than including a long list of general matters that may be the subject of such contracts, Seed Department personnel suggested that it would be appropriate to authorize the Seed Commissioner to "contract with any person for any lawful purpose." That provision has been included in this section, which sets forth the general powers of the Seed Commissioner.

- 1       **SECTION 10. Seed commissioner - Duties.** The seed commissioner shall:
- 2       1. Manage the seed department;
- 3       2. Provide, equip, and maintain offices, laboratories, and any other facilities
- 4       necessary to carry out this chapter, subject to the approval of the seed
- 5       commission;
- 6       3. Employ and compensate necessary personnel;<sup>1</sup>
- 7       4. Permit North Dakota state university of agriculture and applied science to use the
- 8       seed department facilities and the services of the seed department laboratories at
- 9       convenient times;
- 10      5. Determine the nature and size of any seed and plant samples required by the seed
- 11      department in order to conduct official tests or make official determinations and
- 12      shall prescribe the manner in which the seed and plant samples are to be procured
- 13      and delivered to the seed department;
- 14      6. Establish and charge fees for services, subject to the approval of the seed
- 15      commission;
- 16      7. Provide periodic reports to the seed commission regarding the management and
- 17      operation of the seed department;<sup>2</sup>
- 18      8. Recommend to the seed commission the biennial budget and annual salary
- 19      schedules for the seed department;
- 20      9. Submit the seed department's biennial budget, as approved by the seed
- 21      commission, to the office of management and budget;
- 22      10. Do all things necessary to enforce this chapter; and

1           11. Perform any other duties as directed by the seed commission.

**SOURCE:** Sections 4-09-02, 4-09-03, 4-09-08, and 4-09-09.

**NOTE:**

<sup>1</sup> The authority to "employ and compensate necessary personnel" is a new addition to the duties of the Seed Commissioner.

<sup>2</sup> Whereas current law requires the Seed Commissioner to "make semiannual reports to the commission," the rewrite, at the request of Seed Department personnel, calls for "periodic reports to the seed commission regarding the management and operation of the seed department."

2           **SECTION 11. Stop-sale order - Issuance - Enforcement - Appeal.**

3           1. The seed commissioner may issue a written stop-sale order to the owner or  
4           custodian of any lot of seed that the seed commissioner finds to be in violation of  
5           this chapter.

6           2. The seed commissioner may attach terms and conditions that must be fulfilled  
7           before the order will be lifted.<sup>1</sup>

8           3. The stop-sale order shall remain in effect until the seed commissioner is satisfied  
9           that the violation no longer exists. Upon making that determination, the seed  
10          commissioner shall lift the stop-sale order.

11          4. The seed commissioner shall do all things necessary and proper to enforce a  
12          stop-sale order issued under this section.

13          5. Any person subject to a stop-sale order under this section may appeal the order to  
14          a court of competent jurisdiction.

**SOURCE:** Section 4-09-06.

**NOTE:**

<sup>1</sup> Current law provides that the stop-sale order "shall prohibit further sale, conditioning, and movement of the seed." Because such prohibitions might not be appropriate in all cases, it was recommended by Seed Department personnel that the Seed Commissioner be authorized to attach terms and conditions that must be fulfilled in order for the stop-sale order to be lifted.

It is recommended that this section be located with other enforcement provisions.

15          **SECTION 12. Certificates and reports - Publication.** If the seed commissioner signs  
16          a document relating to the findings and determinations made in a laboratory by seed  
17          department personnel, a court shall accept the document as prima facie evidence of the  
18          statements contained in the document. The seed commissioner is subject to court order for a  
19          review of the findings and determinations set forth in the document.

**SOURCE:** Section 4-09-07.

1       **SECTION 13. Label requirements - Agricultural seed.**

2       1. Agricultural seed offered for sale or sold in this state, for planting purposes, must  
3       be labeled.

4       2. a. If the agricultural seed is offered for sale or sold in a container, the label must  
5       be plainly printed in English and conspicuously placed on or attached to the  
6       container.

7       b. If the agricultural seed is offered for sale or sold in bulk, the label must be  
8       plainly printed in English and provided to the purchaser at or before the time  
9       of delivery.

**SOURCE:** Section 4-09-10(1).

10       **SECTION 14. Agricultural seed - Label - Content.** A label required by section 13 of  
11 this Act must include:

12       1. The lot number or other lot identification;

13       2. a. The state or foreign country in which the seed was grown; or

14       b. A statement indicating that the origin of the seed is unknown;

15       3. The percentage by weight of all weed seed;

16       4. The name of each restricted weed seed present and its rate of occurrence per  
17 pound [453.59 grams], if:

18       a. In seeds of grasses and small seeded legumes the rate of occurrence  
19 exceeds thirteen seeds per pound [453.59 grams]; or

20       b. In any other agricultural seeds, the rate of occurrence exceeds five seeds per  
21 pound [453.59 grams];

22       5. The percentage by weight of any other agricultural seeds present;

23       6. The percentage by weight of inert matter;

24       7. a. The percentage of germination, exclusive of hard seed;

25       b. The percentage of hard seed, if applicable; and

26       c. The month and year in which the percentages were determined; and

27       8. The full name and address of the labeler.

**SOURCE:** Section 4-09-10(6).

28       **SECTION 15. Agricultural seed - Label requirements - Treated seed.**

- 1           1. In addition to any other requirements set forth in this chapter, if the seed has been  
2           treated, the label must indicate that the treatment has occurred and must include  
3           the commonly accepted, coined, chemical, or abbreviated chemical name of the  
4           substance used in the treatment.
- 5           a. If the substance with which the seed was treated is harmful to humans or to  
6           other vertebrate animals, the label must contain a cautionary statement  
7           prohibiting use of the seed for human or animal consumption.
- 8           b. If the substance with which the seed was treated is a mercurial or a similarly  
9           toxic substance, the label must contain a statement and symbol indicating that  
10           the substance is poison.
- 11           c. If the substance with which the seed was treated is an inoculant, the label  
12           must contain the date beyond which the inoculant is claimed not to be  
13           effective for use on that particular seed.
- 14           2. The information required by this section may be placed on a separate label.

**SOURCE:** Section 4-09-10(6).

15           **SECTION 16. Agricultural seed - Label requirements - Hermetically sealed**  
16 **containers.** In addition to any other label requirements set forth in this chapter, if agricultural  
17 seed that is offered for sale or sold is in a container that has been hermetically sealed, the label  
18 must so indicate.

**SOURCE:** Section 4-09-10(6).

19           **SECTION 17. Agricultural seed - Additional label requirements - Limited**  
20 **applicability.**

- 21           1. a. In addition to any other label requirements set forth in this chapter, the label  
22           on each container of barley, canola, dry beans, durum, field peas, flax, oats,  
23           rye, soybeans, and wheat seed offered for sale or sold in this state, for  
24           planting purposes, must include:
- 25           (1) The kind of each agricultural seed;  
26           (2) The variety of each agricultural seed component constituting more than  
27           five percent of the whole; and  
28           (3) The percentage by weight of each agricultural seed component  
29           constituting more than five percent of the whole.

- 1            b. Paragraphs 2 and 3 of subdivision a are not applicable to agricultural seed  
2            labeled as being for vegetative cover only.
- 3            2. In addition to any other requirements set forth in this chapter, the label on each  
4            container of agricultural seed other than barley, canola, dry beans, durum, field  
5            peas, flax, oats, rye, soybeans, and wheat seed, offered for sale in this state for  
6            planting purposes:
- 7            a. Must include the kind of each agricultural seed;  
8            b. May include the variety of each agricultural seed component constituting more  
9            than five percent of the whole; and
- 10           c. Must include the percentage by weight of each agricultural seed component  
11           constituting more than five percent of the whole.

**SOURCE:** Section 4-09-10(2) and (4).

12           **SECTION 18. Selling of seed by brand - Requirements.** The seed of barley, canola,  
13 dry beans, durum, field peas, flax, oats, rye, soybeans, and wheat may be sold by brand,  
14 provided the true variety name or number is clearly stated on the label.

**SOURCE:** Section 4-09-10(2).

15           **SECTION 19. Canola seed - Additional label requirements.** In addition to any other  
16 requirements set forth in this chapter, if the agricultural seed is canola:

- 17           1. The seed must:
- 18           a. Have been certified by the seed commissioner as meeting the standards of  
19           this state; or
- 20           b. Have been certified by the appropriate agency of another state or country  
21           having canola certification standards that are determined by the seed  
22           commissioner to meet or exceed the standards of this state; and
- 23           2. The label must indicate that the requirements of subsection 1 have been met.

**SOURCE:** Section 4-09-10(3).

**NOTE:** Current law states that "[i]n seed of canola, the label must contain a statement that the seed is certified by the commissioner as meeting the standards of this chapter or certified by another state or province having certification standards for canola which meet or exceed standards adopted by this chapter." This has been reworked to provide that the seed must be certified and that the label must indicate that the certification requirements have been met.

1           **SECTION 20. Agricultural seed components - Label requirements - Mixture or**  
2 **blend - Designation.** If more than ten percent of the whole consists of an aggregate of  
3 agricultural seed components, each present in an amount not exceeding five percent of the  
4 whole, the label must include each component in excess of one percent of the whole named  
5 together with the percentage by weight of each. Each component must be listed in the order of  
6 its predominance. If more than one component is named, the word "mixture" or "blend" must  
7 be stated appropriately with the name of the mixture or blend.

**SOURCE:** Section 4-09-10(5).

**NOTE:** Section 4-09-10(5) appears to require the designation of a mixture or a blend that is inconsistent with the definitions of those two terms. At the recommendation of Seed Department personnel, the respective definitions have been broadened to include the requirements of this section.

8           **SECTION 21. Agricultural seed - Sale of small quantities - Container labeling**  
9 **requirements.** If agricultural seed is sold in quantities of five pounds [2.26796 kilograms] or  
10 less, the container into which the seed is placed is exempt from the labeling requirements of  
11 this chapter provided:

- 12           1. The container from which the seed is taken is in compliance with the labeling  
13           requirements of this chapter; and
- 14           2. The seed is removed from the container referenced in subsection 1 and weighed,  
15           in the presence of the purchaser.

**SOURCE:** New section.

**NOTE:** Section 4-09-11(5) provides that the "labeling requirements for vegetable seed in containers of more than one pound [.45 kilogram] are deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser." The committee determined that this provision should be kept and extended to "agricultural seed," in part to accommodate sales of grass seed. Seed Department personnel recommended that the referenced quantity be extended from one pound to five pounds.

16           **SECTION 22. Labeling requirements - Vegetable seed.**  
17           1. Each container of vegetable seed offered for sale or sold in this state, for planting  
18           purposes, must be labeled.

- 19           2. The label must be plainly printed in English and placed conspicuously on or  
20           attached to the container.

**SOURCE:** Section 5-09-11(1).

1           **SECTION 23. Vegetable seed - Label - Content.** The label for vegetable seed  
2 packed in units of one pound or less and the label for vegetable seed on prepared mats, tapes,  
3 or in preplanted containers must include:

- 4           1. The kind and variety of seed;
- 5           2. The lot number or other lot identification;
- 6           3. The full name and address of the labeler;
- 7           4. The month and year in which the germination test was completed; and
- 8           5. a. The percentage of germination; or  
9           b. The date by which the seed must be sold, as established in section 40 of this  
10           Act.

**SOURCE:** Section 4-09-11.

11           **SECTION 24. Vegetable seed - Additional label requirements.** If the germination  
12 test referenced in section 23 of this Act results in a finding that the seed does not meet the  
13 standards for germination, as established by the commissioner, the label must include:

- 14           1. The percentage of germination, exclusive of hard seed;
- 15           2. The percentage of hard seed, if present; and
- 16           3. The words "below standard" in at least eight-point type.

**SOURCE:** Section 4-09-11(2)(c).

17           **SECTION 25. Vegetable seed - Quantity - Label requirement.** If the vegetable  
18 seeds are on a mat, on tape, or in some other germination medium, and the quantity of seed  
19 cannot be readily determined, the label must include the minimum number of seeds per  
20 definable unit.

**SOURCE:** Section 4-09-11(2)(f).

21           **SECTION 26. Vegetable seed - Larger units - Label requirement - Exception.**

- 22           1. The label for any vegetable seed other than that referenced in section 23 of this  
23           Act must include:
  - 24           a. The lot number or other lot identification;
  - 25           b. (1) The kind and variety of vegetable seed present in excess of five percent  
26           by weight;  
27           (2) The percentage by weight of each seed referenced in paragraph 1, in  
28           order of its predominance;

- 1                   (3) The percentage of germination for each seed referenced in  
2                   paragraph 1, exclusive of hard seed;  
3                   (4) The percentage of hard seed, if present; and  
4                   (5) The month and year that the percentages were determined; and  
5                   c. The full name and address of that labeler.  
6                   2. If vegetable seed is sold in quantities of five pounds [2.26796 kilograms] or less,  
7                   the container into which the seed is placed is exempt from the labeling  
8                   requirements of this chapter provided:  
9                   a. The container from which the seed is taken is in compliance with the labeling  
10                   requirements of this chapter; and  
11                   b. The seed is removed from the container referenced in subsection 1 and  
12                   weighed, in the presence of the purchaser.

**SOURCE:** Section 4-09-11(3) and (5).

**NOTE:** Subsection 2 references the sale of vegetable seed in five-pound quantities to parallel the provisions governing agricultural seed. Current law references one-pound quantities.

13                   **SECTION 27. Treated vegetable seed - Additional requirements.**

- 14                   1. In addition to any other requirements set forth in this chapter, if the vegetable seed  
15                   has been treated, the label must indicate that the treatment has occurred and must  
16                   include the commonly accepted, coined, chemical, or abbreviated chemical name  
17                   of any substance used in the treatment.  
18                   2. If the substance with which the seed was treated is harmful to humans or to other  
19                   vertebrate animals, the label must contain a cautionary statement prohibiting use of  
20                   the seed for human or animal consumption.  
21                   3. If the substance with which the seed was treated is a mercurial or a similarly toxic  
22                   substance, the label must contain a statement and symbol indicating that the  
23                   substance is poison.  
24                   4. If the substance with which the seed was treated is an inoculant, the label must  
25                   contain the date beyond which the inoculant is claimed not to be effective on that  
26                   particular seed.  
27                   5. The information required by this section may be placed on a separate label.

**SOURCE:** Section 4-09-11(4).

1           **SECTION 28. Vegetable seed - Label requirements - Hermetically sealed**  
2 **containers.** In addition to any other label requirements set forth in this chapter, if vegetable  
3 seed that is offered for sale or sold is in a container that has been hermetically sealed, the label  
4 must so indicate.

**SOURCE:** Section 4-09-11(6).

5           **SECTION 29. Flower seed - Label - Content.**

- 6           1. Each container of flower seed offered for sale or sold in this state, for planting  
7           purposes, must be labeled.  
8           2. The label must be plainly printed in English and conspicuously placed on or  
9           attached to the container.

**SOURCE:** Section 4-09-11.1(1).

10          **SECTION 30. Flower seed - Label content.**

- 11          1. The label for flower seed must include:  
12            a. (1) The kind and variety; or  
13            (2) The information required by rule with respect to type and performance  
14            characteristics;  
15            b. (1) The month and year in which the seed was tested; or  
16            (2) The year for which the seed was packaged; and  
17            c. The full name and address of the labeler.  
18          2. If the flower seed is packed in units of more than one pound, the label must also  
19          include the lot number or other lot identification, unless the flower seed is on  
20          prepared mats, on tapes, or in preplanted containers.  
21          3. If the flower seed is of a kind for which standard testing procedures are prescribed  
22          by the association of official seed analysts, the label must also include:  
23            a. The percentage of germination exclusive of hard seed; and  
24            b. The percentage of hard seed, if present.  
25          4. If the flower seed is of a kind for which standard testing procedures are prescribed  
26          by the association of official seed analysts and if the seed does not meet the  
27          standard for germination required by rule, the label must also include the  
28          percentage of germination exclusive of hard seeds and the words "below standard"  
29          in at least eight-point type.

**SOURCE:** Section 4-09-11.1(3) and (4).

1       **SECTION 31. Flower seed - Quantity - Label requirement.** If the flower seeds are  
2 on a mat, on tape, or in some other germination medium and the quantity of seed cannot be  
3 readily determined, the label must include the minimum number of seeds per definable unit.

**SOURCE:** Section 4-09-11.1(3)(c).

4       **SECTION 32. Treated flower seed - Additional requirements.**

5       1. In addition to any other requirements set forth in this chapter, if the flower seed has  
6 been treated, the label must indicate that the treatment has occurred and must  
7 include the commonly accepted, coined, chemical, or abbreviated chemical name  
8 of the substance used in the treatment.

9       a. If the substance with which the flower seed was treated is harmful to humans  
10 or to other vertebrate animals, the label must contain a cautionary statement  
11 prohibiting use of the seed for human or animal consumption.

12       b. If the substance with which the seed was treated is a mercurial or a similarly  
13 toxic substance, the label must contain a statement and symbol indicating that  
14 the substance is poison.

15       c. If the substance with which the seed was treated is an inoculant, the label  
16 must contain the date beyond which the inoculant is claimed not to be  
17 effective on that particular seed.

18       2. The information required by this section may be placed on a separate label.<sup>1</sup>

**SOURCE:** Section 4-09-11.1(2).

**NOTE:**

<sup>1</sup> Similar label information when required with respect to agricultural and vegetable seeds may be contained on a separate label. Subsection 2 extends the concept to flower seeds as well.

19       **SECTION 33. Labeling requirements for tree seed and shrub seed.**

20       1. a. Each container of tree seed or shrub seed offered for sale or sold in this state,  
21 for planting purposes, must be labeled.

22       b. The label must be plainly printed in English and conspicuously placed on or  
23 attached to the container.

24       2. If seed is supplied in fulfillment of a contract for the collection and gathering of the  
25 seed, the label requirements of this section may be met by an analysis tag

- 1           attached to the invoice if each container is clearly identified by a lot number  
2           stenciled on the container or if the seed is in bulk.  
3           3. If the seed is offered for sale or sold in bulk, the label must be provided to the  
4           purchaser at or before the time of delivery.

**SOURCE:** Section 4-09-11.2(1).

**NOTE:** Section 4-09-11.2(1) provides that the "labeling of seed supplied under a contractual agreement may be by invoice accompanying the shipment or by an analysis tag attached to the invoice if each container is clearly identified by a lot number stenciled on the container or if the seed is in bulk." Seed Department personnel indicated that an invoice does not contain sufficient labeling information and suggested that the option be removed.

5           **SECTION 34. Tree seed and shrub seed - Label - Content.** A label required by this  
6 section must include:

- 7           1. The common name of the tree or shrub species and if appropriate, the name of the  
8           subspecies;  
9           2. The scientific name of the genus, the species, and if appropriate, the name of the  
10           subspecies;  
11           3. The lot number or other lot identification;  
12           4. The elevation at which or the upper and lower elevations within which the seed  
13           was collected;  
14           5. The percentage of pure seed by weight; and  
15           6. The full name and address of the labeler.

**SOURCE:** Section 4-09-11.2(2).

16           **SECTION 35. Statement of origin.** In addition to any other label requirements set  
17 forth in section 34 of this Act, the label of tree seed or shrub seed must identify the location of  
18 the indigenous stand by:

- 19           1. Latitude and longitude; or  
20           2. County or township.

**SOURCE:** Section 4-09-11.2(2)(e).

**NOTE:** Current law provides that the label must contain "[t]he origin for seed collected from a predominately indigenous stand as identified by the area the trees are growing and collected given by latitude and longitude, geographic description, or political subdivision and for seed collected from other than a predominantly indigenous stand as identified by the place from which the seeds or plants were originally introduced or state origin not indigenous." The State Forester indicated that these concepts could be combined. He also indicated that the references to a "geographic description" and to a

"political subdivision" needed to be clarified. He suggested requiring a reference to a county or a township because those are easily identifiable.

1       **SECTION 36. Percentage of germination - Label requirements.**

2       1. If the tree seed or shrub seed belongs to a species for which standard germination  
3       testing procedures are prescribed by the association of official seed analysts, the  
4       label must include:

5       a. (1) The percentage of germination, exclusive of hard seed;

6       (2) The percentage of hard seed; and

7       (3) The month and year in which the percentage of germination was  
8       determined; or

9       b. A statement indicating that the test to determine the percentage of  
10       germination is not yet completed and that the results will be supplied upon  
11       request.

12      2. If the tree or shrub seed belongs to a species for which standard germination  
13       testing procedures are prescribed, the label must include the year in which the  
14       seed was collected.

**SOURCE:** Section 4-09-11.2(2)(h).

15      **SECTION 37. Tree and shrub seed - Label requirements - Treated seed.**

16      1. In addition to any other requirements set forth in this chapter, if the tree seed or  
17       shrub seed has been treated, the label must indicate that the treatment has  
18       occurred and must include the commonly accepted, coined, chemical, or  
19       abbreviated chemical name of any substance used in the treatment.

20      2. If the substance with which the seed was treated is harmful to humans or to other  
21       vertebrate animals, the label must contain a cautionary statement prohibiting use of  
22       the seed for human or animal consumption.

23      3. If the substance with which the seed was treated is a mercurial or a similarly toxic  
24       substance, the label must contain a statement and symbol indicating that the  
25       substance is poison.

26      4. If the substance with which the seed was treated is an inoculant, the label must  
27       contain the date beyond which the inoculant is claimed not to be effective for use  
28       on that particular seed.

**SOURCE:** Section 4-09-11.2(2).

1           **SECTION 38. Invoice and records.**

- 2           1. A labeler shall retain a record of each lot of seed handled for three years after final  
3           disposition of the lot.
- 4           2. A labeler shall retain a file sample of each lot of seed handled for one year after  
5           final disposition of the lot.
- 6           3. A labeler shall make the records and file samples required by this section available  
7           to the seed commissioner upon request.

**SOURCE:** Section 4-09-12.

8           **SECTION 39. Tolerances.**

- 9           1. In order to determine correctness and accuracy in labeling seed as required by this  
10           chapter, the seed commissioner shall:
- 11           a. Apply the tolerances established by the Federal Seed Act of August 9, 1939  
12           [53 Stat. 1275; 7 U.S.C. 1551 et seq.], as amended through June 30, 2011; or
- 13           b. Establish stricter tolerances by rule.
- 14           2. Notwithstanding subsection 1, the tolerance for yellow starthistle is zero.

**SOURCE:** Section 4-09-13.

15           **SECTION 40. Germination test - Period of validity.**

- 16           1. a. Except as provided in subsection 4, a person may not offer for sale or sell any  
17           agricultural seed unless:
- 18           (1) The seed has been tested to determine the percentage of germination;  
19           and
- 20           (2) The period of time between the first day of the month following that in  
21           which the germination test was completed and the date on which the  
22           seed is offered for sale or sold does not exceed nine months.
- 23           b. Subdivision a is not applicable to lawn and turf grasses.
- 24           2. a. Except as provided in subsection 4, a person may not offer for sale or sell any  
25           flower, vegetable, grass, or forb seed unless:
- 26           (1) The seed has been tested to determine the percentage of germination;  
27           and

- 1                   (2) The period of time between the first day of the month following that in  
2                                 which the germination test was completed and the date on which the  
3                                 seed is offered for sale or sold does not exceed twelve months.
- 4                   b. Subdivision a is not applicable to lawn and turf grasses.
- 5                   3. Except as provided in subsection 4, a person may not offer for sale or sell any lawn  
6                                 and turf grass seed, or any blends or mixtures of lawn and turf grass seed unless:
- 7                                 a. The seed has been tested to determine the percentage of germination; and  
8                                 b. The period of time between the first day of the month following that in which  
9                                 the germination test was completed and the date on which the seed is offered  
10                                for sale or sold does not exceed fifteen months.
- 11                   4. A person may not offer for sale or sell any agricultural, flower, vegetable, tree, or  
12                                 shrub seed in hermetically sealed packages unless:
- 13                                 a. The seed has been tested to determine the percentage of germination; and  
14                                 b. The period of time between the first day of the month following that in which  
15                                 the germination test was completed and the date on which the seed is offered  
16                                 for sale or sold does not exceed thirty-six months.

**SOURCE:** Section 4-09-14(1)(a) - (d).

**NOTE:** Section 4-09-14 is an amalgamation of prohibitions. The rewrite separated those that set specific requirements for germination tests.

17                   **SECTION 41. Prohibitions on the offering or sale of seed.** A person may not offer  
18 for sale or sell any seed that:

- 19                   1. Is not labeled in accordance with the requirements of this chapter;  
20                   2. Is labeled with information the person knows is false or misleading;<sup>1</sup>  
21                   3. Is designated, represented, or advertised as having a variety name other than that  
22                                 by which the seed was originally known;
- 23                   4. Contains restricted weed seeds in excess of twenty-five seeds per pound [453.59  
24                                 grams];
- 25                   5. Exceeds the stated tolerances for noxious weed seeds; or<sup>2</sup>  
26                   6. Contains weed seeds in excess of one percent by weight.

**SOURCE:** Section 4-09-14(1)(e),(g) - (k).

**NOTE:** Section 4-09-14 is an amalgamation of prohibitions. The rewrite attempted to separate and reorder the various concepts.

- 1 Current law provides that a person may not offer for sale or sell seed that bears a false or misleading label. Seed Department personnel suggested it would be more appropriate to prohibit the sale of seed if a person "knows" that the label is false or misleading.
- 2 Current law provides that a person may not offer for sale or sell seed that contains prohibited weed seeds. The rewrite references tolerances because Section 4-09-13 states:

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

1 **SECTION 42. Prohibited activities.** A person may not:

- 2 1. Detach, alter, deface, or destroy any label provided for in this chapter;
- 3 2. Alter or substitute seed with the intent to defeat the purpose of this chapter;
- 4 3. Engage in false or misleading advertising regarding seeds;
- 5 4. Use the name of the seed department or the name of the official laboratory for
- 6 advertising purposes in connection with seed analyzed or tested by the seed
- 7 department or the official laboratory, except in the case of registered or certified
- 8 seed;
- 9 5. Fail to comply with a stop-sale order issued by the seed commissioner;
- 10 6. Use the words "type" or "trace" on a label in connection with the name and
- 11 description of any seed;
- 12 7. Disclaim in any manner or form a vendor's responsibility for any label content
- 13 required by law; or
- 14 8. Sell or transfer a protected variety to another producer for the purpose of planting
- 15 without obtaining the approval of the variety owner or developer.

**SOURCE:** Sections 4-09-14(1)(f), 4-09-14(3)(a) - (h), and 4-09-15(1)(e).

**NOTE:** Section 4-09-14(3)(c) provides that a person may not "[h]inder or obstruct in any way any authorized person in the performance of the person's duties under this chapter." This was not included in the rewrite because Section 12.1-08-01, which is part of the criminal code, makes it a Class A misdemeanor for any person to intentionally obstruct, impair, impede, hinder, prevent, or pervert the administration of law or other governmental function.

1           **SECTION 43. Disposal of protected varieties.** Any person in possession of  
2 uncertifiable seed that was produced from a variety protected by the Plant Variety Protection  
3 Act may dispose of the seed only as directed by the seed commissioner.

**SOURCE:** Section 4-09-14(3)(i).

**NOTE:** Current law provides that a person may not "[p]lant any seed labeled 'for vegetative cover only' with the intent to harvest for seed or grain." After questions were raised regarding enforceability, Seed Department personnel attempted to articulate the problem to be addressed.

4           **SECTION 44. Shipments from out of state - Requirements.** The purchaser, vendor,  
5 or any person receiving seed shipped into this state must have the seed labeled:

- 6           1. In accordance with this chapter; or  
7           2. If permitted by the seed commissioner, in accordance with requirements applicable  
8           in other jurisdictions.

**SOURCE:** Section 4-09-14(2).

9           **SECTION 45. Seed labeling permit.** Before a person in this state may label  
10 agricultural, vegetable, flower, or tree or shrub seed and before a person may label agricultural,  
11 vegetable, flower, or tree or shrub seed for delivery into this state, the person must obtain a  
12 seed labeling permit from the commissioner.

**SOURCE:** Section 4-09-14.1.

13           **SECTION 46. Records - Reports - Submission of fees to seed commissioner -**  
14 **Civil penalty.**

- 15           1. Each person issued a seed labeling permit shall:  
16           a. Keep a record of all seeds sold by that person in this state;  
17           b. Report all seeds sold by that person in this state to the seed commissioner at  
18           the time and in the manner determined by the seed commissioner; and  
19           c. Submit at the time and in the manner determined by the seed commissioner,  
20           fees in the amount set by the seed commissioner and applicable to all seeds  
21           that the person sells in this state.  
22           2. If a person fails to submit the fees or reports required by this section within thirty  
23           days of the date determined by the seed commissioner, the seed commissioner  
24           may assess a penalty equal to five percent of the amount due or ten dollars,  
25           whichever is greater.

**SOURCE:** Sections 4-09-14.2 and 4-09-14.4.

**NOTE:** Section 4-09-14.4 also provides that the Seed Commissioner may examine any records required in connection with the permit at all reasonable times. Because Section 9 of the rewrite gives the Seed Commissioner the power to at any time, enter upon real property and access any structure and personal property to inspect records for compliance with this chapter, the concept was not reiterated.

- 1     **SECTION 47. Applicability of chapter.** This chapter does not apply to:  
2     1. Potatoes;  
3     2. Seed<sup>1</sup> that is not intended for planting purposes;  
4     3. Seed stored by or consigned to a seed cleaning or conditioning plant for the  
5     purpose of cleaning or conditioning; provided, however, that any labels or  
6     representations made with respect to uncleaned or unconditioned seed are subject  
7     to the requirements of this chapter;<sup>2</sup> and  
8     4. A farmer who grows the farmer's own seed and sells only<sup>3</sup> the farmer's own seed  
9     and does not advertise or use a third party as an agent or broker to bring buyer  
10    and seller together. However, a variety for which a certificate plant variety  
11    protection has been applied for or issued is not exempt from this chapter.

**SOURCE:** Section 4-09-15.

**NOTE:**

- <sup>1</sup> Current law states that this chapter does not apply to seed "or grain" that is not intended for planting purposes. Various Internet sources refer to "grain" as the seeds of certain grasses and also refer to grain as cereals. Grains include barley, maize or corn, millet, oats, rice, and wheat.

The definition of agricultural seed, as found in Section 1 of this rewrite, references the seed of "cereal, fiber, forage, grass, or oil crops." It is therefore suggested that the reference to "seed" is sufficient and that it is not necessary to specifically mention "grain."

- <sup>2</sup> Throughout the rewrite, the requirements have been established with respect to seed that is "offered for sale or sold." Seed that is being "stored by or consigned to a seed cleaning or conditioning plant for the purpose of cleaning or conditioning would not come under the statutory requirements until such time as it is "offered for sale or sold." It is suggested that subsection 3 should be removed.
- <sup>3</sup> We need to review this section. The reference to "only" adds confusion.

**ADDITIONAL NOTES:**

- Current law states that this chapter does not apply to a common carrier with respect to any seed transported or delivered for transportation in the ordinary course of business. Because the rewrite removed references to the transportation of grain, it was not necessary to maintain this verbiage.

- Section 4-09-15(2) states that:

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.

Because this verbiage pertains to the conditions under which penalties apply, rather than exemptions from the chapter, it was moved to the penalty section.

1     **SECTION 48. Certified seed - Establishment of certification system.**

- 2     1. The seed commissioner shall establish a seed certification system for this state.
- 3     2. The seed certification system must include standards of quality for any lot or stock
- 4         of seed that may be or may become eligible for field inspection or for final
- 5         certification.
- 6     3. The seed commissioner shall make the requirements for seed certification readily
- 7         available in electronic and printed formats.

**SOURCE:** Sections 4-09-16(1) and (3) and 4-09-18.

**NOTE:** Section 4-09-18 states:

1. The rules for certification of crop seeds, other than potatoes, must be published in the department bulletin.
2. The rules for seed potato certification must be published in the department bulletin.

Rules for seed certification are published in the North Dakota Administrative Code. Rather than requiring that they be duplicated in a departmental publication, Seed Department personnel suggested that the rules for seed certification should be made readily available in electronic and printed formats. That provision has been included under this section.

8     **SECTION 49. Requests for certification - Required submissions.**

- 9     1. Any person may submit kinds, varieties, selections, and names of seed stock and
- 10         request that the seed commissioner consider the submission for certification. <sup>1</sup>
- 11     2. In order to pursue certification, a person shall provide to the seed commissioner:
- 12         a. The name of the variety;
- 13         b. A statement regarding the variety's origin and the breeding procedure used in
- 14         its development;

- 1           c. A description of the morphological, physiological, or other characteristics that  
2           distinguish the variety from other varieties;  
3           d. Evidence supporting the identity of the variety;  
4           e. A statement regarding the geographic area of adaptation;  
5           f. A statement regarding plans and procedures for the maintenance of seed  
6           classes, including the number of generations through which the variety may  
7           be multiplied;  
8           g. A description of the manner in which the variety is constituted when a  
9           particular cycle of reproduction or multiplication is specified;  
10          h. Any additional restrictions on the variety specified by the breeder; and  
11          i. A sample of seed that is representative of the variety as marketed. <sup>2</sup>

**SOURCE:** Section 4-09-16(2) - (3).

**NOTE:**

<sup>1</sup> Section 4-09-16(2) states that the Seed Commissioner shall "[a]ccept for certification kinds, varieties, selections, and names of seed stocks ...." Rather than mandating what the Seed Commissioner must accept for certification, the rewrite provides that others may submit kinds, varieties, selections, and names of seed stocks and request that the Seed Commissioner consider such for certification.

<sup>2</sup> The list of requirements was developed by Seed Department personnel.

12          **SECTION 50. Seed certification - Seed commissioner - Specific duties.** The seed  
13 commissioner shall prescribe the labels, seals, certificates, and statements that must be used  
14 for, or in relation to, any seed, or the various kinds and qualities grown, handled, stored, offered  
15 for sale, or sold in this state as "breeders", "foundation", "registered", or "certified" seed, and  
16 shall specify the words and information required to be on the labels, seals, certificates, and  
17 seed containers.

**SOURCE:** Section 4-09-16(4).

**NOTE:** This section could be added to Section 10 of this bill draft (i.e., Seed Commissioner - Duties).

18          **SECTION 51. Seed certification - Seed commissioner - Specific powers.**  
19          1. The seed commissioner may establish standards for seed conditioning facilities  
20          and any other facilities that handle seed eligible for certification. <sup>1</sup>  
21          2. The seed commissioner may establish standards for facilities that handle and  
22          market "breeders", "foundation", "registered", or "certified" seed. <sup>2</sup>

- 1           3.   The seed commissioner may participate with any public or private entity in the  
2                   selection, testing, and production of seed for certification purposes and in efforts to  
3                   increase foundation seed stocks suitable for the production of certified seed.

**SOURCE:** Section 4-09-16(5) - (6).

**NOTE:**

<sup>1 and 2</sup> Section 4-09-16(5) provides that the Seed Commissioner shall "[c]ooperate 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.

In discussions with Seed Department personnel, it appeared that the purpose of this subsection was to authorize the Seed Commissioner to establish standards for seed conditioning facilities and various other entities that handle certified seed. That has been reflected in the rewrite.

**ADDITIONAL NOTES:** Section 4-09-16(7) authorizes the Seed Commissioner to "[e]stablish 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." This has been omitted because under Section 10 of this bill draft, the Seed Commissioner was given the authority to establish and charge fees for services, subject to the approval of the Seed Commission.

This section could be added to Section 9 of this bill draft (i.e., Seed Commissioner - Powers).

- 4           **SECTION 52. Certified seed - Use of certain terms - Required authorization.** A  
5           person may not use the terms "breeders", "certified", "foundation", "elite", "pedigreed", or  
6           "registered" and may not use substantially equivalent terms, in the labeling or in the advertising,  
7           characterization, or representation of seed that is offered for sale or sold in this state, unless  
8           authorized to do so by the seed commissioner. The prohibition of this section applies to oral  
9           and written forms of advertising, characterizations, and representations.

**SOURCE:** Section 4-09-17.

10           **SECTION 53. Plant Variety Protection Act.**

- 11           1.   Any seed having a variety name for which a certificate of plant variety protection  
12                   has been issued under the Plant Variety Protection Act, as amended [7 U.S.C.  
13                   2481 et seq., effective as of July 1, 2011], must be certified by an official seed  
14                   certifying agency, before the seed can be advertised for sale, offered for sale, or  
15                   sold as a class of certified seed.<sup>1</sup>

- 1           2.   Seed from a certified lot may be labeled as to variety name when used in a blend  
2                   or mixture by or with approval of the owner of the variety.<sup>2</sup>

**SOURCE:** Section 4-09-17.1.

**NOTE:**

<sup>1</sup> Section 4-09-17.1 states:

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, 2009], as being for sale only as a class of certified seed must be certified by an official seed certifying agency in order for the seed to be advertised, offered for sale, or sold by variety name in the state of North Dakota.

The organization of the phrases in this sentence renders it incomprehensible. The rewrite attempts to rework the sentence. Please review to ensure accuracy.

- <sup>2</sup> Subsection 2 is taken directly from the current law. There are, however, two ways of reading the sentence:

Version 1:

Seed from a certified lot may be labeled as to variety name if:

- a. It is used in a blend or a mixture by the variety owner; or
- b. It is used in a blend or a mixture with the approval of the variety owner.

Version 2:

Seed from a certified lot may be labeled as to variety name if:

- a. It is used in a blend or a mixture by the variety owner; or
- b. It is used with the approval of the variety owner.

3           **SECTION 54. Seed department fund - Continuing appropriation.**

- 4           1.   The seed commissioner shall forward all moneys received under this chapter to the  
5                   state treasurer for deposit in a special fund known as the seed department fund.  
6                   All moneys in the seed department fund are appropriated on a continuing basis to  
7                   the seed department to carry out this chapter.<sup>1</sup>  
8           2.   The seed commissioner shall approve all expenditures made pursuant to this  
9                   chapter and shall document the expenditures at the time and in the manner  
10                  required by the office of management and budget.<sup>2</sup>

- 1           3. The seed commissioner shall provide a report to the house and senate  
2           appropriations committees, at the time and in the manner directed by the chairmen  
3           of the committees. The report must contain a summary of the department's  
4           activities during the current biennium and a statement of revenues and  
5           expenditures for the ensuing biennium. <sup>3</sup>
- 6           4. At the direction of the seed commission, the state treasurer shall invest all  
7           available moneys in the seed department fund. The state treasurer shall credit  
8           twenty percent of the investment income to the general fund and the remaining  
9           eighty percent of the investment income to the seed department fund. <sup>5</sup>

**SOURCE:** Section 4-09-20.

**NOTE:**

- <sup>1</sup> Current law refers to a Seed Department revolving fund. At the recommendation of Office of Management and Budget personnel, the rewrite clarifies that the Seed Department operates under continuing appropriation authority.
- <sup>2</sup> Current law requires Office of Management and Budget personnel to disburse moneys from the Seed Department fund "upon vouchers signed by the commissioner and warrant-checks prepared by the office of management and budget." Office of Management and Budget personnel suggested that the current language be updated to allow for electronic transactions and not just payments by warrant-checks.
- <sup>3</sup> By virtue of operating under a continuing appropriation, the Seed Department does not have to seek biennial appropriation authority. However, the Seed Department has indicated its desire to continue appearing before the Appropriations Committees. The language of subsection 3 would provide for a report to the Appropriations Committees, in the same manner as agricultural commodity groups provide reports to the standing Agriculture Committees during each legislative session. (see Section 4-24-10)
- <sup>4</sup> The directive to credit 20 percent of the investment income to the general fund and 80 percent to the Seed Department fund is in current law and is comparable to the provisions governing the investment of moneys held by the agricultural commodity groups. (see Section 4-24-09)

**ADDITIONAL NOTE:**

Section 4-09-20 also provides that "[r]oyalty, research, or patent fees will be collected on protected varieties when necessary by the commissioner and disbursed less cost of collection." Seed Department personnel suggested that this be shortened to provide that the "seed commissioner may collect royalty, research, or patent fees." This has been included in the powers of the Seed Commissioner.

- 10           **SECTION 55. Liability of seed commission, seed department, seed**  
11 **commissioner, and certified or noncertified agricultural seed producers. A warranty of**  
12 **any kind, either expressed or implied, including a warranty of merchantability, fitness for a**

1 particular purpose, or absence of disease, is not made by the seed commission, the seed  
2 department, the seed commissioner, or certified or noncertified agricultural seed producers as  
3 to the quantity or quality of the crop produced from the agricultural seeds or as to other produce  
4 which is inspected and certified, except as provided in this section. The sole warranty made is  
5 that the agricultural seeds or other produce were produced, graded, packed, and inspected  
6 under the rules of the seed department or United States department of agriculture. The seed  
7 commissioner functions and serves only in an official regulatory manner.

**SOURCE:** Section 4-09-20.1.

**ADDITIONAL NOTES:**

- Section 4-09-21 states that the Seed Commissioner "shall enforce this chapter and the regulations made thereunder." That directive has been included as a duty of the Seed Commissioner in Section 9 of this bill draft.

- The section goes on to state:

Whenever the commissioner is of the opinion that a violation of this chapter or of the regulations made thereunder exists, the commissioner shall hold a hearing as provided by chapter 28-32.

This language literally requires the Seed Commissioner to hold a hearing under Chapter 28-32, regardless of the violation. Seed Department personnel have indicated that this is neither their wish nor their current manner of operation.

- The section also states:

If after the hearing, or without hearing if the person involved fails or refuses to appear, the commissioner decides that the evidence warrants prosecution, the commissioner shall proceed as hereinafter provided.

Since the ensuing section provides for prosecution, this sentence appears to be unnecessary.

- Finally, the section provides that:

Any proceeding under this chapter for adopting or modifying rules and regulations and determining compliance with rules and regulations of the commissioner shall be conducted in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32.

This language is covered under Chapter 28-32 and does not need to be reiterated.

It is therefore recommended that Section 4-09-21 not be included in the rewrite.

8 **SECTION 56. Prosecution for violations - Duty of attorney general and state's**  
9 **attorney.** Upon a complaint by the seed commissioner alleging a violation of this chapter or of  
10 any rule implementing this chapter, the attorney general or the state's attorney of the county in  
11 which the case arises shall initiate legal proceedings.

**SOURCE:** Section 4-09-22.

1       **SECTION 57. Seizure and injunction - Action.**

- 2       1. If the seed commissioner determines that any lot of seed is not in compliance with  
3       this chapter, the seed commissioner may petition a court of competent jurisdiction  
4       for seizure of the seed. If the court orders the condemnation of the seed, it must  
5       be denatured, processed, destroyed, relabeled, or otherwise disposed of in  
6       accordance with the laws of this state.
- 7       2. A court may not order disposition of the seed without first having given the owner  
8       an opportunity to apply to the court for release of the seed, or for permission to  
9       process or relabel the seed in compliance with this chapter.
- 10      3. Any violation of this chapter may be enjoined in a court of competent jurisdiction  
11      without bringing any other civil or criminal action.

**SOURCE:** Section 4-09-23.

12      **SECTION 58. Penalty - Criminal - Civil - Exemption.**

- 13      1. Any person willfully <sup>1</sup> violating this chapter or the rules implementing this chapter is  
14      guilty of a class A misdemeanor. <sup>2</sup>
- 15      2. When construing and enforcing this chapter, the act, omission, or failure of any  
16      officer, agent, or other person acting for or employed by any person must be  
17      deemed to be the act, omission, or failure of such person as well as that of the  
18      person employed.
- 19      3. Any person found guilty of violating this chapter or the rules implementing this  
20      chapter is subject to a civil penalty in an amount not to exceed five thousand  
21      dollars for each violation. The civil penalty may be imposed by a court in a civil  
22      proceeding or by the seed commissioner.
- 23      4. A person is not subject to the penalties of this chapter for having offered for sale or  
24      sold any seed that was incorrectly represented as to kind, variety, or origin and  
25      which could not be identified through examination, unless the person failed to:
- 26      a. Obtain an invoice or grower's declaration <sup>3</sup> stating the required information; or  
27      b. Take other actions necessary to ensure that the seed was properly identified.

**SOURCE:** Sections 4-09-15(2) and 4-09-24.

**NOTE:**

- 1 The rewrite clarifies that a violation of this chapter must be "willful."
- 2 A Class A misdemeanor is one "for which a maximum penalty of one year's imprisonment, a fine of two thousand dollars, or both, may be imposed."
- 3 This is the first mention of a grower's declaration. Is this a universally understood reference?

1 **SECTION 59. Plant and seed records - Exemption.** The following records of the  
2 seed department are exempt from section 44-04-18 <sup>1</sup>:

- 3 1. Records of any plant or seed analysis or testing and variety or disease  
4 determination conducted by the seed department on a fee-for-service basis for  
5 nonpublic entities or persons; and
- 6 2. Information received by the seed department under this chapter <sup>2</sup> from a nonpublic  
7 entity or person that the nonpublic entity or person determines is proprietary  
8 information or a trade secret.

**SOURCE:** Section 4-09-25.

**NOTE:**

- 1 <sup>1</sup> Section 44-04-18 provides that all "records of a public entity are public records, open and accessible for inspection during reasonable office hours."
- 2 <sup>2</sup> Current law extends the exemption to information received by the Seed Department under Chapters 4-10 and 4-42, as well as Chapter 4-09. If Chapters 4-10 and 4-42 remain independent, this exemption will have to be reiterated in an appropriate location.

9 **SECTION 60. Seed arbitration board - Membership.** The seed arbitration board  
10 consists of the following members:

- 11 1. The agriculture commissioner;
- 12 2. The seed commissioner;
- 13 3. The director of the North Dakota state university extension service;
- 14 4. The director of the North Dakota agricultural experiment station;
- 15 5. The chairman of the seed trade division <sup>1</sup> of the North Dakota agriculture  
16 association; and
- 17 6. A representative of a farm organization <sup>2</sup> in this state, appointed by the agriculture  
18 commissioner or an authorized designee <sup>3</sup>.

**SOURCE:** Section 4-09-20.2(1).

**NOTE:**

- 1 Current law references the "chairman of the North Dakota seed trade committee of the North Dakota agriculture association." Seed Department personnel have indicated that the appropriate reference should be to the "chairman of the seed trade division of the North Dakota agriculture association."
- 2 Current law references a representative of a "major" North Dakota farm organization. The word "major" is arbitrary and vague and has been omitted from the rewrite. If certain parameters are desired to limit the pool of available applicants, those can be appropriately crafted.
- 3 Current law references a representative of a major North Dakota farm organization, appointed by the Agriculture Commissioner or an "authorized designee." This can be interpreted in different ways.

Version 1:

A representative of a major North Dakota farm organization, appointed by (either) the Agriculture Commissioner or (by) an authorized designee (of the Agriculture Commissioner.)

Version 2:

A representative of a major North Dakota farm organization, appointed by the Agriculture Commissioner (or a designee of that representative).

**ADDITIONAL NOTE:** Should the sections pertaining to the Seed Arbitration Board be moved to a portion of the North Dakota Century Code governing the Agriculture Commissioner.

1       **SECTION 61. Seed arbitration board - Compensation.** The chairman of the seed  
2 division of the North Dakota agriculture association and the representative of a farm  
3 organization in this state are entitled to receive compensation in the amount of one hundred  
4 thirty-five dollars per day plus reimbursement for expenses as provided by law for state officials,  
5 if the individual is attending meetings or performing duties directed by the board. The  
6 compensation and reimbursement for expenses required by this section must be paid by the  
7 agriculture commissioner.

**SOURCE:** Section 4-09-20.2(1).

8       **SECTION 62. Seed arbitration board - Rules of operation and procedure.** The  
9 seed arbitration board shall adopt rules of operation and procedure for arbitration hearings,  
10 including a formula for reimbursement by the parties of the expenses of the arbitration process.

**SOURCE:** Section 4-09-20.2(2).

11       **SECTION 63. Seed arbitration board - Petition - Hearing - Recommendation.**

- 1           1. A seed labeler, seed dealer, or seed customer may file with the agriculture
- 2                   commissioner a petition for a hearing to settle a dispute involving a seed
- 3                   transaction.
- 4           2. The agriculture commissioner shall forward the petition to the seed arbitration
- 5                   board.
- 6           3. The seed arbitration board shall hold a hearing and within thirty days issue a
- 7                   nonbinding recommendation for a resolution of the dispute.

**SOURCE:** Section 4-09-20.2(2).

8           **SECTION 64. Seed arbitration board - Hearing - Use of evidence.** Any evidence  
9 and testimony presented at a seed arbitration hearing and any findings or recommendations by  
10 the seed arbitration board are admissible in any subsequent proceeding.

**SOURCE:** Section 4-09-20.2(2).

11           **SECTION 65.** A new section to chapter 11-08 of the North Dakota Century Code is  
12 created and enacted as follows:

13           **Limitation on authority - Seed.** Notwithstanding any other law, a county may not  
14 impose any requirements or restrictions pertaining to the registration, labeling, distribution, sale,  
15 handling, use, application, transportation, or disposal of seed.

**SOURCE:** Section 4-09-02.1.

**NOTE:** This is existing law. It is recommended that the section be moved to the  
chapter pertaining to counties.

16           **SECTION 66.** A new section to chapter 40-05 of the North Dakota Century Code is  
17 created and enacted as follows:

18           **Limitation on authority - Seed.** Notwithstanding any other law, a city may not impose  
19 any requirements or restrictions pertaining to the registration, labeling, distribution, sale,  
20 handling, use, application, transportation, or disposal of seed. This section does not apply to  
21 city zoning ordinances.

**SOURCE:** Section 4-09-02.1.

**NOTE:** This is existing law. It is recommended that the section be moved to the  
chapter pertaining to cities.

22           **SECTION 67.** A new section to chapter 58-03 of the North Dakota Century Code is  
23 created and enacted as follows:

- 1           **Limitation on authority - Seed.** Notwithstanding any other law, a township may not
- 2 impose any requirements or restrictions pertaining to the registration, labeling, distribution, sale,
- 3 handling, use, application, transportation, or disposal of seed.

**SOURCE:** Section 4-09-02.1.

**NOTE:** This is existing law. It is recommended that the section be moved to the chapter pertaining to townships.