

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 4-10, chapters 4.1-53, 4.1-54,
2 and 4.1-57, a new section to chapter 11-08, a new section to chapter 40-05, and a new section
3 to chapter 58-03 of the North Dakota Century Code, relating to the labeling, certification, and
4 sale of seed; to amend and reenact sections 4-10-12.1, 60-02-01, and 60-02.1-01 of the North
5 Dakota Century Code, relating to seed labeler and wholesale potato dealer licenses; to repeal
6 chapters 4-09, 4-09.1, 4-11, 4-25, and 4-42 of the North Dakota Century Code, relating to the
7 labeling, certification, and sale of seed; to provide a penalty; and to provide a continuing
8 appropriation.

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

10 **SECTION 1. AMENDMENT.** Section 4-10-12.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **4-10-12.1. Liability - Potato crop quantity and quality.** The state seed commission,
13 state seed department, commissioner and the commissioner's employees, certified seed potato
14 producers, and wholesale potato dealers licensed under chapter ~~4-44~~ 4.1-57 make no
15 expressed or implied warranty of any kind as to the quantity or quality of the crop produced
16 from the seed potatoes or through other produce inspected and certified, including
17 merchantability, fitness for a particular purpose, or absence of disease. The only
18 representation is that the potatoes or other produce were produced, graded, packed, and
19 inspected under the rules of the state seed department or United States department of
20 agriculture. The commissioner and the commissioner's employees function and serve only in
21 an official regulatory manner.

NOTE: The amendment of this section reconciles a cross-reference.

SECTION 2. A new section to chapter 4-10 of the North Dakota Century Code is created and enacted as follows:

Plant and seed records - Exempt. The following records of the state seed commission are exempt from section 44-04-18:

1. Records of any plant or seed inspection, analysis, or testing and germination, purity, variety, or disease determinations conducted by the state seed department on a fee-for-service basis for nonpublic entities or persons.
2. Information received by the seed commission under this chapter from a nonpublic entity or person that the nonpublic entity or person determines is proprietary information or a trade secret.

SOURCE: Section 4-09-25.

NOTE: Section 4-09-25 exempts certain records from the open records requirements of Section 44-04-18, including records generated under Chapter 4-10, which pertain to the inspection and grading of potatoes. In order not to change this exemption, the language of current Section 4-09-25 is being added to Chapter 4-10.

SECTION 3. Chapter 4.1-53 of the North Dakota Century Code is created and enacted as follows:

4.1-53-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Agricultural seed" means:
 - a. The seed of cereal, fiber, forage, grass, or oil crops;
 - b. Irish potato seed tubers;
 - c. Lawn seed;
 - d. Any other seed designated by the seed commissioner as agricultural seed;
and
 - e. Any mixture of seeds referenced in this subsection.
2. "Blend" means seed that consists of more than one variety, provided each variety consists of more than five percent of the whole, by weight.
3. "Brand" means a design, name, number, symbol, or word used to identify the seed of one person and distinguish the seed from that of another person.
4. "Certification" means a process that:
 - a. Is designed to maintain the genetic purity and varietal identity of crop cultivars; and

b. Requires a variety of components, including:

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

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

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

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

6. "Conditioning" means any process to remove unwanted seeds or other matter from
a seed lot in order to produce a uniform product.

7. "Flower seed" means the seed of a herbaceous plant grown for its bloom,
ornamental foliage, or other ornamental part.

8. "Germination" means the physiological process of development and the
emergence from the seed embryo of essential structures that are indicative of the
ability to produce a normal plant under favorable conditions.

9. "Hard seed" means a seed that has an impermeable seed coat and has not
absorbed water by the end of the prescribed test period.

10. "Inert matter" means anything other than unbroken seeds.

11. "Kind" means one or more related species or subspecies known singly or
collectively by a common name.

12. "Label" means a device or tag attached to a seed container, printed or stamped
information on a seed container, or written information accompanying a lot of bulk
seed.

13. "Labeler" means the person identified by name and address on the label.

14. "Lot" means an identifiable quantity of seed that is uniform within permitted
tolerances for the factors that appear on its label.

15. "Mixture" means seed consisting of more than one kind, each in excess of five
percent of the whole, by weight.

16. "Official seed-certifying agency" means:

a. An agency that is authorized under the laws of a state, territory, or possession
to officially certify seed and which has standards and procedures approved by

- 1 the United States secretary of agriculture to assure the genetic purity and
2 identity of any seed it certifies; or
- 3 b. An agency of a foreign country if the United States secretary of agriculture
4 has determined that the agency adheres to seed certification procedures and
5 standards that are comparable to those generally adhered to by a
6 seed-certifying agency meeting the criteria set forth in subdivision a.
- 7 17. "Prohibited weed seed" means:
- 8 a. The seed or propagule of any weed designated as noxious by the agriculture
9 commissioner in accordance with section 4.1-47-05; or
- 10 b. The seed or propagule of any weed determined by the seed commissioner to
11 be highly destructive and difficult to control by good cultural practices or by
12 the use of herbicides.
- 13 18. "Pure seed" means a quantity of seed that belongs to a particular kind or variety
14 and which does not contain either inert matter or seeds of another kind or variety.
- 15 19. "Record" includes all information relating to origin or source, variety, lot
16 identification, quantity, inspection, processing, testing, labeling, distribution, and file
17 samples of the seed.
- 18 20. "Restricted weed seed" means a seed that is determined by the seed
19 commissioner to be:
- 20 a. Objectionable in agricultural seed, lawn or turf seed, vegetable seed, and
21 flower seed; and
- 22 b. Controllable by good cultural practices or the use of herbicides.
- 23 21. "Selection" means a subgroup of a variety and includes clones, lines, and strains.
- 24 22. "Treated" means a seed has received an application of a substance intended to
25 enhance the performance of the seed or alter a physiological process of the plant.
- 26 23. "Unbroken seed" means a seed that is more than fifty percent intact.
- 27 24. "Variety" means a subdivision of a kind that:
- 28 a. Can be differentiated by one or more identifiable morphological, physiological,
29 or other characteristics from other varieties of the same kind;
- 30 b. Has describable variations in essential and distinct characteristics; and

- 1 c. Will remain unchanged in its essential and distinct characteristics and
2 uniformity when reproduced or reconstituted, as required by the different
3 categories of varieties.

SOURCE: Section 4-09-01.

4 **4.1-53-02. Seed department - Location.** The North Dakota seed department is the
5 official seed-certifying agency of the state. The seed department must be located on the
6 campus of North Dakota state university of agriculture and applied science.

SOURCE: Section 4-09-02.

7 **4.1-53-03. Official seal.** The seed department shall have and use an official
8 departmental seal that has been recorded in the office of the secretary of state.

SOURCE: Section 4-09-04.

9 **4.1-53-04. Seed commission - Membership.** The seed commission is the governing
10 board of the seed department. The seed commission consists of the following nine members:

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

SOURCE: Section 4-09-03.

NOTE: Current law provides that the Seed Commission consists of "... an elected member of the North Dakota potato council selected by the North Dakota potato council. ..." Because the current law allows other groups to appoint individuals without requiring that they be members of the appointing group, the interim committee suggested that subsection 5 parallel the language of the other groups.

24 **4.1-53-05. Seed commission - Chairman - Meetings.**

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

SOURCE: Section 4-09-03.

6 **4.1-53-06. Seed commission - Appointment of proxy.** If a member of the seed
7 commission is unable to attend a meeting of the commission, the member may appoint a proxy.
8 The appointment must be in writing and must be presented to the chairman. The vote of the
9 proxy is final.

SOURCE: Section 4-09-03(3).

10 **4.1-53-07. Seed commission - Members - Compensation.** Each member of the
11 seed commission, except the agriculture commissioner and the director of the agricultural
12 experiment station, is entitled to receive compensation at the rate of one hundred thirty-five
13 dollars per day and reimbursement for expenses, as provided by law for state officers, if the
14 member is attending a commission meeting or performing duties directed by the commission.

SOURCE: Section 4-09-03(3).

15 **4.1-53-08. Seed commission - Powers.** The seed commission may:

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

SOURCE: Sections 4-09-02 and 4-09-03(4).

22 **4.1-53-09. Seed commission - Duties.** The seed commission shall:

- 23 1. Appoint a seed commissioner;
- 24 2. Compensate the seed commissioner; and
- 25 3. Review the appointment of a seed commissioner, annually.

SOURCE: Section 4-09-03(4).

26 **4.1-53-10. Seed commissioner - Powers.** The seed commissioner may:

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

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

4.1-53-11. Seed commissioner - Duties. The seed commissioner shall:

1. Manage the seed department;
2. Provide, equip, and maintain offices, laboratories, and any other facilities necessary to carry out this chapter, subject to the approval of the seed commission;
3. Employ and compensate necessary personnel;
4. Permit North Dakota state university of agriculture and applied science to use the seed department facilities and the services of the seed department laboratories at convenient times;
5. Determine the nature and size of any seed and plant samples required by the seed department in order to conduct official tests or make official determinations and shall prescribe the manner in which the seed and plant samples are to be obtained and delivered to the seed department;
6. Provide commodity inspection services upon request;
7. Establish and charge fees for services, subject to the approval of the seed commission;
8. Provide periodic reports to the seed commission regarding the management and operation of the seed department;
9. Recommend to the seed commission the biennial budget and annual salary schedules for the seed department;
10. Submit the seed department's biennial budget, as approved by the seed commission, to the office of management and budget;

- 1 11. Do all things necessary to enforce this chapter and rules implementing this
2 chapter; and
3 12. Perform any other duties as directed by the seed commission.

SOURCE: Sections 4-09-02, 4-09-03, 4-09-08, 4-09-09, and 4-09.1-02.

NOTE: In its examination of Chapter 4-09.1, which pertains to the inspection and grading of agricultural commodities, the interim committee determined that many of the provisions were duplicative of those already in current Chapter 4-09 and reflected in this bill draft. The exception was current law Section 4-09.1-02:

4-09.1-02. Commissioner - Duties. The commissioner may establish commodity grades and inspection services for the purpose of making inspection and otherwise providing for the proper handling and marketing of commodities

Seed Department personnel indicated that they do not establish commodity grades. That activity is within the purview of the federal government. However, in certain circumstances, they do provide commodity inspection services upon request. That provision is included as subsection 6.

4 **4.1-53-12. Label requirements - Agricultural seed.**

- 5 1. Agricultural seed offered for sale or sold in this state, for planting purposes, must
6 be labeled.
7 2. a. If the agricultural seed is offered for sale or sold in a container, the label must
8 be plainly printed in English and conspicuously placed on or attached to the
9 container.
10 b. If the agricultural seed is offered for sale or sold in bulk, the label must be
11 plainly printed in English and provided to the purchaser at or before the time
12 of delivery.

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

13 **4.1-53-13. Agricultural seed - Label - Content.** A label required by 4.1-53-12 must
14 include:

- 15 1. The lot number or other lot identification;
16 2. a. The state or foreign country in which the seed was grown; or
17 b. A statement indicating that the origin of the seed is unknown;
18 3. The percentage by weight of all weed seed;
19 4. The name of each restricted weed seed present and its rate of occurrence per
20 pound [453.59 grams], if:

- 1 a. In seeds of grasses and small seeded legumes the rate of occurrence
- 2 exceeds thirteen seeds per pound [453.59 grams]; or
- 3 b. In any other agricultural seeds, the rate of occurrence exceeds five seeds per
- 4 pound [453.59 grams];
- 5 5. The percentage by weight of any other agricultural seeds present;
- 6 6. The percentage by weight of inert matter;
- 7 7. a. The percentage of germination, exclusive of hard seed;
- 8 b. The percentage of hard seed, if applicable; and
- 9 c. The month and year in which the percentages were determined; and
- 10 8. The full name and address of the labeler.

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

11 **4.1-53-14. Agricultural seed - Label requirements - Treated seed.**

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

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

26 **4.1-53-15. Agricultural seed - Label requirements - Hermetically sealed**

- 27 **containers.** In addition to any other label requirements set forth in this chapter, if agricultural
- 28 seed that is offered for sale or sold is in a container that has been hermetically sealed, the label
- 29 must so indicate.

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

4.1-53-16. Agricultural seed - Additional label requirements - Limited applicability.

1. In addition to any other label requirements set forth in this chapter, the label on each container of barley, canola, dry beans, durum, field peas, flax, oats, rye, soybeans, and wheat seed offered for sale or sold in this state, for planting purposes, must include:
 - a. The kind of each agricultural seed;
 - b. The variety of each agricultural seed component constituting more than five percent of the whole; and
 - c. The percentage by weight of each agricultural seed component constituting more than five percent of the whole.
2. In addition to any other requirements set forth in this chapter, the label on each container of agricultural seed other than barley, canola, dry beans, durum, field peas, flax, oats, rye, soybeans, and wheat seed, offered for sale in this state for planting purposes:
 - a. Must include the kind of each agricultural seed;
 - b. May include the variety of each agricultural seed component constituting more than five percent of the whole; and
 - c. Must include the percentage by weight of each agricultural seed component constituting more than five percent of the whole.

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

4.1-53-17. Selling of seed by brand - Requirements. The seed of barley, canola, dry beans, durum, field peas, flax, oats, rye, soybeans, and wheat may be sold by brand, provided the true variety name or number is clearly stated on the label.

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

4.1-53-18. Canola seed - Additional label requirements. In addition to any other requirements set forth in this chapter, if the agricultural seed is canola, the seed must:

1. Have been certified by the seed commissioner as meeting the standards of this state; or

2. Have been certified by the appropriate agency of another state or country having canola certification standards that are determined by the seed commissioner to meet or exceed the standards of this state.

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

4.1-53-19. Agricultural seed components - Label requirements - Mixture or blend -

Designation. If more than ten percent of the whole consists of an aggregate of agricultural seed components, each present in an amount not exceeding five percent of the whole, the label must include each component in excess of one percent of the whole named together with the percentage by weight of each. Each component must be listed in the order of its predominance. If more than one component is named, the word "mixture" or "blend" must be stated appropriately with the name of the mixture or blend.

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

4.1-53-20. Agricultural seed - Sale of small quantities - Container labeling

requirements. If agricultural seed is sold in quantities of five pounds [2.26796 kilograms] or less, the container into which the seed is placed is exempt from the labeling requirements of this chapter provided:

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

SOURCE: New section.

4.1-53-21. Labeling requirements - Vegetable seed.

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

SOURCE: Section 4-09-11(1).

4.1-53-22. Vegetable seed - Label - Content. The label for vegetable seed packed in units of one pound or less and the label for vegetable seed on prepared mats, tapes, or in preplanted containers must include:

1. The kind and variety of seed;

- 1 2. The lot number or other lot identification;
- 2 3. The full name and address of the labeler;
- 3 4. The month and year in which the germination test was completed; and
- 4 5. a. The percentage of germination; or
- 5 b. The date by which the seed must be sold, as established in section 4.1-53-52
- 6 of this Act.

SOURCE: Section 4-09-11.

7 **4.1-53-23. Vegetable seed - Additional label requirements.** If the germination test
8 referenced in section 4.1-53-22 of this Act results in a finding that the seed does not meet the
9 standards for germination, as established by the commissioner, the label must include:

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

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

13 **4.1-53-24. Vegetable seed - Larger units - Label requirement - Exception.**

- 14 1. The label for any vegetable seed other than that referenced in section 4.1-53-22 of
15 this Act must include:
 - 16 a. The lot number or other lot identification;
 - 17 b. (1) The kind and variety of vegetable seed present in excess of five percent
18 by weight;
 - 19 (2) The percentage by weight of each seed referenced in paragraph 1, in
20 order of its predominance;
 - 21 (3) The percentage of germination for each seed referenced in
22 paragraph 1, exclusive of hard seed;
 - 23 (4) The percentage of hard seed, if present; and
 - 24 (5) The month and year that the percentages were determined; and
 - 25 c. The full name and address of that labeler.
- 26 2. If vegetable seed is sold in quantities of five pounds [2.26796 kilograms] or less,
27 the container into which the seed is placed is exempt from the labeling
28 requirements of this chapter provided:

a. The container from which the seed is taken is in compliance with the labeling requirements of this chapter; and

b. The seed is removed from the container referenced in subsection 1 and weighed, in the presence of the purchaser.

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

4.1-53-25. Vegetable seed - Quantity - Label requirement. If the vegetable seeds are on a mat, on tape, or in some other germination medium, and the quantity of seed cannot be readily determined, the label must include the minimum number of seeds per definable unit.

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

4.1-53-26. Treated vegetable seed - Additional requirements.

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

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

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

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

5. The information required by this section may be placed on a separate label.

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

4.1-53-27. Vegetable seed - Label requirements - Hermetically sealed containers.

In addition to any other label requirements set forth in this chapter, if vegetable seed that is offered for sale or sold is in a container that has been hermetically sealed, the label must so indicate.

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

4.1-53-28. Flower seed - Label - Content.

1 1. Each container of flower seed offered for sale or sold in this state, for planting
2 purposes, must be labeled.

3 2. The label must be plainly printed in English and conspicuously placed on or
4 attached to the container.

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

5 **4.1-53-29. Flower seed - Label content.**

6 1. The label for flower seed must include:

7 a. (1) The kind and variety; or

8 (2) The information required by rule with respect to type and performance
9 characteristics;

10 b. (1) The month and year in which the seed was tested; or

11 (2) The year for which the seed was packaged; and

12 c. The full name and address of the labeler.

13 2. If the flower seed is packed in units of more than one pound, the label must also
14 include the lot number or other lot identification, unless the flower seed is on
15 prepared mats, on tapes, or in preplanted containers.

16 3. If the flower seed is of a kind for which standard testing procedures are prescribed
17 by the association of official seed analysts, the label must also include:

18 a. The percentage of germination exclusive of hard seed; and

19 b. The percentage of hard seed, if present.

20 4. If the flower seed is of a kind for which standard testing procedures are prescribed
21 by the association of official seed analysts and if the seed does not meet the
22 standard for germination required by rule, the label must also include the
23 percentage of germination exclusive of hard seeds and the words "below standard"
24 in at least eight-point type.

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

25 **4.1-53-30. Flower seed - Quantity - Label requirement.** If the flower seeds are on a
26 mat, on tape, or in some other germination medium and the quantity of seed cannot be readily
27 determined, the label must include the minimum number of seeds per definable unit.

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

28 **4.1-53-31. Treated flower seed - Additional requirements.**

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

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

4.1-53-32. Labeling requirements for tree seed and shrub seed.

1.
 - a. Each container of tree seed or shrub seed offered for sale or sold in this state, for planting purposes, must be labeled.
 - b. The label must be plainly printed in English and conspicuously placed on or attached to the container.
2. If seed is supplied in fulfillment of a contract for the collection and gathering of the seed, the label requirements of this section may be met 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.
3. If the seed is offered for sale or sold in bulk, the label must be provided to the purchaser at or before the time of delivery.

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

4.1-53-33. Tree seed and shrub seed - Label - Content. A label required by this section must include:

1. The common name of the tree or shrub species and if appropriate, the name of the subspecies;

2. The scientific name of the genus, the species, and if appropriate, the name of the subspecies;
3. The lot number or other lot identification;
4. The elevation at which or the upper and lower elevations within which the seed was collected;
5. The percentage of pure seed by weight; and
6. The full name and address of the labeler.

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

4.1-53-34. Statement of origin. In addition to any other label requirements set forth in section 4.1-53-33, the label of tree seed or shrub seed must identify the location from which the seeds were collected by:

1. Latitude and longitude; or
2. County or township.

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

4.1-53-35. Percentage of germination - Label requirements.

1. If the tree seed or shrub seed belongs to a species for which standard germination testing procedures are prescribed by the association of official seed analysts, the label must include:
 - a. (1) The percentage of germination, exclusive of hard seed;
 - (2) The percentage of hard seed; and
 - (3) The month and year in which the percentage of germination was determined; or
 - b. A statement indicating that the test to determine the percentage of germination is not yet completed and that the results will be supplied upon request.
2. If the tree or shrub seed belongs to a species for which standard germination testing procedures are prescribed, the label must include the year in which the seed was collected.

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

4.1-53-36. Tree and shrub seed - Label requirements - Treated seed.

1. In addition to any other requirements set forth in this chapter, if the tree seed or shrub seed has been treated, the label must indicate that the treatment has occurred and must include the commonly accepted, coined, chemical, or abbreviated chemical name of any substance used in the treatment.
2. If the substance with which the seed was treated is harmful to humans or to other vertebrate animals, the label must contain a cautionary statement prohibiting use of the seed for human or animal consumption.
3. If the substance with which the seed was treated is a mercurial or a similarly toxic substance, the label must contain a statement and symbol indicating that the substance is poison.
4. If the substance with which the seed was treated is an inoculant, the label must contain the date beyond which the inoculant is claimed not to be effective for use on that particular seed.

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

4.1-53-37. Tolerances.

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

SOURCE: Section 4-09-13.

4.1-53-38. Seed labeling permit - Reports - Fees - Civil penalty.

1. Before a person in this state may label agricultural, vegetable, flower, or tree or shrub seed and before a person may label agricultural, vegetable, flower, or tree or shrub seed for delivery into this state, the person shall obtain a seed labeling permit from the seed commissioner.
2. Each person issued a seed labeling permit under this section shall:
 - a. Record all seeds sold by that person in this state;
 - b. Report all seeds sold by that person in this state to the seed commissioner at the time and in the manner determined by the seed commissioner; and

c. Submit at the time and in the manner determined by the seed commissioner, fees in the amount set by the seed commissioner and applicable to all seeds that the person sells in this state.

3. If a person issued a seed labeling permit under this section fails to submit the reports or fees required by this section within thirty days of the date determined by the seed commissioner, the seed commissioner may assess a penalty equal to five percent of the amount due or ten dollars, whichever is greater.

SOURCE: Sections 4-09-14.1, 4-09-14.2, and 4-09-14.4.

4.1-53-39. Invoice and records. A labeler shall:

1. Retain a record of each lot of seed handled for three years after final disposition of the lot;
2. Retain a file sample of each lot of seed handled for one year after final disposition of the lot; and
3. Make the records and file samples required by this section available to the seed commissioner upon request.

SOURCE: Section 4-09-12.

4.1-53-40. Shipments from out of state - Requirements. The purchaser, vendor, or any person receiving seed shipped into this state must have the seed labeled:

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

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

4.1-53-41. Nonresident seed dealer's license.

1. A person that is not a resident of this state may not offer for sale or sell agricultural seed in this state directly to a consumer unless the person first obtains a nonresident seed dealer's license. In order to obtain the license, a person must submit to the seed commissioner an application for a license, together with the required fee.
2. A license issued under this section covers all employees and agents of the applicant, provided their names are included with the application.
3. A license issued under this section expires on December thirty-first.

SOURCE: Section 4-25-04.

NOTE: Like current law, this section requires a nonresident seed dealer to obtain a license prior to selling agricultural seed in this state directly to a consumer. Is it intentional that this section be limited to agricultural seed dealers and not reference those who sell vegetable, flower, or tree and shrub seed?

1 **4.1-53-42. 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.

8 **4.1-53-43. 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.
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;
15 c. A description of the morphological, physiological, or other characteristics that
16 distinguish the variety from other varieties;
17 d. Evidence supporting the identity of the variety;
18 e. A statement regarding the geographic area of adaptation;
19 f. A statement regarding plans and procedures for the maintenance of seed
20 classes, including the number of generations through which the variety may
21 be multiplied;
22 g. A description of the manner in which the variety is constituted when a
23 particular cycle of reproduction or multiplication is specified;
24 h. Any additional restrictions on the variety specified by the breeder; and
25 i. A sample of seed that is representative of the variety as marketed.

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

1 **4.1-53-44. Certified Seed - Specific label requirements.** The seed commissioner
2 shall prescribe the labels, seals, certificates, and statements that must be used for, or in relation
3 to, any seed, or the various kinds and qualities grown, handled, stored, offered for sale, or sold
4 in this state as "breeders", "foundation", "registered", or "certified" seed, and shall specify the
5 words and information required to be on the labels, seals, certificates, and seed containers.

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

6 **4.1-53-45. Certified seed - Use of certain terms - Required authorization.** A person
7 may not use the terms "breeders", "foundation", "registered", or "certified", and may not use
8 substantially equivalent terms, in the labeling or in the advertising, characterization, or
9 representation of seed that is offered for sale or sold in this state, unless authorized to do so by
10 the seed commissioner. The prohibition of this section applies to oral and written forms of
11 advertising, characterizations, and representations.

SOURCE: Section 4-09-17.

12 **4.1-53-46. Seed conditioning facilities - Other facilities - Standards.** The seed
13 commissioner may establish standards for:

- 14 1. Seed conditioning facilities and any other facilities that handle seed eligible for
15 certification; and
- 16 2. Facilities that handle and market "breeders", "foundation", "registered", or
17 "certified" seed.

18 **4.1-53-47. Seed for certification purposes - Increase in foundation seed stocks.**
19 The seed commissioner may participate with any public or private entity in the selection,
20 testing, and production of seed for certification purposes and in efforts to increase foundation
21 seed stocks suitable for the production of certified seed.

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

22 **4.1-53-48. Plant Variety Protection Act - Requirements for certification.**

- 23 1. If a certificate of plant variety protection issued under the Plant Variety Protection
24 Act [7 U.S.C. 2121 et seq., as amended through July 31, 2011], specifies that the
25 variety may be sold only as a class of certified seed, that seed must be certified by
26 an official seed certifying agency before it can be advertised for sale, offered for
27 sale, or sold.

- 1 2. Seed from a certified lot may be used in a blend or mixture by or with the approval
2 of the owner of the variety.

SOURCE: Section 4-09-17.1.

3 **4.1-53-49. Identity preserved seed and crops.**

- 4 1. The seed commissioner may inspect and analyze seed or crops grown, sold, or
5 otherwise present in this state to determine and verify the genetic traits of the seed
6 or the crops.
- 7 2. For purposes of conducting the inspection, analysis, or verification, the seed
8 commissioner, may:
- 9 a. Accept samples of seed or crops grown in this state, sold in this state, or
10 otherwise present in this state from any person that owns the seed or crops;
11 and
- 12 b. Upon request of the owner, obtain samples of the seed or crops.

SOURCE: Section 4-42-03.

13 **4.1-53-50. Identity preserved seed and crops - Verification and certification**

14 **services.** The seed commissioner may establish programs and procedures to provide
15 producers with customized verification and certification services pertaining to identity preserved
16 seeds and crops.

SOURCE: Section 4-42-07.

NOTE:

1. Section 4-42-08 provides that "[T]he commissioner shall prescribe the type of labels and other identifying documentation to be affixed by the commissioner to seeds or crops inspected and analyzed under this chapter. All labels and other identifying documentation affixed by the commissioner must clearly bear the identification of the department and may be used by only the commissioner in conjunction with the verification services provided under this chapter." Since the section as rewritten provides authority for the seed commissioner to establish programs and "procedures," it would follow that the seed commissioner could also identify any particular labels that would be beneficial. Therefore, the language regarding the labels has been omitted.
2. Current law provides that the commissioner "may establish a procedure for the identify preservation and traceability of seeds or crops inspected or analyzed under this chapter." In discussions with seed department personnel, the wording of the section was changed to more accurately portray the services actually being provided by the seed department.

17 **4.1-53-51. Sale of seed - Prohibitions.** A person may not offer for sale or sell any
18 seed that:

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

SOURCE: Section 4-09-14(1)(e) and (g) through (k).

4.1-53-52. Germination test - Requirement for sale.

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

b. The period of time between the first day of the month following that in which the germination test was completed and the date on which the seed is offered for sale or sold does not exceed fifteen months.

4. A person may not offer for sale or sell any agricultural, flower, vegetable, tree, or shrub seed in hermetically sealed packages unless:

a. The seed has been tested to determine the percentage of germination; and

b. The period of time between the first day of the month following that in which the germination test was completed and the date on which the seed is offered for sale or sold does not exceed thirty-six months.

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

4.1-53-53. Prohibited activities. A person may not:

1. Detach, alter, deface, or destroy any label provided for in this chapter;

2. Alter or substitute seed with the intent to defeat the purpose of this chapter;

3. Engage in false or misleading advertising regarding seeds;

4. Use the name of the seed department or the name of the official laboratory for advertising purposes in connection with seed analyzed or tested by the seed department or the official laboratory, except in the case of certified seed;

5. Fail to comply with a stop-sale order issued by the seed commissioner;

6. Use the words "type" or "trace" on a label in connection with the name and description of any seed;

7. Disclaim in any manner or form a vendor's responsibility for any label content required by law; or

8. Sell or transfer a protected variety to another producer for the purpose of planting without obtaining the approval of the variety owner or developer.

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

4.1-53-54. Stop-sale order - Issuance - Enforcement - Appeal.

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

2. The seed commissioner may attach terms and conditions that must be fulfilled before the order will be lifted.

- 1 3. The stop-sale order shall remain in effect until the seed commissioner is satisfied
2 that the violation no longer exists. Upon making that determination, the seed
3 commissioner shall lift the stop-sale order.
- 4 4. The seed commissioner shall do all things necessary and proper to enforce a
5 stop-sale order issued under this section.
- 6 5. Any person subject to a stop-sale order under this section may appeal the order to
7 a court of competent jurisdiction.

SOURCE: Section 4-09-06.

8 **4.1-53-55. Seizure and injunction - Action.**

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

SOURCE: Section 4-09-23.

19 **4.1-53-56. Prosecution for violations - Duty of attorney general and state's**
20 **attorney.** Upon a complaint by the seed commissioner alleging a violation of this chapter or of
21 any rule implementing this chapter, the attorney general or the state's attorney of the county in
22 which the case arises shall initiate legal proceedings.

SOURCE: Section 4-09-22.

23 **4.1-53-57. Penalty - Criminal - Civil - Exemption.**

- 24 1. Any person willfully violating this chapter or the rules implementing this chapter is
25 guilty of a class A misdemeanor.
- 26 2. When construing and enforcing this chapter, the act, omission, or failure of any
27 officer, agent, or other person acting for or employed by any person must be

1 deemed to be the act, omission, or failure of such person as well as that of the
2 person employed.

3 3. Any person found guilty of violating this chapter or the rules implementing this
4 chapter is subject to a civil penalty in an amount not to exceed five thousand
5 dollars for each violation. The civil penalty may be imposed by a court in a civil
6 proceeding or by the seed commissioner.

7 4. A person is not subject to the penalties of this chapter for having offered for sale or
8 sold any seed that was incorrectly represented as to kind, variety, or origin and
9 which could not be identified through examination, unless the person failed to:

10 a. Obtain an invoice or grower's declaration stating the required information; or

11 b. Take other actions necessary to ensure that the seed was properly identified.

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

12 **4.1-53-58. Certificates and reports - Publication.** If the seed commissioner signs a
13 document relating to the findings and determinations made in a laboratory by seed department
14 personnel, a court shall accept the document as prima facie evidence of the statements
15 contained in the document. The seed commissioner is subject to court order for a review of the
16 findings and determinations set forth in the document.

SOURCE: Section 4-09-07.

17 **4.1-53-59. Liability of seed commission, seed department, seed commissioner,**
18 **and certified or noncertified agricultural seed producers.** A warranty of any kind, either
19 expressed or implied, including a warranty of merchantability, fitness for a particular purpose, or
20 absence of disease, is not made by the seed commission, the seed department, the seed
21 commissioner, or certified or noncertified agricultural seed producers, as to the quantity or
22 quality of the crop produced from the agricultural seeds or as to other produce which is
23 inspected and certified, except as provided in this section. The sole warranty made is that the
24 agricultural seeds were inspected under the rules of the seed department or the United States
25 department of agriculture. The seed commissioner functions and serves only in an official
26 regulatory manner.

SOURCE: Section 4-09-20.1.

NOTE: Is it intentional that this section be limited to "agricultural" seeds and not reference vegetable, flower, or tree and shrub seed?

1 **4.1-53-60. Seed department records - Exemption.** The following records of the seed
2 department are exempt from section 44-04-18:

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

SOURCE: Section 4-09-25.

9 **4.1-53-61. Applicability of chapter.** This chapter does not apply to:

- 10 1. Seed that is not intended for planting purposes; and
- 11 2. Seed grown by a producer and sold by that producer without advertising and
12 without using a third party as an agent or broker to effect the sale, provided this
13 exemption is not applicable if the seed is a variety protected by the Plant Variety
14 Protection Act [7 U.S.C. 2321 et seq.], as amended through July 31, 2011.

SOURCE: Section 4-09-15.

15 **4.1-53-62. Seed department fund - Continuing appropriation.**

- 16 1. The seed commissioner shall forward all moneys received under this chapter to the
17 state treasurer for deposit in a special fund known as the seed department fund.
18 All moneys in the seed department fund are appropriated on a continuing basis to
19 the seed department to carry out this chapter.
- 20 2. The seed commissioner shall approve all expenditures made pursuant to this
21 chapter and shall document the expenditures at the time and in the manner
22 required by the office of management and budget.
- 23 3. The seed commissioner shall provide a report to the house and senate
24 appropriations committees, at the time and in the manner directed by the chairmen
25 of the committees. The report must contain a summary of the department's
26 activities during the current biennium and a statement of revenues and
27 expenditures for the ensuing biennium.
- 28 4. At the direction of the seed commission, the state treasurer shall invest all
29 available moneys in the seed department fund. The state treasurer shall credit

twenty percent of the investment income to the general fund and the remaining
eighty percent of the investment income to the seed department fund.

SOURCE: Section 4-09-20.

SECTION 4. Chapter 4.1-54 of the North Dakota Century Code is created and enacted
as follows:

4.1-54-01. Seed arbitration board - Membership. The seed arbitration board
consists of the following members:

1. The agriculture commissioner;
2. The seed commissioner;
3. The director of the North Dakota state university extension service;
4. The director of the North Dakota agricultural experiment station;
5. The chairman of the seed trade division of the North Dakota agriculture
association; and
6. A producer appointed by the agriculture commissioner.

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

NOTE: Current law provides that the Seed Arbitration Board consists of "... a
representative of a major North Dakota farm organization appointed by the agriculture
commissioner or an authorized designee." Because current law does not define what
constitutes a "major North Dakota farm organization," the interim committee suggested
that subsection 6 be changed to reference a producer appointed by the Agriculture
Commissioner.

4.1-54-02. Seed arbitration board - Compensation. The chairman of the seed
division of the North Dakota agriculture association and the representative of a farm
organization in this state are entitled to receive compensation in the amount of one hundred
thirty-five dollars per day plus reimbursement for expenses as provided by law for state officials,
if the individual is attending meetings or performing duties directed by the board. The
compensation and reimbursement for expenses required by this section must be paid by the
agriculture commissioner.

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

4.1-54-03. Seed arbitration board - Rules of operation and procedure. The seed
arbitration board shall adopt rules of operation and procedure for arbitration hearings, including
a formula for reimbursement by the parties of the expenses of the arbitration process.

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

4.1-54-04. Seed arbitration board - Petition - Hearing - Recommendation.

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

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

4.1-54-05. Seed arbitration board - Hearing - Use of evidence. Any evidence and testimony presented at a seed arbitration hearing and any findings or recommendations by the seed arbitration board are admissible in any subsequent proceeding.

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

SECTION 5. Chapter 4.1-57 of the North Dakota Century Code is created and enacted as follows:

4.1-57-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Insolvency" means an inability¹ to provide payment for potatoes purchased by the dealer.
2. "Potato" means an Irish potato.
3. "Wholesale potato dealer" means any person who:
 - a. Buys potatoes in wholesale lots directly from a producer or a producer cooperative;
 - b. Sells or handles potatoes in wholesale lots for the purpose of processing or resale; or
 - c. Handles potatoes on account of or as an agent for another.

SOURCE: Section 4-11-01.

NOTE:

- ¹ Current law defines insolvency as an "unableness or unwillingness to provide payment ...". Insolvency is an inability to provide payment. It generally involves a declaration of insolvency and placement under an order of liquidation by a court. An unwillingness to provide payment is generally a breach of contract.

1 **4.1-57-02. Wholesale potato dealer - License required.** Before a person may
2 engage in the business of a wholesale potato dealer, the person must be licensed by the seed
3 commissioner.

SOURCE: Section 4-11-02.

4 **4.1-57-03. Application for license - Content.** To obtain a license as a wholesale
5 potato dealer, a person must complete an application and submit it to the seed commissioner.
6 The application must be signed by the applicant under oath and must include:

- 7 1. The location in which the applicant intends to operate as a wholesale potato
8 dealer;
- 9 2. The estimated amount of business to be done monthly;
- 10 3. The amount of business done the preceding year, if any;
- 11 4. The greatest volume of potatoes, by hundredweight, purchased during any one
12 month in the preceding calendar year;
- 13 5. The greatest value of potatoes purchased during any one month in the preceding
14 calendar year;
- 15 6. The name of each partner if the applicant is a partnership;
- 16 7. The name of each corporate officer and the state of incorporation if the applicant is
17 a corporation;
- 18 8. The name of each manager and the state of organization if the applicant is a
19 limited liability company;
- 20 9. The name of every agent employed by the applicant on the date of the application;
- 21 10. A financial statement prepared in accordance with generally accepted accounting
22 principles showing the assets and liabilities of the applicant;
- 23 11. A list of similar licenses issued to the applicant by other states;
- 24 12. The name of each state that has:
 - 25 a. Refused to issue the applicant a wholesale potato dealer's license;
 - 26 b. Suspended or revoked a wholesale potato dealer's license that had been
27 issued to the applicant;
 - 28 c. Refused to issue a wholesale potato dealer's license to an agent of the
29 applicant; or

- 1 d. Suspended or revoked a wholesale potato dealer's license that had been
2 issued to an agent of the applicant.

SOURCE: Section 4-11-03.

3 **4.1-57-04. Application for license - Required security.**

- 4 1. As a condition of licensure, the seed commissioner shall require an applicant to
5 file:
6 a. A current financial statement prepared in accordance with generally accepted
7 accounting principles;
8 b. A cash bond or a surety bond, in an amount and form determined by the seed
9 commissioner; or
10 c. An irrevocable letter of credit.
11 2. The form of security required by the seed commissioner under subsection 1 must
12 be conditioned for:
13 a. The faithful performance of the person's duties as a wholesale potato dealer;
14 b. Compliance with all laws and rules relating to the purchase of potatoes by the
15 wholesale potato dealer;
16 c. Prompt payment in the case of insolvency; and
17 d. The protection and benefit of any potato producer in this state during the
18 period the license is in effect.

SOURCE: Section 4-11-04.

NOTE: Current law provides that, as a condition of licensure, the Seed Commissioner "may" require the applicant to file a current financial statement, a cash bond or a surety bond, or provide an irrevocable letter of credit. Because Seed Department personnel indicated that proof of financial stability is an integral part of the licensing process, the language has been changed so that the Seed Commissioner "shall" require such evidence. The committee is asked to verify this change.

19 **4.1-57-05. Termination of bond - Notice to seed commissioner - Suspension of**
20 **license.** The surety may terminate its liability under a bond by giving the seed commissioner at
21 least ninety days' notice of intent to terminate. The surety is released from all future liability
22 accruing on the bond after the expiration of ninety days from the date the seed commissioner
23 received the notice or on a later date specified by the surety. This section does not relieve,
24 release, or discharge the surety from any liability incurred before the expiration of the
25 ninety-day period. Unless the wholesale potato dealer files a new bond ¹ at least thirty days

1 before the surety's liability ceases, the seed commissioner, without hearing, shall suspend the
2 wholesale potato dealer's license. The seed commissioner may not remove the suspension
3 until a new bond or other form of surety has been filed with and approved by the seed
4 commissioner.

SOURCE: Section 4-11-04.1.

NOTE:

1 May the wholesale potato dealer file a current financial statement or an irrevocable
letter of credit in place of a surety bond, in order to prevent suspension? (Are we
in fact assuming that if the surety is no longer comfortable in that role, there are
problems and one should not accept a lesser guarantee (e.g., a letter or credit or a
current financial statement)?

5 **4.1-57-06. License - Fee - Expiration.** The seed commissioner shall establish the fee
6 for a wholesale potato dealer's license, subject to approval by the seed commission. A license
7 issued under this chapter expires on June thirtieth of each year.

SOURCE: Section 4-11-06.

NOTE: The rewrite clarifies that the setting of the license fee is subject to approval by
the Seed Commission.

8 **4.1-57-07. License - Posting.** The wholesale potato dealer shall post the license or a
9 certified copy of the license in the office at each location where the dealer transacts business.

SOURCE: Section 4-11-07.

10 **4.1-57-08. License - Refusal - Suspension - Cancellation - Grounds.**

- 11 1. The seed commissioner may refuse to issue a license to operate a wholesale
12 potato dealer if:
- 13 a. The applicant was refused a wholesale potato dealer's license by another
14 state;
 - 15 b. The applicant had a wholesale potato dealer's license suspended or revoked
16 by another state; or
 - 17 c. The applicant employs in a position of responsibility an individual who had a
18 wholesale potato dealer's license suspended or revoked by another state.
- 19 2. The seed commissioner may suspend or revoke a license to operate as a
20 wholesale potato dealer if:
- 21 a. The dealer had a wholesale potato dealer's license suspended or revoked by
22 another state; or

- b. The dealer employs in a position of responsibility an individual who had a wholesale potato dealer's license suspended or revoked in another state.

SOURCE: Section 4-11-08.

4.1-57-09. Agent of licensee - Ineligibility. The seed commissioner may determine that an individual may not act as an authorized agent for a licensee if the individual was refused a wholesale potato dealer's license by another state or if the individual had a wholesale potato dealer's license suspended or revoked another state.

4.1-57-10. Accounts and records. A wholesale potato dealer shall keep accurate accounts and retain records of all transactions as a dealer for eighteen months. The dealer shall make the records available to the seed commissioner upon request.

SOURCE: Section 4-11-12.

4.1-57-11. Discontinuation of business - Duty of dealer. If a wholesale potato dealer sells, disposes of, or discontinues the business for which the dealer obtained a license during the period covered by the license, the dealer shall notify the seed commissioner in writing and, at the request of the seed commissioner, produce a statement of assets and liabilities as of the date the business was sold, disposed of, or discontinued.

SOURCE: Section 4-11-13.

4.1-57-12. Bonds - Requirements for increase - Production of verified financial statements - Hearing. The seed commissioner may at any time require an increase in the amount of a wholesale potato dealer's bond. The seed commissioner may at any time require verified financial statements from a dealer. If a dealer fails to furnish the information or fails to furnish a new or higher bond when directed by the seed commissioner, the seed commissioner shall suspend the dealer's license. After providing the dealer with at least ten days' notice and a hearing, the seed commissioner may revoke the dealer's license.

SOURCE: Section 4-11-14.

4.1-57-13. Seed commissioner - Appointment as trustee.

1. If a person notifies the seed commissioner that a wholesale potato dealer has breached any of the conditions for which security was given under this chapter, the seed commissioner shall investigate the allegation.
2. The seed commissioner may hold a hearing to obtain additional testimony and documentary evidence. If the seed commissioner determines that the allegation is

supportable, the seed commissioner shall apply to the district court of the county in which the claim is alleged to have occurred for appointment as trustee.

3. Upon notice to the wholesale potato dealer as the court may prescribe or upon waiver of notice by the dealer, the court shall hear the matter in a summary manner. If the court determines that the dealer has breached any condition for which security was given under this chapter and if the court determines that it would be in the best interest of all persons holding claims against the dealer that the seed commissioner execute the trust, the court shall issue an order appointing the seed commissioner as a trustee, without bond. The seed commissioner shall proceed in the manner provided for in this chapter.

4. The seed commissioner, as trustee, shall notify by certified mail all persons having claims against the dealer that the claims must be filed with the seed commissioner by a date certain. Any person who fails to file a claim within the time allotted is barred from participation in any fund marshaled by the seed commissioner under this chapter.

5. All moneys collected and received by the seed commissioner as trustee must be deposited in the Bank of North Dakota pending the marshalling of the fund.

SOURCE: Section 4-11-15.

4.1-57-14. Report - Notice to claimants - Payment of claims. Upon recovery of the trust fund, or so much of the fund as is possible to recover or necessary to pay all outstanding claims, the seed commissioner shall file a report in court showing the amount payable on each claim. If the fund is insufficient to pay all claims in full, the seed commissioner shall prorate the fund among the claimants. The court shall notify the claimants by mail regarding the proposed distribution and direct that the claimants show cause why the report should not be approved and distribution made in accordance with the report. After holding a hearing on the matter, the court shall approve or modify the report, issue an order directing the distribution of the fund, and discharge the seed commissioner from all duties as trustee.

SOURCE: Section 4-11-15.1.

4.1-57-15. Representation of seed commissioner. The attorney general shall represent the seed commissioner in any action or proceeding brought under this chapter and

1 may employ legal assistance when necessary. Any expenses incurred by the attorney general
2 in providing representation to the seed commissioner may be deducted from the trust fund.

SOURCE: Section 4-11-15.2.

3 **4.1-57-16. Inspection of potatoes - Rights to demand certificate of inspection.**

- 4 1. When potatoes are ready for sale or are on their way to market, the owner,
5 conveyor, prospective buyer, or any other interested party may demand and is
6 entitled to inspection of the potatoes and to an inspection certificate as provided by
7 law.
- 8 2. Whenever potatoes are shipped to or received by a wholesale potato dealer for
9 handling, purchase, or sale in this state and the wholesale potato dealer finds the
10 potatoes to be spoiled, damaged, unmarketable, in unsatisfactory condition,
11 mislabeled, or misrepresented in any way, unless both parties waive inspection
12 before sale or other disposition, the wholesale potato dealer shall cause the
13 potatoes to be examined by an inspector assigned by the seed commissioner for
14 that purpose. The inspector shall execute and deliver a certificate to the wholesale
15 potato dealer, stating the day, the time, and the place of inspection and the
16 condition of the potatoes. The wholesale potato dealer shall mail or deliver a copy
17 of the certificate to the shipper of the inspected potatoes.

SOURCE: Section 4-11-16.

18 **4.1-57-17. Report by wholesale potato dealer - Payment.** A wholesale potato dealer
19 to whom potatoes have been shipped or consigned for sale and to whom title has not yet
20 passed shall provide to the person who shipped or consigned the potatoes, within a reasonable
21 time ¹ after receiving the potatoes, a written report detailing the potatoes' time of arrival, the
22 quantity, the quality, and the price per unit. At the time of providing the report, the wholesale
23 potato dealer shall pay the person who shipped or consigned the potatoes the net amount due
24 for the potatoes.

SOURCE: Section 4-11-17.

NOTE:

- ¹ Although current law references the provision of a written report within a
"reasonable time," the committee might wish to consider clarifying what constitutes
a "reasonable time."

1 **4.1-57-18. Sales reports unsatisfactory - Remedy of shipper.** If a person who
2 shipped or consigned the potatoes, after demand, receives no payment or report of sale of
3 potatoes, or is dissatisfied with the remittance, sale, or report, the shipper may file a complaint
4 with the seed commissioner. Upon receipt of a complaint, the seed commissioner shall initiate
5 an investigation.

SOURCE: Section 4-11-18.

6 **4.1-57-19. Investigation - Hearing - Action on license.**

- 7 1. If the seed commissioner receives a complaint against any person dealing in,
8 shipping, transporting, storing, or selling potatoes, the seed commissioner may
9 initiate an investigation.
- 10 2. The seed commissioner¹ may enter upon real property and access any structure
11 and personal property at any time to inspect and sample potatoes for compliance
12 with the laws of this state.²
- 13 3. After an investigation, the seed commissioner may suspend the license of any
14 wholesale potato dealer. Within ten days of the suspension, the seed
15 commissioner shall schedule, provide notice of, and hold a hearing on the
16 suspension.
- 17 4. After receiving both testimony and documentary evidence, the seed commissioner
18 may reverse the suspension, continue the suspension, or revoke the wholesale
19 potato dealer's license. If appropriate, the seed commissioner may demand the
20 return of any agent's identification card issued by the seed commissioner.
- 21 5. Any aggrieved party may appeal a decision of the seed commissioner under this
22 section to the district court.

SOURCE: Section 4-11-20.

NOTE:

- ¹ Current law provides that the commissioner and the commissioner's agents have access at all times to all buildings, yards, warehouses, storage and transportation facilities, and railway cars in which any potatoes are kept, stored, handled, or transported and may take any necessary samples. This has been replaced with language that parallels a similar provision found in the rewrite of Chapter 4-09. Unlike the current law, the new language does not include a reference to the commissioner's agents. This is not an attempt to deny the commissioner's agents any authority or access but merely a recognition that the authority is provided not to the commissioner as an individual but to the office of the commissioner and therefore encompasses all who carry out the commissioner's powers and duties.

- ² Current law provides that "[t]he commissioner ... [has] access, at all times, to all buildings, yards, warehouses, storage, and transportation facilities, and railway cars in which any potatoes are kept, stored, handled, or transported, and may take any necessary samples." The rewrite provides that the Seed Commissioner may access such property for the purpose of inspecting and sampling the potatoes to ensure compliance with the laws of this state. Are there any other purposes for which the Seed Commissioner requires access?

1 **4.1-57-20. Fees and collections - Continuing appropriation.** The seed
2 commissioner shall forward all moneys received from the collection of fees and other charges
3 under this chapter to the state treasurer for deposit in a special fund known as the seed
4 department fund. All moneys in the seed department fund are appropriated on a continuing
5 basis to the state seed department to carry out statutory directives.

SOURCE: Section 4-11-21.

NOTE: The rewrite reconciles this section with the changes proposed in the rewrite of Chapter 4-09. The continuing appropriation for the purpose of "carrying out specific statutory directives" was selected rather than the standard phrase "to carry out this chapter" because other chapters also reference this particular fund.

6 **4.1-57-21. Enforcement of chapter.** The seed commissioner shall do all things
7 necessary to enforce this chapter and rules implementing this chapter. The attorney general or
8 the state's attorney in the county where a case arises shall prosecute violations of this chapter
9 and the rules.

SOURCE: Section 4-11-22.

10 **4.1-57-22. Violations of chapter - Penalty.**

- 11 1. A person is guilty of a class A misdemeanor if the person:
12 a. Makes any false statement or report as to the grade, condition, markings,
13 quality, or quantity of potatoes received or delivered, or acts in a manner
14 designed to deceive the consignor or purchaser of the potatoes;
15 b. Refuses to accept, on agreed terms, any shipment for which the person has
16 contracted, unless the refusal is based on a state inspection certificate,
17 secured with reasonable promptness ¹ after receipt of the shipment, and
18 showing that the kind or quality of potatoes is not that which was purchased or
19 ordered; ²
20 c. Fails to account for potatoes or to pay for potatoes within the time required by
21 this chapter;

- 1 d. Breaches any contract to which the person is a party for the purchase or sale
- 2 of potatoes;
- 3 e. Purchases for the person's own account any potatoes received on
- 4 consignment, either directly or indirectly, without the consent of the consignor;
- 5 f. Issues false or misleading market quotations;
- 6 g. Cancels any quotations during the period advertised by the person;
- 7 h. Makes any false or misleading statement on an application for licensure as a
- 8 wholesale potato dealer;
- 9 i. Increases the sales charges on shipped potatoes by means of fictitious sales;
- 10 j. Fails to keep accurate records and financial accounts of all transactions as a
- 11 wholesale potato dealer;³
- 12 k. Receives potatoes from foreign states or countries for sale or resale, within or
- 13 outside this state, and gives the purchaser the impression through any
- 14 method of advertising or description that the potatoes are from a source other
- 15 than their true origin; or
- 16 l. Violates this chapter or any rule implementing this chapter.
- 17 2. If the seed commissioner is notified that a wholesale potato dealer has been
- 18 convicted of an offense listed in this section, of an offense involving fraudulent use
- 19 of the mails, or of any other criminal act pertaining to the conduct of the person as
- 20 a wholesale potato dealer, the seed commissioner shall provide at least ten days
- 21 notice and hold a hearing to determine whether the wholesale potato dealer's
- 22 license should be suspended or revoked.⁴

SOURCE: Section 4-11-23.

NOTE:

¹ The committee may wish to clarify what constitutes "reasonable promptness."

² Subsection 1(b) provides that a person is guilty of a misdemeanor if the person "[r]efuses to accept, on agreed terms, any shipment for which the person has contracted" and goes on to provide an exception, i.e., "unless the refusal is based on a state inspection certificate, secured with reasonable promptness after receipt of the shipment, and showing that the kind or quality of potatoes is not that which was purchased or ordered".

Since subsection 1(d) provides that a person is guilty of a misdemeanor if the person "breaches any contract entered by the person for the purchase or sale of potatoes," perhaps the two concepts could be combined as follows:

A person is guilty of a misdemeanor if the person:

- Breaches any contract for the purchase or sale of potatoes to which the person was a party unless the breach is based on a state inspection certificate, secured with reasonable promptness after receipt of the shipment; and shows that the kind or quality of potatoes is not that which was purchased or ordered.
- ³ Subsection 1(j) provides that a person is guilty of a misdemeanor if the person "[f]ails to keep accurate records and financial accounts of all transactions as a wholesale potato dealer". This parallels Section 4.1-57-10, which states that a "wholesale potato dealer shall keep accurate accounts and retain records of all transactions as a dealer for eighteen months...." Since subsection 1(l) applies the penalty to anyone who violates "this chapter," subsection 1(j) is unnecessary and should be removed.
- ⁴ Consideration should be given to relocating subsection 2 with Section 4.1-57-08(3), which already sets forth several other circumstances under which the Seed Commissioner may suspend or revoke a wholesale potato dealer's license.

1 **SECTION 6.** A new section to chapter 11-08 of the North Dakota Century Code is
2 created and enacted as follows:

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

SOURCE: Section 4-09-02.1.

6 **SECTION 7.** A new section to chapter 40-05 of the North Dakota Century Code is
7 created and enacted as follows:

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

SOURCE: Section 4-09-02.1.

12 **SECTION 8.** A new section to chapter 58-03 of the North Dakota Century Code is
13 created and enacted as follows:

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

SOURCE: Section 4-09-02.1.

1 **SECTION 9. AMENDMENT.** Section 60-02-01 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **60-02-01. Definitions.** In this chapter, unless the context or subject matter otherwise
4 requires:

- 5 1. "Commission" means the public service commission.
- 6 2. "Credit-sale contract" means a written contract for the sale of grain pursuant to
7 which the sale price is to be paid or may be paid more than thirty days after the
8 delivery or release of the grain for sale and which contains the notice provided in
9 subsection 7 of section 60-02-19.1. If a part of the sale price of a contract for the
10 sale of grain is to be paid or may be paid more than thirty days after the delivery or
11 release of the grain for sale, only such part of the contract is a credit-sale contract.
- 12 3. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz,
13 safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover,
14 millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" as
15 defined in this chapter shall not include grain or grass seeds owned by or in the
16 possession of the warehouseman that have been cleaned, processed, and
17 specifically identified for an intended use of planting for reproduction and for which
18 a warehouse receipt has not been issued.
- 19 4. "Noncredit-sale contract" means a contract for the sale of grain other than a
20 credit-sale contract.
- 21 5. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain
22 warehouse, terminal warehouse, or other structure or facility not licensed under the
23 United States Warehouse Act [7 U.S.C. 241-273] in which grain is received for
24 storing, buying, selling, shipping, or processing for compensation. Provided,
25 however, that nothing in this chapter shall be construed to require a processor to
26 receive, store, or purchase any lot or kind of grain at said facility.
- 27 6. "Public warehouseman" means the person operating a public warehouse that is
28 located or doing business within this state, whether or not such owner or operator
29 resides within this state. The term does not include a person who is permitted to
30 sell seed under chapter ~~4-09~~ 4.1-53, if that person does not store grain for the
31 public and buys grain only for processing and subsequent resale as seed, or an

authorized dealer or agent of a seed company holding a permit in accordance with section ~~4-09-14.4~~ 4.1-53-38.

7. "Receipts" means grain warehouse receipts, scale tickets, checks, or other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain except when such memoranda was received as a result of a credit-sale contract.
8. "Receiving station" means any facility other than an individually licensed warehouse that is used by a licensed public warehouseman to receive and temporarily store grain prior to transferring the grain to the warehouseman's primary licensed warehouse location or delivering it directly to market.

NOTE: The amendment of this section reconciles a cross-reference.

SECTION 10. AMENDMENT. Section 60-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the public service commission.
2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
3. "Facility" means a structure in which grain purchased by a grain buyer is received or held.
4. "Facility-based grain buyer" means a grain buyer who operates a facility licensed under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.
5. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" does not include grain or grass seeds owned by or in the possession of the grain buyer

1 which have been cleaned, processed, and specifically identified for an intended
2 use of planting for reproduction and for which a warehouse receipt has not been
3 issued.

- 4 6. "Grain buyer" means any person, other than a public warehouseman as defined in
5 chapter 60-02, who purchases or otherwise merchandises grain for compensation.

6 The term does not include:

- 7 a. A producer of grain who purchases grain from other producers to complete a
8 carload or truckload in which the greater portion of the load is grain grown by
9 the producer or on-farm feedlot operations in which at least fifty percent of the
10 livestock is owned by the owner of the farm.
11 b. A person who is permitted to sell seed under chapter ~~4-09~~ 4.1-53, if that
12 person buys grain only for processing and subsequent resale as seed.
13 c. A person who is an authorized dealer or agent of a seed company holding a
14 permit in accordance with section ~~4-09-14.4~~ 4.1-53-38.

- 15 7. "Noncredit-sale contract" means a contract for the sale of grain other than a
16 credit-sale contract.

- 17 8. "Receipts" means scale tickets, checks, or other memoranda given by a grain
18 buyer for, or as evidence of, the receipt or sale of grain except when such
19 memoranda was received as a result of a credit-sale contract.

- 20 9. "Roving grain buyer" means a grain buyer who does not operate a facility where
21 grain is received.

NOTE: The amendment of this section reconciles a cross-reference.

22 **SECTION 11. REPEAL.** Chapters 4-09, 4-09.1, 4-11, 4-25, and 4-42 of the North
23 Dakota Century Code are repealed.