

September 2010

Introduced by

1 A BILL for an Act to amend and reenact sections 4-42-01, 4-42-02, 4-42-03, 4-42-04, 4-42-05,
2 4-42-06, 4-42-07, 4-42-08, 4-42-09, 4-42-10, and 4-42-11 of the North Dakota Century Code,
3 relating to the inspection and analysis of seeds and crops for the purpose of verifying genetic
4 identity; and to provide a continuing appropriation.

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

6 **SECTION 1. AMENDMENT.** Section 4-42-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **4-42-01. Definitions.** As used in this chapter, unless the context otherwise requires:

- 9 1. "Analysis" means the laboratory examination of seeds, crops, or plant tissue to
10 determine the genetic identity or physical traits of the seeds or crops.
11 2. ~~"Commission" means the state seed commission.~~
12 3. ~~"Commissioner" means the state seed commissioner.~~
13 4. ~~"Department" means the state seed department.~~
14 5. "Inspection" means a visual field inspection of seeds or crops.

NOTE: Because the individual sections in this chapter reference the Seed
Commission, the Seed Commissioner, and the Seed Department, it is not necessary to
include this terminology in a definition section.

15 **SECTION 2. AMENDMENT.** Section 4-42-02 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **4-42-02. ~~Commissioner~~ Genetic identity - Physical traits - Analysis and**
18 **verification.** The seed commissioner may establish procedures for inspecting, analyzing, and
19 verifying the genetic identity or physical traits of seeds or crops. The procedures may address
20 the compilation of all necessary documentation and other administrative functions.

NOTE: It is recommended that this section be repealed. The content of the first
sentence is reiterated in Section 4-42-03. As for the second sentence, in order to

inspect, analyze, and verify the genetic identity or physical traits of the seed or crops, the Seed Commissioner will have to utilize certain protocols and procedures. It is not necessary to statutorily list suggestions for such. If the Seed Commissioner wishes to create a more formal system, the Seed Commissioner is able to adopt rules to implement the chapter.

1 **SECTION 3. AMENDMENT.** Section 4-42-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-42-03. Inspection and analysis - ~~Procurement of samples~~ Samples -**
4 **Specifications.**

- 5 1. The seed commissioner may inspect and analyze seed or crop grown¹, sold, or
6 otherwise ~~situated~~ present in this state to determine and verify the genetic identity
7 or physical traits of the seed or the crop. ~~The~~
- 8 2. For purposes of conducting the inspection, analysis, or verification, the seed
9 commissioner may ~~procure~~:
- 10 a. Obtain² samples of seed or crop grown in this state, sold in this state, or
11 otherwise situated in this state; ~~or may accept for analysis and verification~~
- 12 b. Accept samples submitted of seed or crop grown in this state, sold in this
13 state, or otherwise situated in this state from any public or nonpublic entity
14 that ~~is the owner of~~ owns the seed or crop.
- 15 3. The seed commissioner ~~shall determine~~ may specify the size and nature of each
16 sample to be ~~submitted to the laboratory~~ tested under this chapter, the manner in
17 which each sample is to be ~~taken, the purposes for which each sample is to be~~
18 ~~taken,~~ obtained and delivered to the seed commissioner, and the manner in which
19 each sample's identity is to be preserved, ~~and the manner in which each sample is~~
20 ~~to be delivered to the laboratory.~~

NOTE:

¹ Is it necessary to mention "plant tissues" as well?

² It is not clear if the intent of this section is to authorize the Seed Commissioner to enter upon private property for the purposes of obtaining a sample.

21 **SECTION 4. AMENDMENT.** Section 4-42-04 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **4-42-04. Field inspections.** The seed commissioner shall determine the criteria for
24 field inspections.

NOTE: In order to conduct a field inspection, the Seed Commissioner will have to utilize certain scientific protocols and procedures. It is not necessary to suggest that the Seed Commissioner do so. If the Seed Commissioner wishes to create a more formal system, the Seed Commissioner is able to adopt rules governing field inspections.

1 **SECTION 5. AMENDMENT.** Section 4-42-05 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-42-05. Inspection and analysis - Fee.** The seed commissioner, ~~with the approval of~~
4 ~~the commission,~~ shall establish and charge a fee, subject to the approval of the seed
5 commission, for ~~inspecting, analyzing, and performing any other services permitted by service~~
6 under this chapter.

7 **SECTION 6. AMENDMENT.** Section 4-42-06 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **4-42-06. Laboratories and facilities.** The seed commissioner ~~shall provide and~~
10 ~~maintain~~ may utilize any laboratories and or other facilities necessary to conduct the analyses
11 ~~authorized by this chapter and to effect any other work necessary~~ established by or under the
12 control of the seed commission to implement this chapter.

NOTE: The rewording of this section clarifies that the Seed Commissioner may use existing facilities to analyze and verify seeds, crops, and plant tissue in accordance with this chapter.

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

15 **4-42-07. Identity preservation - Traceability.** The seed commissioner may establish
16 a procedure for the identity preservation and traceability of seeds or crops inspected or
17 analyzed under this chapter.

NOTE:

1 ¹ Do you wish to authorize the Seed Commissioner to establish a procedure for
identity preservation and traceability or do you wish to require that the Seed
Commissioner utilize such a procedure in certain instances?

2 ² Should the reference to "verification" be included as well?

18 **SECTION 8. AMENDMENT.** Section 4-42-08 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **4-42-08. Labels - Documentation.** The seed commissioner shall prescribe the ~~type~~
21 ~~of labels and any other identifying documentation to be affixed by the commissioner to~~
22 necessary to identify seeds or crops inspected and analyzed¹ under this chapter. All labels and
23 other identifying documentation ~~affixed~~ used by the seed commissioner in accordance with this

1 ~~chapter must clearly bear the identification of the department and may be used only by the~~
2 ~~commissioner in conjunction with the verification services provided under this chapter include~~
3 ~~the departmental seal².~~

NOTE:

1 ¹ Should the reference to "verification" be included as well?

2 ² The departmental seal is the official identification of the Seed Department. Is use
of the seal that which is intended?

4 **SECTION 9. AMENDMENT.** Section 4-42-09 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **4-42-09. Contract for services - Protection of growers.** The seed commissioner
7 may contract with any ~~public or private entity to provide person for the~~ protection, inspection,
8 analysis, or verification of seeds or crops, as provided by this chapter.

NOTE: Should "plant tissue" be referenced as well? It is included in the current
definition of "analysis" as found in Section 4-42-01. Is "verification" an act that is
sufficiently separate from the definition of "analysis"?

9 **SECTION 10. AMENDMENT.** Section 4-42-10 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **4-42-10. ~~Deposit of fees – Investment~~ Receipt of moneys - Seed department fund -**
12 **Continuing appropriation.**

13 1. The seed commissioner shall ~~deposit forward~~ all moneys ~~arising from the~~
14 ~~collection of fees~~ received under this chapter ~~with~~ to the state treasurer for ~~credit to~~
15 ~~deposit in a special fund known as the seed department revolving fund. At the~~
16 ~~direction of the commission, the state treasurer shall provide for the investment of~~
17 ~~available moneys from the revolving fund. The state treasurer shall deposit twenty~~
18 ~~percent of the income from the investment of the moneys in the general fund and~~
19 ~~the remaining eighty percent of the investment income in the seed department~~
20 ~~revolving fund~~¹ All moneys in the seed department fund are appropriated on a
21 continuing basis to the seed department to carry out statutory directives.

22 2. The seed commissioner shall approve all expenditures made pursuant to this
23 chapter and shall document the expenditures at the time and in the manner
24 required by the office of management and budget.

NOTE:

1 The language governing the investment of moneys in the Seed Department fund
has been omitted because it was addressed in the rewrite of the chapter pertaining
to the Seed Department and seed labeling laws.

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

3 **4-42-11. Warranties or representations regarding seeds or crops.** The seed
4 commission, the seed commissioner, and the seed department make no warranties or
5 representations of any kind, either expressed or implied, including warranties of merchantability,
6 fitness for a particular purpose, or absence of disease, as to seed or crop that is inspected,
7 analyzed, or verified under this chapter.