

2011 HOUSE AGRICULTURE

HB 1378

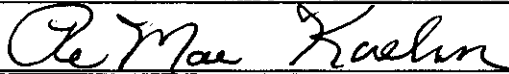
# 2011 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee  
Peace Garden Room, State Capitol

HB 1378  
January 27, 2011  
Job # 13538

☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to label requirements for canola seed

## Minutes:

**Rep. Nelson, Sponsor:** Add canola after dry beans (See attached #1)

## Opposition:

**Ken Bertsch, State Seed commissioner:** (See attached #2)

I would like to provide information of what the result would be of the actions of HB 1378. Any time there is an action that removes the law that requires a crop to be certified in the state of North Dakota, we have to argue against it. There are only two and that is canola and potatoes. The planting of certified seed is going to improve the quality of the seed products and commercial products that result from the planting of certified seed. We have little choice but to talk about the result of the repeal of canola language.

Look at the fact sheet (attached #2) with the headers for certified seed and common seed. What would happen without a certified seed requirement? The certified seed column has standards that have to be adhered to. They are seed standards. There is a difference between seed standards and the other column labeled common seed or QA (Quality Assured) seed. On the certified seed side, anything produced or sold in ND has to adhere to these standards. Those may or may not be labeling standards. Certified is a seed standard and labeling standard. Common seed is a labeling standard only.

Pure seed in certified seed standards demand that pure seed be 99% or that a bag of seed be 99% pure. Common seed has no labeling standard. Our agency runs the state regulatory program. Regulatory folks go to seed companies and check them to make that seed accurate. The label has to be accurate. In regard to pure seed there is no standard.

For inert matter the standard in certified seed is 1%. There is no standard on the other side. There can be inert matter in QA seed or common seed that exceeds 1%. That doesn't always happen. Inert matter in regard to canola would be pieces of sticks or cracked seed, etc.

Prohibited weeds can't be planted or sold under either standard. The law currently says the Canadian seed entering the state has to meet ND certified seed standards. Prohibited weeds are those on the state noxious weed list which is governed by the ND Agriculture Dept. Rep. Nelson talked about cleavers. They are not on the state noxious weed list. This means that under labeling law, cleavers could be present. Under certified seed laws, they cannot be. If the requirement is in place that any seed entering the state contains cleavers, we would regulate that under our certified seed requirement. We would put a stop sale on that. We wouldn't without the certified seed requirement.

Objectionable weeds—this is where we run into quality issues. Objectionable weeds standards are lower for noncertified product. You will see that 5 per pound are allowed of objectionable weeds even including wild oats under certified standards. Up to 25 per pound are allowed under common seed standards.

Other kinds include in regard to canola, like a wheat seed, barley, corn, etc. Other kinds are allowed to a certain extent in a very low amount under certified seed standards but there is no standard under common.

Weed seeds are other seeds not noted above. They are weeds not on restricted list or the objectionable list. It could be like a dandelion seed. They are very low on the seed standards but they are 1% by total weight under the other. The 1% would include all weed seeds.

Sclerotia is a problem for all broad leaf crops like sunflowers, soybeans, edible beans, and canola. There is a sclerotia standard in certified seed. There is no standard under common seed. Sclerotia is the little body that comes from the growth of sclerotina in a crop. If you have sclerotina in canola, you will have a little body that forms inside the seed pod. It is a physical chunk of sclerotina. There is a limit as to what can be contained in a sample of seed under the certified seed standards but there is no limit under the other standard.

Lab testing requirements. If you are operating under certified seed requirements, it has to be done with an AOSA (Association of Official Seed Analysts) approved lab. We accept the results of similar AOSA labs if seed is coming from out of state or Canada. There is a standard on the certified seed side. There is not a standard on the common side. That doesn't mean the seed is not tested. In the soybean industry, there are very few soybean varieties that are certified. Those that are, have to fall under the certification side. Those that aren't, are regulated under the common seed statutes. That seed has to be tested but it can be tested by an internal quality assurance lab with a company. There is just no regulatory standard. That means there may or may not be a quality issue. At least it is not governed or regulated by the state.

We are in opposition because our mission is to insure high quality seed in the state. We ask you to think if this does provide an advantage to producers or to the industry. Would there be a cost issue to consumers of seed? I'm not sure. This would give the possibility of the canola industry evolving to what the soybean industry has.

**Representative Mueller:** Rep. Nelson says we have spread cleavers throughout our area in the certified seed. Is that an accurate statement?

**Ken Bertsch:** Since the law came, it is not likely because anybody importing seed into the state knows what the standards are of the state which includes a prohibition on cleavers.

**Representative Boe:** What if we fix this by putting common seed standards in for canola seed. Would that be looked favorably upon by the Seed Dept.?

**Ken Bertsch:** I think Rep. Nelson's amendment basically does that. It adds canola to be treated the same as most other crops. All that section does is that it has to be labeled by variety and that it may be sold by brand. If we treated canola the same as soybeans, soybeans are only regulated under the seed standards when they are certified. When they are under PVP (Plant Variety Protection) Title 5 which requires certification is the only time we certify soybeans. Otherwise we provide field inspection, laboratory testing of soybeans that are not certified. We provide companies with quality assurance programs inspections to identify whether the soybeans that are grown in that field are to the company's specifications. If a canola was a PVP Title 5, which requires they are certified, they would come out of the NDSU breeding program.

**Representative Boe:** If this fact sheet was handed out for wheat or barley, what would that look like on the common seed side? Would there still be no standards?

**Ken Bertsch:** If there were wheat varieties that were not under certification, the answer would be yes. Nearly every variety of wheat seed marketed in the state of ND is a PVP Title 5 variety. That means it is either protected by the university that released it or the private seed company. It then goes under the certified seed standards for wheat which is different than the certified seed standards for canola. There is no sclerotinia standard for wheat. The common seed standard is simply a labeling standard and those fall under labeling laws which are different than certified seed laws.

**Chairman Johnson:** Under the pure seed, Rep. Nelson led us to believe it is hard to find pure seed in canola. How do you detect that in your testing?

**Ken Bertsch:** You can't detect an off type by looking at the seed. You can only detect an off type by doing a field inspection. The only time to look at the seed is in the laboratory. The issue of off types wouldn't be regulated one way or the other except if we are certifying that seed crop in the field.

**Representative Trottier:** On the common seed side where there are no standards, do growers list in numbers?

**Ken Bertsch:** Yes, because labeling laws require that certain things be listed. It has to list the kind, variety, pure seed, other crop, inert, weed seed, any seed treatments, noxious weeds, and the number of seeds per pound. This varies among crops. All labels have to contain certain things.

**Representative Mueller:** Aside from the process of certification, the changes that Rep. Nelson is suggesting do what for growers?

**Ken Bertsch:** We don't believe that it improves seed quality. I can't find anything that is a benefit to growers by removing a certification requirement.

**Representative Mueller:** If I am growing canola, why would I want this law to pass? Is it a cost factor, accessibility factor?

**Ken Bertsch:** I am not sure what the benefit is. Seed quality would be diminished with the repeal.

**Chairman Johnson:** Closed the hearing.

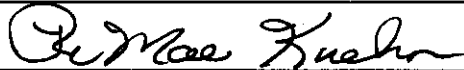
# 2011 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee  
Peace Garden Room, State Capitol

HB 1378  
January 28, 2011  
Job #13618

☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Committee Work

## Minutes:

**Representative Belter:** Moved Do Not Pass

**Representative Rust:** Seconded the motion.

**Representative Boe:** You seed canola at five pounds to the acre. At five pounds an acre at today's prices of bin run canola you can seed crop for about \$1.25 an acre. If you buy certified seed, it will cost you between \$50-75/acre. Round-up ready canola, you can't clean your seed, you can't clean it for your own use or to sell it to your neighbor. The only variety of canola available for this type of sale would be clear field varieties. I've been cleaning clear field for years. But only for my own use because you can't sell it to anybody. All this bill would do is allow other people to buy the clear field seed and save \$50/acre. There is no benefit to buying the certified. If we demand certified seed on canola why don't we do it on wheat, barley, etc.? I am not going to support the **Do Not Pass**.

**Chairman Johnson:** I feel the same way. If you can get the seed from your neighbor, especially canola seed. . . I feel different about the wheat and other crops. The Round-up Ready is already protected by your Monsanto agreements. The clear field you can save yourself \$50-60 an acre. I think when the original bill came forward, the people who had it introduced ended up with a different bill than they intended. I am not in support of **Do Not Pass**.

**Representative Belter:** Isn't there a royalty for the clear field?

**Representative Boe:** No. As Rep. Nelson said, there are some varieties that they did apply for a PVP protection. To this date nobody has finished the application. So they get the initial two years of protection. They don't file because the filing cost is substantial. The original bill that came in was trying to address a problem that all seed came out of Canada. All canola growing companies were based out of Canada. They would clean their seed and take the best seed. Then what I call the "pepper" was sold in U.S. because it was little seed. The idea of the bill was to say you cannot import anything with a lesser quality to the

United States than what is available in Canada. It got hoghoused into all canola has to be sold certified. It has been that way for ten years. This bill attempts to clear that up. The bill sponsor would like to see an amendment.

**Representative Belter:** Is most of the canola raised clear field?

**Representative Boe:** No, the majority is Round-up Ready. Round-up Ready is preferred where you have heavy kochia infestation. If you have \$1.25/acre for seed costs, you can afford to pay for some pre emergent chemicals. Clear field you can sell at a premium on a non GMO market.

**Representative Belter:** It was mentioned to amend. If it is amended, I **withdraw** my motion.

**Representative Rust:** **Withdraws** second

**Representative Headland:** Moved the amendment to put "canola" after "dry beans" on line 14.

**Representative Mueller:** Seconded the motion for the amendment.

**Representative Rust:** What is Round-up Ready?

**Representative Boe:** Round-up Ready is a genetically modified plant that has genetics to be resistant to the chemical Round Up. When the crop is growing it can be sprayed with Round Up. They have patents on the genes. You must sign an agreement to not retain any seed for your use and will not sell to anyone else. You will keep their product in place.

**Representative Rust:** That is what I thought.

**Chairman Johnson:** People have testified in here that they have been spot checked and found themselves in a serious situation.

**Representative Belter:** If we pass this bill, does that mean that any new varieties of clear field would not be identity preserved? Anyone could grow them and sell them?

**Chairman Johnson:** I would assume that without getting registered properly.

**Representative Boe:** My understanding of the industry would be that they would file for their PVP (Plant Variety Protection) protection and finish up the paper work. I don't remember how long you get PVP for? Do you get two years of protection for just filing paper work? Once you finish the paper work you get longer than two years?

**Representative Mueller:** In 2014 old Round Up goes off patent. Then Monsanto, etc. will have to come up with Phase 2. Something new will probably replace it.

**Representative Holman:** When these patents expire (soybean growers pay \$35/acre to Monsanto) can the State of ND get into the business? That discussion will be out there.

**Representative Schmidt:** I wrote in my notes, "NDSU believes this does not improve seed quality." That was driving my thought. But when you mention economics with clear field I changed my thought. How would you compare economics vs. the improving seed quality?

**Representative Boe:** In Manitoba, the first clear field variety did not apply for PVP protection. Everybody in Manitoba and anybody who had purchased seed out of Manitoba went back to their bins and cleaned their own seed. Once out it is hard to get it back. They abandoned that variety. They came out with a new variety and filed for PVP protection and finished the paper work on it. The increased performance of the seed wouldn't get you \$50/acre. It was a dismal failure. Nobody bought it. At 5 lbs/acre and you seed a thousand acres you need 5,000 pounds.

**Representative Schmidt:** The companies that buy canola, does it matter to them whether it is PVP? Does price matter one way or the other?

**Representative Boe:** No. If you can get into a non GMO contract, you can get a premium. You are responsible for the purity. If somebody found that it was contaminated product and they find your sample, you are on the hook. You want it higher priced to make it worth the risk. Sometimes I participate in contracts like that. Sometimes I don't.

**Representative Mueller:** The other part of the answer to Rep. Schmidt, the State Seed Dept. doesn't develop new varieties. They certify that the seed is what they said it is.

**Chairman Johnson:** I have an amendment on Line 14 to add "canola" after "beans."

**Voice Vote taken. Motion passed.**

**Chairman Johnson:** We have the amended HB 1378.

**Representative Rust:** It appeared to me that Ken Bertsch of the State Seed Dept. was not fired up about this bill?

**Chairman Johnson:** He was representing seed dealers that sell canola seed. Officially he wasn't but I think that is the direction he is coming from--the people he works with that sell certified seed.

**Representative Boe:** He indicated that he was trying to stay neutral.

**Representative Mueller:** This would take business out of the Seed Commissioner's hands. He is the certifying agent in our state. We will impact his business.

**Representative Boe: Moved to Do Pass as amended.**

**Representative Schmidt:** Seconded the motion

A Roll Call vote was taken. Yes: 11, No: 3, Absent: 0.

**DO PASS as amended** carries.

**Representative Boe will carry the bill.**

Date: 1/28/11

Roll Call Vote # 1

**2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

**BILL/RESOLUTION NO.** 1378

House **Agriculture** Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended

☐ Rerefer to Appropriations

Motion Made By Representative Belter Seconded By Representative Rust

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair			Tracy Boe		
Joyce Kingsbury, Vice Chair			Tom Conklin		
Wesley Belter			Richard Holman		
Craig Headland			Phillip Mueller		
David Rust					
Mike Schatz					
Jim Schmidt					
Wayne Trottier					
John Wall					
Dwight Wrangham					

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Bill Carrier \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

January 28, 2011

VLC  
1/28/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1378

Page 1, line 14, after "beans" insert ", canola"

Renumber accordingly

Date: 1/28/11

Roll Call Vote # 2

**2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

**BILL/RESOLUTION NO.** 1378

House **Agriculture** Committee

Legislative Council Amendment Number 11.0613.01001

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended

☐ Rerefer to Appropriations

Motion Made By Representative Headland Seconded By Representative Mueller

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair			Tracy Boe		
Joyce Kingsbury, Vice Chair			Tom Conklin		
Wesley Belter			Richard Holman		
Craig Headland			Phillip Mueller		
David Rust					
Mike Schatz					
Jim Schmidt					
Wayne Trottier					
John Wall					
Dwight Wrangham					

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Bill Carrier \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Insert "canola" after "beans"

Date: 1/28/11

Roll Call Vote # 3

**2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

**BILL/RESOLUTION NO.** 1378

House **Agriculture** Committee

Legislative Council Amendment Number 11.0613.01001

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended

☐ Rerefer to Appropriations

Motion Made By Representative Boe Seconded By Representative Schmidt

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	X		Tracy Boe	X	
Joyce Kingsbury, Vice Chair	X		Tom Conklin	X	
Wesley Belter		X	Richard Holman		X
Craig Headland	X		Phillip Mueller	X	
David Rust	X				
Mike Schatz		X			
Jim Schmidt	X				
Wayne Trottier	X				
John Wall	X				
Dwight Wrangham	X				

Total Yes 11 No 3

Absent 0

Bill Carrier Representative Boe

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1378: Agriculture Committee (Rep. D. Johnson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1378 was placed on the Sixth order on the calendar.

Page 1, line 14, after "beans" insert ". canola"

Renumber accordingly

2011 SENATE AGRICULTURE

HB 1378

# 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Agriculture Committee**  
Roosevelt Park Room, State Capitol

Engrossed HB 1378  
March 10, 2011  
Job # 15261

☐ Conference Committee

Committee Clerk Signature

*Greta Nelson*

## Explanation or reason for introduction of bill/resolution:

Relating to label requirements for canola seed

## Minutes:

Attachments: #1, #2,

**Senator Larsen;** Meeting called to order at 10:30 am, March 10, 2011 HB1378

**Rep Marvin Nelson:** District 9 (Attachment #1)

**Senator Luick;** You mentioned about the rotational of canola.....right now you are looking at a 4 -5 year rotation?

**Rep Nelson:** For certified seed, Canada requires a 5 year rotation actually not sure of ND requirements, but about the same.

**Senator Luick;** Is it because of diseases or plant vigor or what is the purpose of the rotational distance?

**Rep Nelson:** The only reason for separation is contamination of different types between seed lots. You don't really need a 5 year rotation, if you stay with same variety like Canada, you could be growing it back to back.

**Senator Klein;** We are just removing the language that provides all certified seed in the state has to be certified....this would allow after you have harvested your canola from last season to sell without having to go through the certification process?

**Rep Nelson:** In the vast majority cases, no, because there are other laws in place. If it were utility pended, no, if were plan variety patented, no. There is really very little seed available that would fit very specialized situations.

**Senator Klein;** If falls on the outside, which it could, it would be ok instead of having to go through a long process?

**Rep Nelson:** Yes, if it did fall outside.....we would be treating it like it was treated before, we would be treating it exactly the same as other states. MN does not have this law....we are unique by having this law.....none of them treat canola special as we do in ND.

**Senator Larsen;** Is it difficult to clean the weed seed out of the canola when they process it?

**Rep Nelson:** The seed under a microscope, it looks quite different. It is like a little center with a bunch of thick spines coming out .....but end result is the spine makes a circle and acts the same way.....very similar in size so you can't screen it out. You can't length grade it out. It works the same on a gravity table and on a spiral it rolls just like the canola seed. There would be some potential using a daughter mill on it as used on alfalfa. The industry operates with a zero tolerance but same time the industry admitted that the cleavers is spread as the canola has spread. It is a thing of trying to do a zero tolerance on a weed seed that is universal in the area production .....it just doesn't happen.

**Senator Luick;** How does the organic industry work with this?

**Rep Nelson:** Basically they don't. Due to the contamination, they couldn't get clean seed, there is no way to maintain clean seed, and the organic people have black balled canola. The talk about having small quantities of organic canola, the industry is unable to provide seed to the organic growers. The only potential shot is to go to old seed and grow it carefully grow it in isolation that would not get contaminated. They would not be able to sell it because not certified.

**Senator Larsen;** Canola seed is for oil extraction? What is the production loss from having this in there....if you do a field and it has 10 -20% of this in there, what is the loss that takes place in that?

**Rep Nelson:** Usually with the herbicides that we have, we don't see a big loss. If Canadians are aware of a problem, would be when they are swathing wheat....come to a green patch and the swather ...the swather wouldn't come out of the green patch. If it grows all summer, it ties the crop together more than a bind weed or buck wheat. Also is a problem for livestock producers as it will grow in pastures and hedges ....cattle eating the seed, it will pass through the cow and it actually grows better in the cow pattie than in thrown out on the ground. It is a native plant to North America ....called a bed straw in some places and is member of the mint family. Spreads very easily.

**Rep Tracy Boe:** District 9. What I would like to add, it is a very small segment of seed market that would be able to be sold or traded in a non-certified setting. It is such small quantities that it would be inconvenient to have each farmer clean up his own seed. It would be more convenient if you could have one farmer be the designee to clean up his batch of seed and then sell it to surrounding neighbors. It is a very small part and if you discover your management methods if you can make it work, it can be profitable because the seed cost is \$1.25 an acre versus around \$50. It makes quite a difference.

**Senator Larsen:** Discussion? Opposition?

**Ken Bertsch:** ND State Seed Commissioner Dept (Attachment #2)

**Senator Murphy;** In your hand-out that certified seed is pure seed to the degree of 99%+ and the cleavers are so hard to pick out that no one is doing that. Could you address that and the cost differential between the dollars? Are you using the only method he said that would work as metal filings and pick up more cleaver seed that way? Are you certifying seed that is 99% + cleaner?

**Ken Bertsch:** Rely on Steve for help with the information in regard to seed quality. Basic answer is yes...We haven't taken a field inspection for canola seed since you have been here? We produce very little in the state so we do very little seed inspection, but do quite a bit of laboratory analysis of the seed under the standard, the lab standards, for that seed. We don't know exactly it has been conditioned, which is the technical terms what happens once you harvest it. We don't have a lot of experiences with the conditioning aspect, but do have a lot of experience with the lab analysis part. That is where we put those standards in place for the seed that is coming in. If our laboratory analysis examining that seed with a set of standards that is on the certified side that say specifics, that is what they will use while doing the analysis. If no requirements...that is the list and will examine under those standards. The cost issue, we don't have any expertise because the cost of the seed product is outside what the state seed dept does.....and in reality it could be 50 -60 dollars an acre....sounds a bit low.

**Senator Luick;** Canola is a host plant for sclerotia?

**Ken Bertsch:** Yes.

**Senator Luick;** Concerned about the rotation differences you have to break that cycle of that disease? Keeping that under control, you would have to have that rotation issue? Planting it back to back would host that type of disease.....correct?

**Ken Bertsch:** In overview, yes. The field standard for canola production is probably 3 years. To break the disease cycle, is a different issue.....the sclerotia bodies that exist in the soil could easily could be a 5 year issue....really doesn't have much to do with a marketing standard is in play.

**Senator Luick;** Do you have any of the possibilities of the cleaning issue.....is there a way we can correct some of the problems with this cleaver issue so high in the seed? How are any of these certified cleaning establishments getting it clean enough so we aren't passing it on and on?

**Ken Bertsch:** Questions on cleaning equipment, I will refer it to Steve. The certified standard seed only prohibits cleavers which means regardless of cleaning facilities, there isn't suppose to be any cleaver in that bag.....zero tolerance is impossible to achieve. If they ran through our labs and were found, they were not to be sold ...lots of things happen that we can't control and sometimes to could possibly be sold. That played a much bigger part in cleavers than having a law in place that prohibited cleavers from being sold in a bag in ND.

**Senator Luick;** How many years has canola been grown in Canada and does cleavers plant established itself in the crop and how long has it taken to contaminate to the point of where it is at in North Dakota?

**Ken Bertsch:** Been produced in Canada since the 60's-70's (approximately) ND we adopted canola later in the Langdon area in the 80's.....the cleavers as a weed, I can guess followed production practices in both sides of the border. Canada dealing with cleaver in the very early years.

**Senator Heckaman;** Look at the bill...page one line 5 -6. If does not become effective, then this will be amended. Has this portion been taken out?

**Ken Bertsch:** No, not yet. Most of the Ag issues that deal with seed law are double drafted. This one is the same case. What happens on line 7, the certification requirement is one change on line 14 and repeal on line 21. That comes out of chapter 409, the current operating chapter. If HB 1027 does pass this is the section that is going to go out ....same language as found on page 1. It will take care of both the new chapter and current chapter 409 which does the same in both.

**Senator Klein;** If we are the only state that certifies.....would you respond to that?

**Ken Bertsch:** We may be the only state who requires certification ..... if means that ND is the only state that has the requirement for marketing of certified seed. Professionally, I feel there should be certified requirement for all the crops produced in the state. Would lead to a higher quality to all crops produced in the state. Studies show that would be a good thing, however would be more costly. Limit the spread of disease. Canola has benefited by this chapter.

**Senator Klein;** I cannot buy seed in MN and bring it back legally?

**Ken Bertsch:** You can if there was no protection on that variety. 99% of cases would be a conventional open pollinated variety of canola seed that didn't have any level of protection on it existing as patent, technology agreement trade, you could do that. Within limits, you could.

**Senator Larsen:** Are these national standards for certification or just a ND standard?

**Ken Bertsch:** ND standard ...there are minimum standards set by national agencies for some crops....ND exceeds in most all crops. ND has a state agency located in one spot....all under administrative rules.

**Senator Luick:** Seed coming across the border, were you referring to canola or any seed conventional seed but open pollinated? You could transport a hybrid seed also?

**Steve Sebesta:** ND State Seed Dept. (Deputy Commissioner of the Seed Dept) Plant breeder.

**Senator Luick:** Is there such a thing as a conventional hybrid? Is it only in canola or with all seed production that crossing state borders....is it ok to bring any type plant or seed product across the border if it is hybrid? Open pollinated ....could you define?

**Steve Sebesta:** It is legal for someone to go across state line as long as it is a legal product in that state. They do not need to meet ND standards.....for canola standards, ND standards exceed the standards....they have to meet our standards in order to sell that product in ND. It is legal to go across border for the seed as long as it meets the federal seed act requirements. Conventional versus Hybrid.....hybrid is going to be conventional if it does not carry a trait as round-up, liberty link that would be a trait bearing hybrid. They are both hybrids one is conventional one has trait; one can purchase that seed anywhere else and bring it into ND ....perfectly legal.

**Senator Luick:** Difference between open pollinated and hybrid issue?

**Steve Sebesta:** Difference.....open pollinated variety is a variety ....not a hybrid ...it is a synthetic ....the method of developing the hybrid. Seed companies will use an inbred line as a female and is typically is male sterile and plant in a field in separated strips with a male which is the pollinator. The male carries the genes to restore for fertility. That is a traditional hybrid. 95-99% of canola planted in North America is hybrid.

**Senator Miller:** How do you see the world canola the impact, should we pass the bill or fail?

**Steve Sebesta:** See some problems if this bill is to pass. We see that some of the language should be removed from law because of the cleaver issue. I would contend that based our certified seed regulations, that the cleavers did not multiply in ND because of state certified seed regulations, but seed in other crops. Same crop or not, will spread weed seeds....I would contend that some of the weed seed issues are the results of not certified seed standards, but because common seed being replanted. Other issues could be the misconception it is legal save seed and replant on own farm or sell it to a neighbor. We see that in other crops difficult issue for the seed dept to regulate, the issue of saving a hybrid versus a conventional variety (open pollinated) there would not be a problem with saving seed of an open pollinated variety. Problem is that variety has a protected trait. Problem with saving hybrid is legal concern of a hybrid that has protected trait which is illegal because of the patent laws and genetic reasons. Saving a hybrid then becomes two parents which create another problem.....using late parent and early parent. Potential is the legal and genetic problems and the poor performance of that product. With that, the canola and oil would not meet the standards in ND and the industry would be interested in not seeing that happen.

**Senator Miller** Making a copy of a copy.

**Steve Sebesta:** The next generation is the segregation of the genes....get late or early plants, you would get segregation that 25% of the plants would be susceptible to the chemical .....when farm sprays, he would kill about 1/4 of the plants, black leg resistance. Canada did lot of study...yield was reduced about half by saving the seed and replanting.

**Senator Larsen;** Discussion?

**Senator Larsen:** Opposition?

**Barry Coleman** Northern Canola Growers: Mission of the Grower is to improve the profitability canola production in the state of ND. If we have lower quality seed in ND, that is not a good thing. I can't support that would lower the quality of seed in the state. Primary intent is to make sure the seed industry would be hampered in ND in the future because of this. Let's try to address that somehow.....maybe this isn't the way to do it. We side with the seed dept in the arguments they make and are valid. If quality seed is going to be lowered, it is difficult to support.

**Senator Miller;** How does ND rate in production of canola?

**Barry Coleman:** About 92% of the national production.

**Barry Coleman:** We have done studies that show planting really doesn't pay for you.....however; we don't want to be in the case where we say we are going to take away that choice from the grower.

**Gary Knutson:** ND Agricultural Association. We represent crop production input dealers across the state. This is a complex issue ....seed laws. Our opposition is to caution in the matter....we need to go slow and analysis it carefully.

**Senator Luick:** Is there a dire need that this bill goes through right now or should there a study to do this right?

**Ken Bertsch:** We will be studying seed laws again within the next session. We have finished chapter 409 that deals with all field crops including canola; however, I am suggesting that there would be another open form in the interim to discuss any kind of seed. Next we will work on the potatoes. Obviously is the choice of the legislature.

**Senator Larsen;** Close hearing on HB 1378

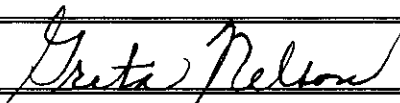
# 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Agriculture Committee**  
Roosevelt Park Room, State Capitol

HB 1378  
March 11, 2011  
15293

☐ Conference Committee

Committee Clerk Signature



## **Explanation or reason for introduction of bill/resolution:**

Relating to label requirements for canola seed.

## **Minutes:**

**Senator Larsen;** Meeting called to order

Senator Klein; Discussion with a very interesting amount of information from Senator Nelson, who certainly understands what he does and how to get to be where he is. More interesting was the concerns from the seed commissioner and from Zone industry who found there are problems. We are looking at such a narrow amount of people who maybe help by this bill, but bigger concern would be who might be hurt by this bill. I will be voting no on this.

**Senator Miller;** I move a Do Not Pass on HB 1378

**Senator Klein;** Second

**Senator Larsen;** Moved a Do Not Pass by Senator Miller and second by Senator Klein

**Senator Larsen;** Discussion?

**Senator Miller;** Ecco what Senator Klein said.....I understand the issues....with ND being 92% of the nations production of canola, we being such large consumers of seed for the US in our state. High quality seed and high standard as the industry progresses as we get more people involved. It is important we keep this high level and maybe something can be ironed out between interesting parties on their own in the next two years. I don't see repeal the whole section as the proper course.

**Senator Larsen;** Further discussion? My thought of the "watering down" of the genetics and what they are putting in there, it strains out without certified is troubling and then the weed seed is mimicking the other canola seed .....try to stay on top.

**Senator Miller;** Also add canola is one of those seed that ends up in everyone's ditches and fence line.....blows out of the truck because it is a light seed and can be a lot of cross

contamination....very rapidly. Another reason to keep a tight lid on this.....lots of technology and interests in having patents or whatever it might be on a product.

**Senator Larsen;** Discussion?

**Senator Larsen:** Clerk take the roll

**Clerk:** 6-0-1 (Senator Flakoll absent)

**Senator Larsen;** Passes 6-0 Do Not Pass

**Senator Larsen** Senator Miller carries

**Senator Larsen:** Close meeting.

Date: 3/11/11

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1378

Senate Agriculture Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Miller Seconded By Senator Klein

Senators	Yes	No	Senators	Yes	No
Chairman Flakoll	<input checked="" type="checkbox"/>		Senator Heckaman	<input checked="" type="checkbox"/>	
Vice-Chair Larsen	<input checked="" type="checkbox"/>				
Senator Klein	<input checked="" type="checkbox"/>				
Senator Luick	<input checked="" type="checkbox"/>				
Senator Miller	<input checked="" type="checkbox"/>				
Senator Murphy	<input checked="" type="checkbox"/>				

Total (Yes) 6 No 0

Absent 1 (Senator Flakoll)

Floor Assignment Senator Miller

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1378, as engrossed: Agriculture Committee (Sen. Flakoll, Chairman)** recommends  
**DO NOT PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
Engrossed HB 1378 was placed on the Fourteenth order on the calendar.

**2011 TESTIMONY**

**HB 1378**

#1

Testimony by Representative Marvin E. Nelson on HB1378 before the House Agriculture Committee  
1/27/2011

Intention is to simply not treat canola as some unique crop concerning certified seed being required. Didn't intend to eliminate canola entirely so I have a proposed amendment in Line 14 to add "canola," after "dry beans,"

I noticed during the rewrite that staff kept asking what was the purpose of the special canola section. Knowing the history, I thought that I would bring a bill concerning the unique treatment.

A few years ago, I had a concern concerning canola seed. There was a nasty weed spreading throughout the Prairie Provinces of Canada called cleavers. It had seed the same basic size as canola, there was no good control in conventional canola and it was indeed a serious weed in canola production.

Many areas of the Prairie Provinces had most of the fields infested. Due to concerns, there was a zero tolerance on cleavers in Canadian Certified Seed. I was concerned that if a field had passed field inspection yet the company knew cleavers had grown up afterwards that they could have brought the seed into ND for cleaning and certification. In ND cleavers was simply another weed and so a fair amount would be tolerated in certified seed.

Well, Representative Douglas Lemieux took that and ran with it, he was also concerned that many of the varieties being sold in North Dakota actually couldn't be sold in Canada because they had not been licensed, most commonly because their oil content was too low.

So it started out as a bill to make sure that ND certified canola seed also met the Canadian Standards, no cleavers, and good oil.

Well, it got caught up in the whole Roundup Ready crop fight and in the end came out entirely different, that you couldn't sell canola seed if it wasn't certified.

Here we are years later, and the original purposes don't exist anymore, we have spread cleavers throughout our area in our certified Canadian canola seed and there is not the big variation between Canadian and ND varieties anymore, and so I ask you to put it to rest and eliminate the section entirely.

Now some might argue that certification is still important because it protects growers. Well, it actually hasn't functioned that way. As was already mentioned we have spread cleavers throughout our area in the certified seed.

I also included references to two studies that were done on the contamination of seed lots by off herbicide tolerant canolas. These are the only two studies I am aware of, both showed that contamination was extremely common and indeed if considered an off type would have prevented certification. There were standards for contamination in conventional seed but it seems it's ignored

because the companies can't maintain it and to my knowledge there's never been a standard set for off type herbicide tolerant contamination in herbicide tolerant canola.

It is interesting to go through the Canadian Seed laws, for Hybrid seed the "in-bred" lines are supposed to breed more or less true.

There is also a problem that canola persists for a long time in a field after it is grown. The length most often given is 10 years. Used to be you could grow a seed crop every 3 years, now it is 5, but in any case, there clearly will be some contamination.

So purity isn't necessarily what people would think it would be.

In addition, it is industry practice to always blend lots. This isn't bad in that it gives uniformity between growers but again isn't really what people used to buying wheat seed from an individual field think of.

And one other problem has been small seed. It's not unusual for companies to sell seed at 160,000 seeds/lb or smaller even. Canadians won't accept that seed. Too much publicity up there for how smaller seed is more likely to be nonvigorous seed and cost you 15% to 25% of your final yield. It isn't always nonvigorous but it's more likely to be and we have indeed seen nonvigorous seed too often.

I should also point out that a breeder can, through the Plant Variety Protection Act, decide to limit a variety to only certified seed. I have included the listing of a variety bred by the Kansas Ag Experiment Station and if NDSU comes with varieties they too can make that decision if they so desire.

So certified seed has too often not worked well for growers, so it's not something that should be enshrined in law, let it be like wheat and barley and most of the other crops we grow. I wouldn't expect there to be much if any noncertified seed sold, but there is no real reason to not have that freedom in those cases where it does not violate things like the PVPA.

I would also point out that the law pretty well means there will never be organic canola grown in ND. Now the organic growers, because of all the GMO contamination pretty well dropped all canola production, but I am seeing some now being grown in other states in small quantities. Requiring them to buy certified seed basically makes it impossible for them. Most likely they would grow multiple generations of seed clean of GMO's. I'm not in favor of getting rid of GMO's as many organic growers are, but at the same time, the organic grower should not have his hands tied if he wants to grow the crop.

Thank you for your time, I would be happy to answer any questions.



Proposed Amendment to HB1378

Line 14, add "canola," after "dry beans,"

## Studies on Contamination of Canola Seed

1. Friesen LF, Nelson AG and Van Acker RC. Evidence of contamination of pedigreed canola (*Brassica napus*) seedlots in western Canada with genetically engineered herbicide resistance traits. *Agron. J.* 2003, 95 (in press).

Friesen, Nelson and Van Acker in the University of Manitoba in Winnipeg, Manitoba, Canada, studied certified canola seed stocks for contamination due to transgenes for herbicide tolerance to glyphosate, glufosinate or thifensulfuron [1]. Certified seed stocks were studied in field plots to which herbicides were applied. The results showed that 95% of 27 certified seed lots were contaminated with herbicide tolerance transgenes; with 52% of the seed lots exceeding the 0.25% maximum contamination standard set for certified seed. Some lots were tolerant to both glyphosate and glufosinate.

2. Downey RK, and Beckie H. 2002. Isolation Effectiveness in Canola Pedigree Seed Production. Internal Research Report, Agriculture and Agri-Food Canada, Saskatoon Research Centre, Saskatoon, Saskatchewan, S7N 0X2, Canada, 2002, 14 pp.

A year earlier, Downie and Beckie from AgriFood Canada in Saskatoon, Saskatchewan [2], examined 70 certified canola seed lots using a laboratory Petri dish assay. They found 59% of the seed lots had detectable herbicide tolerance and 25% had contamination levels exceeding the maximum acceptable standard for certified conventional seeds.

## **Example of a Plant Variety Protection Listing of a Canola Variety.**

**Variety:** Plainsman

**Experimental name or Synonym:** <KS 3505>

**Taxon:** Brassica napus L. var. napus

**Crop:** Rape

**Applicant:** Kansas Agricultural Experiment Station

**Date filed:** 06/04/1999

**Status:** Certificate Issued

**Status date:** 09/20/2002

**Date issued:** 09/20/2002

**Years protected:** 20

**Number of pages:** 14

**Certified Seed Only** - To be sold by variety name only as a class of certified seed.



# Seed Regulatory

4/27/11

## Comparison of Certified Canola Seed vs Common Seed

	<u>Certified seed</u>	<u>Common seed</u>
Pure seed	99.00%	no standard
Inert matter	1.00%	no standard
Prohibited noxious weeds	none <sup>1</sup>	none (ND noxious weed list)
Objectionable weeds	5 per lb <sup>2</sup>	25 per lb
Other crop seed	0.25%	no standard
Other kinds	0.01%	no standard
Weed seed	15 per lb	1.0% total by weight (cleavers)
Sclerotia	7 per lb	no standard (unlimited-included in inert %)
Germination	85%	no standard
Lab testing requirements	AOSA approved lab	no standard

<sup>1</sup> Prohibited noxious weed seeds include cleavers

<sup>2</sup> Objectionable weed seeds include dodder, wild mustard, wild oats, quackgrass and hedge bindweed.

### The potential problem of cleavers

1000 seed weigh 0.6gr so there are approximately 756,666 cleaver seed in 1 lb.

Common seed may contain up to 1% weed seed by weight of agricultural seed, therefore a 50 lb unit of canola seed could contain 0.5lb or 378,333 cleaver seed.

At a canola seeding rate of 5 lb per acre, a farmer could plant 37,833 cleaver seed per acre.

### Sclerotinia is a serious problem in many ND crops

Certified canola seed standards for sclerotia were established to help minimize the introduction of the pathogen into ND fields.

It is counter-productive to allow an unlimited amount of sclerotia in seed, then turn around and fund programs such as the National Sclerotinia Initiative to fight the disease.

#1

Testimony by Representative Marvin E. Nelson on HB1378 before the Senate Agriculture Committee  
3/10/2011

Intention of this bill is to simply not treat canola as some unique crop concerning certified seed being required.

I noticed during the rewrite of the seed laws that staff kept asking what was the purpose of the special canola section. Knowing the history, I thought that I would bring a bill concerning the unique treatment.

A few years ago, I had a concern concerning canola seed. There was a nasty weed spreading throughout the Prairie Provinces of Canada called cleavers. It had seed the same basic size as canola, there was no good control in conventional canola and it was indeed a serious weed in canola production.

Many areas of the Prairie Provinces had most of the fields infested. Due to concerns, there was a zero tolerance on cleavers in Canadian Certified Seed. I was concerned that if a field had passed field inspection yet the company knew cleavers had grown up afterwards that they could have brought the seed into ND for cleaning and certification. In ND cleavers was simply another weed and so a fair amount would be tolerated in certified seed.

Well, Representative Douglas Lemieux took that and ran with it, he was also concerned that many of the varieties being sold in North Dakota actually couldn't be sold in Canada because they had not been licensed, most commonly because their oil content was too low.

So it started out as a bill to make sure that ND certified canola seed also met the Canadian Standards, which were no cleavers, and good oil, because we did not want ND to be a potential dumping ground for poor quality seed or seed with weeds not permitted in Canada.

Well, it got caught up in the whole Roundup Ready crop fight and in the end came out entirely different, that you couldn't sell canola seed if it wasn't certified.

Here we are years later, and the original purposes don't exist anymore, we have spread cleavers throughout our area in our certified Canadian canola seed and there is not the big variation between Canadian and ND varieties anymore, and so I ask you to put it to rest and eliminate the section entirely.

Now some might argue that certification is still important because it protects growers. Well, it actually hasn't functioned that way. As was already mentioned we have spread cleavers throughout our area in the certified seed. The potential to have seed with a lot of cleavers in it be certified in ND still exists. It exists both in field inspected seed lots brought into the state and it would exist in certified canola seed produced in ND. It will be interesting to see if sometime in the future the Canadians use that fact against ND seed with their zero tolerance.

I also included references to two studies that were done on the contamination of seed lots by off herbicide tolerant canolas. These are the only two studies I am aware of, both showed that

contamination was extremely common and indeed if considered an off type would have prevented certification. There were standards for contamination in conventional seed but it seems it's ignored because the companies can't maintain it and to my knowledge there's never been a standard set for off type herbicide tolerant contamination in herbicide tolerant canola. So the certification system in canola seed actually allows off types.

It is interesting to go through the Canadian Seed laws, for Hybrid seed the "in-bred" lines are supposed to breed "more or less" true to type.

We also see companies sell synthetic hybrids which are simply two varieties grown together and you hope that much of the seed produced is cross pollinated and gives you hybrid vigor.

There is also a problem that canola persists for a long time in a field after it is grown. The length most often given is 10 years. Used to be you could grow a seed crop every 3 years, now it is 5, but in any case, there clearly will be some contamination.

So purity isn't necessarily what people would think it would be. The certification system in canola doesn't protect from off types.

In addition, it is industry practice to always blend lots. This isn't bad in that it gives uniformity between growers but again isn't really what people used to buying wheat seed from an individual field think of. They blend this year's seed and also the left over seed from last year. A seedsman in Brandon lost his job with a seed company when he refused to blend in the leftover seed from the previous year because it was not of seed quality, it had poor germ and vigor. That isn't always the case but that is a common practice for getting rid of leftover seed.

And one other problem in ND has been small seed. It's not unusual for companies to sell seed at 160,000 seeds/lb or smaller even. Canadians won't accept that seed. Too much publicity up there for how smaller seed is more likely to be nonvigorous seed and cost you 15% to 25% of you final yield. It isn't always nonvigorous but it's more likely to be and we have indeed seen nonvigorous seed too often. Seed should be 80-100,000 per lb. for hybrids and something around 120,000 per lb. for nonhybrids.

If the certification system tested for vigor, that would be very valuable, but it doesn't.

Nonvigorous seed produces a nonvigorous plant. That plant never does become a good healthy good growing plant capable of producing a high yield. It's a characteristic that seems somewhat unique to canola but from observations over the years, I'm not sure that it's unique to canola, but the fact it could be tested for does seem unique.

For some reason, nonvigorous canola seed produces ethanol when it germinates. Researchers have quantified it and you can test the level of alcohol either with a breathalyzer or with compounds that change color. While it has yet to become commercial, there has been a fair amount of work to quantify the whole process.

I have seen the effects of nonvigorous seed, it grows very slow, is very susceptible to fleabeattle damage, and never yields well compared to other fields of the year.

I should also point out that a breeder can, through the Plant Variety Protection Act, decide to limit a variety to only certified seed. I have included the listing of a variety bred by the Kansas Ag Experiment Station and if NDSU comes with varieties they too can make that decision if they so desire.

There are also utility patents being used by companies to control their varieties so that one could not even sell those even if they were certified without permission of the owner of the patent.

Certified seed has too often not worked well for growers, so it's not something that should be enshrined in law, let it be like wheat and barley and most of the other crops we grow. I wouldn't expect there to be much if any noncertified seed sold, but there is no real reason to not have that freedom in those cases where it does not violate things like the PVPA.

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# Seed Regulatory

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### The problem of saved seed

- Legal concerns
  - Traits are patented. Patent law prohibits saving seed containing patented traits.
  - Technology use agreements don't allow saved seed.
- Hybrids
  - The F2 generation exhibits the greatest possible amount of segregation in traits.
  - Less yield - studies have shown 16-47% yield reductions from saved seed.
  - More disease - for a disease controlled by a single gene, ¼ of plants will be susceptible.
  - More sterility - up to ¼ of the plants will be sterile, resulting in significant yield loss.
  - Less uniformity - at harvest, plants may vary from mature to green, affecting harvest ease and oil quality.
  - Reduced herbicide tolerance - segregation will result in 15-25% dead plants.
- Conventional open-pollinated varieties
  - Few available
  - May contain patented traits
- The illusions of cheap seed are quickly lost due to poor performance.

### The problem of seed quality

Poor quality seed, not meeting certification standards in other states or provinces, may be sold into ND

#2

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#2

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