

Introduced by

1 A BILL for an Act to create and enact chapter 4.1-13 of the North Dakota Century Code, relating
2 to the wheat commission and assessment; to repeal chapter 4-28 of the North Dakota Century
3 Code, relating to the wheat commission and assessment; to provide a penalty; and to provide a
4 continuing appropriation.

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

6 **SECTION 1.** Chapter 4.1-13 of the North Dakota Century Code is created and enacted
7 as follows:

8 **4.1-13-01. Definitions.** As used in this chapter:

- 9 1. "Commercial channels" means the sale of wheat by a producer to any person who
10 resells wheat or any product produced from wheat.
- 11 2. "Commission" means the North Dakota state wheat commission.
- 12 3. "Final settlement" means:
- 13 a. The date that wheat upon which a loan was obtained is:
- 14 (1) Sold to a person other than a governmental entity; or
- 15 (2) Assigned or transferred to a United States government agency; or
- 16 b. The date upon which payment for the wheat is actually made if the wheat is
17 sold in accordance with the terms of a deferred payment contract.
- 18 4. "First purchaser" means any person buying, accepting for sale, or otherwise
19 acquiring, after harvest, the property in or to wheat, from the producer. The term
20 includes a mortgagee, pledgee, lienor, or other person having a claim against the
21 producer if the actual or constructive possession of wheat is taken as partial
22 payment or in satisfaction of a mortgage, pledge, lien, or claim.
- 23 5. "Producer" means any person who has an ownership interest in wheat that the
24 person has:

- 1 a. Planted during four of the previous six calendar years; or
- 2 b. Caused to be planted during four of the previous six calendar years.

NOTE: Present law defines a producer as any landowner or tenant engaged in growing wheat and receiving, in such capacity, any portion of the crop produced. The rewrite, for the sake of consistency, uses a definition being considered for other commodity chapters.

The proposed definition specifies that there must be an ownership interest in the crop and that the producer must have planted the crop (or caused the crop to be planted) during four of the previous six calendar years. This latter provision is inserted because some commodity groups were concerned about the eligibility of producers who decided not to plant a specific crop during one or two growing seasons. (The committee is asked to determine an appropriate ratio.)

- 3 6. "Sale" includes any pledge or mortgage of wheat, after harvest, to any person.
- 4 7. "Wheat" includes all classes of wheat.

SOURCE: Section 4-28-02.

5 **4.1-13-02. Wheat districts - Establishment.** The state consists of the following six
6 wheat districts:

- 7 1. Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, Mercer, Morton,
8 Oliver, Sioux, Slope, and Stark Counties;
- 9 2. Burke, Divide, McKenzie, Mountrail, Renville, Ward, and Williams Counties;
- 10 3. Burleigh, Eddy, Emmons, Foster, Kidder, Logan, McIntosh, McLean, Sheridan,
11 Stutsman, and Wells Counties;
- 12 4. Benson, Bottineau, McHenry, Pierce, Ramsey, Rolette, and Towner Counties;
- 13 5. Barnes, Cass, Dickey, Griggs, LaMoure, Ransom, Richland, Sargent, Steele, and
14 Traill Counties; and
- 15 6. Cavalier, Grand Forks, Nelson, Pembina, and Walsh Counties.

SOURCE: 4-28-04.

16 **4.1-13-03. Wheat commission - Membership - Eligibility.**

- 17 1. The wheat commission consists of:
 - 18 a. One individual elected from each of the six districts established in section
19 4.1-13-02; and
 - 20 b. One individual appointed to represent the state at large.
- 21 2. Each elected member of the wheat commission must be a resident of the district
22 that the member represents, a qualified elector, and a producer.

- 1 3. The member at large must be a resident of this state, a qualified elector, and a
2 producer.

NOTE: In an attempt to define and standardize the concept of "actively engaged in farming," the rewrite requires (through the definition of a producer) an ownership interest in wheat that the producer has planted or caused to be planted.

- 3 4. Any individual who requested a refund under section 4.1-13-18 during the twelve
4 months preceding the date on which the term being sought would begin is not
5 eligible to serve as a member of the commission.

NOTE: Section 4-28-03(1) provides that "an individual is not eligible to be a member of the wheat commission if that individual requested a refund under section 4-28-07 during the twelve-month period before the date on which the term sought by the individual would commence." It also provides that a "member of the wheat commission is not eligible to receive a refund under section 4-28-07." (Requests for refunds due to overpayments are permitted.) If a member of the commission requests a refund during the member's term, is the member deemed ineligible to continue in that capacity? The language indicating that a member of the commission is not eligible to receive a refund under Section 4-28-07 is not yet included in the rewrite.

SOURCE: Section 4-28-03.

6 **4.1-13-04. Terms of office.**

- 7 1. The term of each commission member is four years.
8 2. The term of an elected member begins on July first following the date of the
9 member's election and continues until the member's successor has been elected
10 and qualified. The term of the member at large begins on July first of the year in
11 which the member is appointed and continues until the member's successor has
12 been appointed.
13 3. The terms must be staggered so that no more than two expire each year.
14 4. An individual may not serve more than three terms as a commission member. If an
15 individual is appointed to complete a vacancy, that service is not counted as a term
16 for purposes of this section unless the duration of that service exceeds one year.

NOTE: The final sentence of subsection 4 is new language. It tries to clarify the permitted length of service in the event an individual is appointed to fill a vacancy.

SOURCE: Section 4-28-03(3).

17 **4.1-13-05. Election of county representative.**

- 18 1. No later than May first of the year in which the term of an elected commission
19 member is to expire, the extension agent for each county in that member's district

- 1 shall hold a meeting of producers for the purpose of electing a county
2 representative.
- 3 2. The county extension agent shall publish notice of the meeting in the official
4 newspaper of the county for two consecutive weeks. The last notice must be
5 published no fewer than five nor more than ten days before the meeting.
- 6 3. The meeting must be held at a central location within the county.
- 7 4. During the meeting, the county extension agent shall conduct the election.
- 8 5. Any producer who resides in the county may vote in the election.
- 9 6. The county extension agent shall canvass the votes, notify the director of the North
10 Dakota state university extension service that the election has taken place, and
11 provide to the director the name and address of the newly elected county
12 representative.
- 13 7. Only those individuals who would be qualified to serve as elected commission
14 members may serve as county representatives.

NOTE: If a county representative ceases to be qualified for that position, Section 4-28-03(4) indicates that the county representative is deemed to have resigned and the commission is to declare the position vacant. What happens then? Does the commission appoint another county representative or does the position remain vacant until the next cycle of district elections?

SOURCE: Section 4-28-03(4).

15 **4.1-13-06. Election of district representative - Commission member.**

- 16 1. Upon receiving the notice required by section 4.1-13-05, the director of the North
17 Dakota state university extension service shall call a meeting of all county
18 representatives in the district represented by the member whose term is to expire.
- 19 2. The director shall notify each county representative in the district of the meeting, by
20 registered mail, at least five days before the meeting.
- 21 3. The meeting must be held at a central location within the district.
- 22 4. At the meeting, the county representatives shall elect one from among themselves
23 to serve as the commission member from that district.
- 24 5. The director shall notify the governor that the election has taken place and shall
25 provide to the governor the name and address of the newly elected commission
26 member.

SOURCE: Section 4-28-03(4).

1 **4.1-13-07. County representative - Additional duties - Reimbursement of**
2 **expenses.** In addition to any other duties established in section 4.1-13-05, the commission
3 may require county representatives to attend meetings for the purpose of promoting
4 commission programs and to perform other duties as directed by the commission. The
5 commission shall reimburse the expenses of county representatives who perform such
6 additional duties in the same manner as that provided by law for state officials.

SOURCE: Section 4-28-03(4).

7 **4.1-13-08. Election costs - Responsibility.** All costs of holding county and district
8 meetings and elections are the responsibility of the commission.

SOURCE: Section 4-28-03(4).

9 **4.1-13-09. Member at large - Nominating commission - Appointment by governor.**

- 10 1. No sooner than sixty days before the term of the commission's member at large is
11 to expire, the agriculture commissioner, serving as the chairman, shall convene a
12 nominating committee consisting of the following individuals:
- 13 a. The agriculture commissioner;
 - 14 b. The director of the North Dakota agricultural experiment station;
 - 15 c. The president of the North Dakota crop improvement association;
 - 16 d. The president of the North Dakota farm bureau;
 - 17 e. The president of the North Dakota farmers union;
 - 18 f. The president of the North Dakota grain dealers association;
 - 19 g. The president of the North Dakota grain growers association;
 - 20 h. The director of the North Dakota state university extension service; and
 - 21 i. A resident of this state who is a member of, and selected by, the United
22 States durum growers association.
- 23 2. The committee shall submit to the governor the names of three individuals who are
24 qualified to serve as a member at large.
- 25 3. No later than sixty days after the member's term expires, the governor shall
26 appoint one of the three individuals to serve as the member at large.
- 27 4. Any member of the nominating committee may appoint a designee to carry out the
28 requirements of this section.

SOURCE: Section 4-28-03(2).

1 **4.1-13-10. Commission vacancies.**

- 2 1. The commission shall declare a member to be ineligible and the member's position
3 vacant if the commission determines that the member no longer meets the
4 qualifications set forth in section 4.1-13-03.
- 5 2. The commission may declare a member to be ineligible and the member's position
6 vacant if the commission determines that the member has failed to attend two
7 consecutive commission meetings.
- 8 3. If an elected commission member is declared by the commission to be ineligible or
9 is otherwise unable to continue serving for the duration of the term to which the
10 member was elected, the commission shall direct the county representatives to
11 hold an election for the purpose of filling the vacancy. The election must be
12 conducted in the same manner as that provided for under section 4.1-13-06.
- 13 4. If the commission member serving at large is declared by the commission to be
14 ineligible or is otherwise unable to continue serving for the duration of the term to
15 which the member was appointed, the commission shall direct the nominating
16 committee to submit the names of three eligible individuals to the governor for the
17 purpose of filling the vacancy. The appointment must be conducted in the same
18 manner as that provided for under section 4.1-13-09.

SOURCE: Section 4-28-03(1) and (5).

19 **4.1-13-11. Election of chairman - Meetings.**

- 20 1. The commission shall meet at least once every calendar quarter at such times and
21 places as determined by the commission.
- 22 2. Annually, the commission shall elect one member to serve as the chairman and the
23 vice chairman.
- 24 3. The commission shall adopt rules setting forth the requirements for calling and
25 holding special meetings.

NOTE: Proposed legislation for the other commodity councils provides that the chairman shall call all meetings and must call a special meeting within seven days when petitioned to do so by three members of the council.

SOURCE: Section 4-28-05.

- 26 **4.1-13-12. Commission members - Compensation.** Each member of the
27 commission is entitled to receive compensation in the amount established by the commission,

1 but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by
2 law for state officers if the member is attending meetings or performing duties directed by the
3 commission.

SOURCE: Section 4-28-05.

4 **4.1-13-13. Commission - Powers.**

- 5 1. The commission may:
- 6 a. Expend moneys collected pursuant to this chapter for its administration;¹
 - 7 b. Employ, bond, and compensate necessary personnel;²
 - 8 c. Accept gifts, grants, and donations of money, property, and services to carry
9 out this chapter;³
 - 10 d. Contract with any person for any purpose permitted under this chapter;⁴
 - 11 e. Sue and be sued; and⁵
 - 12 f. Do all things necessary and proper to enforce and administer this chapter.⁶

NOTE: ¹This is new language used in other commodity chapters.

²Section 4-28-06(6).

³Section 4-28-06(7). Currently this section requires that the commission deposit "all funds so received in the state wheat commission fund in the state treasury." This directive is omitted here because it is included in proposed Section 4.1-13-21.

⁴Section 4-28-06(4).

⁵Section 4-28-06(12).

⁶Section 4-28-06(11).

13 2. The commission may not engage in a commercial business enterprise.

NOTE: Present law prohibits the commission from participating in a "competitive" business enterprise. (Is this intended to prohibit the commission from forming a custom combining operation that might compete with a producer or is it intended to allow a business that is not financially successful (competitive) but preclude one that is successful?)

In the interest of clarifying exactly what is intended by this prohibition, the rewrite prohibits the commission from engaging in a "commercial" business enterprise. The committee may, however, wish to determine whether this prohibition should be:

- 1. Left without exception until changed by a future Legislative Assembly;
or
- 2. Tempered by allowing the activity if approved by "a supermajority of the commission" or by "a majority of the producers."

SOURCE: Sections 4-28-01 and 4-28-06.

1 **4.1-13-14. Commission - Duties.**

2 1. The commission shall determine the uses for which any moneys raised under this
3 chapter may be expended. The uses may include the funding of research,
4 education programs, and market development efforts.

NOTE: Subsection 1 attempts to articulate the following similar directives to the commission:

Section 4-28-06(1): "To foster and promote programs aimed at increasing the sale, utilization, and development of wheat, both at home and abroad."

Section 4-28-06(2): "To publish and disseminate reliable information on the value of wheat and wheat products for any purpose for which they are valuable and useful to both processor and consumer."

Section 4-28-06(3): "To search for and promote new uses of wheat and wheat products."

Section 4-28-06(8): "To provide market maintenance and development services, utilization research, transportation research, and education."

The interim committee may want to determine if there should be specific authority to participate in programs under the auspices of other state or national wheat promotion groups.

5 2. The commission shall develop and disseminate information regarding the purpose
6 of the wheat assessment and ways in which the assessment benefits wheat
7 producers.

NOTE: Current law also includes the following commission directives:

Section 4-28-06(5): "To lease, purchase, own, equip, maintain, and operate a commission office."

Section 4-28-06(9): "To address trade and domestic issues."

Section 4-28-06(10): "To seek improvement in the export quality of wheat."

Section 4-28-06(13): "To engage in any other related activities."

Because these directives fit less clearly within the powers and duties sections, they should be subject to discussion by the interim Agriculture Committee. Perhaps the committee might wish to entertain a grant of general authority directing the commission to do all things necessary and proper to increase the sale and use of wheat domestically and internationally.

SOURCE: Sections 4-28-01, 4-28-06, and 4-28-07.1(3).

8 **4.1-13-15. Assessment.** An assessment at the rate of twelve mills per bushel [35.24
9 liters] by weight is imposed upon:

- 1 1. All wheat grown in this state, at the time of its sale;
- 2 2. All wheat delivered into this state, at the time of its sale; and
- 3 3. All wheat sold through commercial channels to a first purchaser in this state.

SOURCE: Section 4-28-07.1(1).

4 **4.1-13-16. Collection of assessment - Records.**

- 5 1. The first purchaser shall collect the assessment from the seller by deducting the
6 assessment from the total price of the wheat being purchased. If the wheat is
7 subject to a lien, pledge, or mortgage, the assessment must:
 - 8 a. Be deducted from the proceeds of the loan; or
 - 9 b. The claim must be secured and must be subject to adjustment at the time of
10 settlement if the number of bushels [liters] is not accurately determined at the
11 time of the lien, pledge, or mortgage.
- 12 2. At the time of the sale, the first purchaser shall provide a record of the transaction
13 to the seller in the manner prescribed by the commission.

NOTE: Unlike other commodity chapters, this one contains no mention of record retention periods. Should there be such a provision?

SOURCE: Section 4-28-07.1(1).

14 **4.1-13-17. Submission of assessments.** No later than twenty days after the
15 conclusion of each calendar quarter, each first purchaser shall:

- 16 1. Complete and file with the commission a form prescribed by the commission; and
- 17 2. Forward to the commission all assessments collected by the first purchaser.

NOTE: Other commodity groups have the authority to impose a civil penalty if this is not done. Other groups also provide 30 days after the conclusion of each calendar quarter, rather than 20, for the submission of assessments.

SOURCE: Section 4-28-08.

18 **4.1-13-18. Refund of assessment - Form.**

- 19 1. To receive a refund of any assessment paid in accordance with this chapter, a
20 producer shall submit to the commission a written request for a refund application
21 within sixty days after the date of the assessment or final settlement.
- 22 2. The producer shall complete the refund application and return the application to the
23 commission, together with a record of the assessment collected within ninety days

1 after the date of the assessment or final settlement. The commission then shall
2 refund the net amount of the assessment that had been collected.

3 3. If a request for a refund is not submitted to the commission within the prescribed
4 time period, the producer is presumed to have agreed to the assessment.

SOURCE: Section 4-28-07.1(2).

5 **4.1-13-19. Reimbursement for double payments.** Notwithstanding section
6 4.1-13-18, if a producer documents to the commission that the producer has paid the
7 assessment more than once on the same wheat, the commission shall reimburse the producer
8 for the double payment.

SOURCE: Section 4-28-03.

9 **4.1-13-20. Expenditure of funds.** The commission shall approve all expenditures
10 made pursuant to this chapter. All expenditures must be recorded on vouchers approved by
11 the commission.

SOURCE: Section 4-28-08.

12 **4.1-13-21. Continuing appropriation.** The commission shall forward all moneys
13 received under this chapter to the state treasurer for deposit in the state wheat commission
14 fund. All moneys in the state wheat commission fund are appropriated on a continuing basis to
15 the commission to carry out this chapter.

SOURCE: Section 4-28-08.

16 **4.1-13-22. Commission - Report to legislative assembly.** At the time the
17 commission presents the report required by section 4-24-10, the commission shall present a
18 separate report detailing the nature and extent of the commission's efforts to address trade and
19 domestic policy issues. The commission may invite other entities with which it has contracted
20 to assist in the presentation.

SOURCE: Section 4-28-07.1(5).

21 **4.1-13-23. Contract with trade associations.** The commission shall expend an
22 amount at least equal to that raised by two mills of the assessment provided for in section
23 4.1-13-15 to contract for activities related to domestic wheat policy issues, wheat production,
24 promotion, and sales. The contracts may be with no more than two trade associations that are
25 incorporated in this state and which have as their primary purpose the representation of wheat
26 producers. The contracts must require that any trade association receiving money under this

1 section pay from that money all dues required as a condition of the trade association's
2 membership in any national trade association. The contracts must prohibit any trade
3 association receiving money under this section from eliminating any dues required as a
4 condition of membership in that trade association or from reducing such dues below the amount
5 required for membership as of January 1, 2005.

SOURCE: Section 4-28-07.1(4).

6 **4.1-13-24. Contract with trade associations - Report to legislative assembly.** at
7 the time the commission presents the report required by section section 4-24-10, each trade
8 association with which the commission has contracted under section 4.1-13-23 shall present a
9 report detailing all activities in which the trade association engaged under the contract.

SOURCE: Section 4-28-07.1(6).

10 **4.1-13-25. Legal counsel - Provision by attorney general.**

- 11 1. The attorney general shall provide legal counsel to the commission or designate an
12 assistant for that purpose.
13 2. The commission may employ other counsel to advise and represent the
14 commission in its affairs and proceedings.

NOTE: Subsection 2 is taken directly from Section 4-28-05. It conflicts with Section 54-12-08, which states:

After consultation with the head of the state department or institution or with the state board, commission, committee, or agency affected, the attorney general may appoint assistant or special assistant attorneys general to represent the state board, commission, committee, or agency. A state officer, head of any state department, whether elected or appointed, or state department, board, commission, committee, or agency may not employ legal counsel, and no person may act as legal counsel in any matter, action, or proceeding in which the state or any state department, board, commission, committee, or agency is interested or is a party, except upon written appointment by the attorney general. (emphasis supplied)

SOURCE: Section 4-28-05.

15 **4.1-13-26. Penalty.** Any person who violates this chapter is guilty of a class B
16 misdemeanor.

SOURCE: Section 4-28-09.

17 **SECTION 2. REPEAL.** Chapter 4-28 of the North Dakota Century Code is repealed.