

December 2009

Introduced by

1 A BILL for an Act to create and enact ten new sections to chapter 4-09 of the North Dakota
2 Century Code, relating to seed labeling; to amend and reenact sections 4-09-01, 4-09-02,
3 4-09-02.1, 4-09-03, 4-09-04, 4-09-05, 4-09-05.1, 4-09-06, 4-09-06.1, 4-09-07, 4-09-08, 4-09-09,
4 4-09-10, 4-09-11, 4-09-11.1, 4-09-11.2, 4-09-12, 4-09-13, 4-09-14, 4-09-14.1, 4-09-14.2,
5 4-09-14.4, 4-09-15, 4-09-16, 4-09-17, 4-09-17.1, 4-09-18, 4-09-19, 4-09-20, 4-09-20.1,
6 4-09-20.2, 4-09-21, 4-09-22, 4-09-23, 4-09-24, and 4-09-25 of the North Dakota Century Code,
7 relating to seed labeling; and to provide a continuing appropriation.

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

9 **SECTION 1. AMENDMENT.** Section 4-09-01 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **4-09-01. Definitions.** In this chapter, unless the context otherwise requires:

12 1. ~~"Advertisement" means any representation, other than representations made on~~
13 ~~labels, which relates to seed.~~

NOTE: Because the word "advertisement" is used only once in the chapter
(4-09-14(3)(b)), it is recommended that the definition, if necessary, be included where
the word is used.

14 2. ~~"Agent", when used in connection with the commissioner, means the~~
15 ~~commissioner's deputy, inspector, analyst, specialist, aide, agent, and employee,~~
16 ~~when each is acting officially for the commissioner or performing any duty or duties~~
17 ~~as provided in this chapter or in the rules adopted to implement this chapter.~~

NOTE: Title 3 deals with agents and agency. Therefore, it is suggested that this
definition is not necessary and should be removed.

18 3. "Agricultural seed" means the seed of grass, forage, cereal, fiber, oil crops, Irish
19 potato seed tubers, and any other kind of seeds commonly recognized within this
20 state as agricultural seed, lawn seed, and mixture of these seeds.

NOTE: The Federal Seed Act (FSA) defines agricultural seeds as "grass, forage, and field crop seeds which the Secretary of Agriculture finds are used for seeding purposes in the United States and which he lists in the rules and regulations prescribed under section 1592 of this title."

The California Seed Act states that agricultural seed is "the seed of any domesticated grass or cereal, and of any legume or other plant that is grown as turf, cover crop, forage crop, fiber crop, or field crop, and mixtures of such seeds. It does not, however, include any variety that is generally known and sold as flower seed or vegetable seed."

- 1 4- 2. "Blend" means seed ~~consisting~~ that consists of more than one variety of a kind,
2 provided each in excess variety constitutes more than of five percent ~~by weight~~
3 the whole, by weight.

NOTE: In defining a "mixture," the FSA does not reference "weight." Is the reference to weight necessary in this definition?

- 4 5- 3. "Brand" means a word, name, ~~or~~ symbol, number, or design used to identify seed
5 of one person ~~to~~ and distinguish that the seed from ~~seed that~~ of another person.

NOTE: Is this definition necessary? It is not in the Minnesota statutes.

- 6 6- 4. "Certified" means the agricultural seed was randomly inspected and found to meet
7 the rules of the department at the time of inspection.

NOTE: This definition does not provide much of a context for understanding what is meant by certified seed.

1. The California Seed Act references certification with respect to the variety, purity, quality, type, strain, or other generic character of agricultural or vegetable seed.
2. Another option might be to define "certified seed" rather than merely defining "certified" and then clarify what is meant by the different categories of certified seed. The following, which is an amalgamation of definitions from several sources, could be crafted into statutory language:

"Certified seed" means seed of a known variety produced under strict seed certification standards to maintain varietal purity. Seed lots must meet specified standards for other crops, inert matter, weed seeds, and germination. Certified seed must be free of prohibited noxious weed seeds. All certified seed must pass field inspection, be conditioned by an approved seed conditioning plant, and then be sampled and pass laboratory testing before it can be sold as certified seed. There are four classes (generations) of certified seed. In order of genetic purity they are breeder, foundation, registered, and certified seed.

Options for defining "breeder seed" include the following:

- Breeder seed is directly controlled by the originating plant breeder or sponsoring institution or firm, which supplies the initial source and recurring increases of foundation seed. There are no certification standards for breeder seed.

- Breeder seed is:

Directly controlled by the originating breeder or sponsoring plant breeding institution; and

The production source for all classes of certified seed.

Options for defining "foundation seed" include the following:

- Foundation seed is produced from breeder's seed or foundation seed produced under the control of the originator or sponsoring institution or licensee. Foundation seed is controlled by the originating plant owner or licensee.
- Foundation seed is seed:
 - a. Produced from breeder or foundation seed; and
 - b. Produced and handled in accordance with procedures adopted by the certifying agency to maintain genetic identity and purity.

Options for defining "registered seed" include the following:

- Registered seed is produced from foundation or other approved seed stocks. This class of seed must be of a quality suitable for the production of certified seed. This seed is usually, but not always, one generation from foundation seed.
- Registered seed is seed:
 - a. Produced from foundation or registered seed;
 - b. Produced and handled in accordance with procedures adopted by the certifying agency to maintain genetic purity and identity; and
 - c. Suitable for the production of certified seed.

Options for defining "certified seed" include the following:

- Certified seed is produced from foundation, registered, certified, or other approved seed stocks. This seed is two generations from foundation seed. Certified seed cannot be used to produce certified seed again without the approval of the state certification agency, which can approve production only under extreme conditions.
- Certified seed is:
 - a. A class of certified seed;
 - b. Seed produced from breeder, foundation, or registered seed; and
 - c. Seed produced and handled in accordance with procedures adopted by the certifying agency to maintain genetic purity and identity.

1 ~~7.~~ 5. "Commission" means the state seed commission.

2 ~~8.~~ 6. "Commissioner" means the state seed commissioner.

NOTE:

1. Is it necessary to include this term in the definitions? Would it be clearer to simply refer to the "seed commissioner" within the appropriate sections?

2. Are members of the Seed Commission also called "commissioners"?

3 ~~9.~~ 7. "Conditioning" means drying, cleaning, scarifying, and other operations that may
4 change the purity or germination of the seed.

NOTE: Rather than defining "conditioning," the FSA defines "processing" as "cleaning, scarifying, or blending to obtain uniform quality, and other operations which would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind or variety without cleaning, or the preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed."

5 ~~40.~~ 8. "Department" means the state seed department ~~of this state~~.

6 ~~44.~~ 9. "Flower seed" includes a seed of a herbaceous plant grown for the bloom,
7 ornamental foliage, or other ornamental part, and commonly known and sold under
8 the name of flower or wildflower seed in this state.

NOTE: Minnesota's statutory definition exempts native or introduced wildflowers.

9 ~~42.~~ 10. "Foundation seed", "registered seed", and "certified seed" means seed that has
10 been produced and labeled in accordance with the procedures and in compliance
11 with the rules of an officially recognized seed-certifying agency.

NOTE: See definition of "certified" and accompanying notes.

12 ~~43.~~ 11. "Germination" means the percentage of seed capable of producing normal
13 seedlings under ordinarily favorable conditions as determined by methods
14 prescribed under the rules established by the association of official seed analysts.
15 ~~The percentage does not include seed that produces weak, malformed, or~~
16 ~~obviously abnormal sprouts.~~

NOTE:

1. If germination is the percentage of seed capable of producing "normal" seedlings under favorable conditions, it is not necessary to indicate that the percentage does not include "abnormal" seedlings.

2. The rules established by the Association of Official Seed Analysts are not readily available to the public. They may, however, be purchased for \$75.

3. Despite the language of this subsection closely paralleling the FSA, it is in fact not a definition of "germination" per se, but rather a definition of the "percentage of germination." A definition of "germination" might be:

- The emergence and development from the seed embryo of essential structures that are indicative of the ability to produce a normal plant under favorable conditions.

1 44. 12. "Hard seed" means a seed that ~~remains hard at the end of the prescribed test~~
2 ~~period because the seed has~~ an impermeable seed coat and has not absorbed
3 ~~water due to an impermeable seed coat~~ by the end of the prescribed test period.

NOTE: This is a nonsubstantive change to avoid defining a "hard seed" as one that "remains hard."

4 45. 13. "Inert matter" means ~~all matter not seed and includes the broken seed, a sterile~~
5 ~~floret, chaff, a fungus body, and a stone~~ anything other than unbroken seeds.

NOTE: Some states clarify that in order to be considered "broken," a seed must be less than half of its original size. Is this necessary?

6 46. 14. "Kind" means one or more related species or subspecies ~~which~~ known singly or
7 ~~collectively is known by one~~ by a common name, such as corn, oats, alfalfa, or
8 ~~timothy.~~

9 47. 15. "Labeler" means the person ~~who~~ that furnishes the information required in ~~sections~~
10 ~~4-09-10, 4-09-11, 4-09-11.1, and 4-09-11.2~~ this chapter.

NOTE: The California Seed Act defines labeler as "any person whose name and address appears on the label pertaining to or attached to a lot or container of agricultural or vegetable seed, or both agricultural and vegetable seed, for sale and distribution within the state." Is the definition of a labeler necessary and, if so, is it accurate?

11 48. 16. "Labeling Label" means a tag or ~~other~~ device attached to ~~or information written a~~
12 ~~seed container,~~ stamped; or printed information on ~~any a seed container,~~ or written
13 information accompanying a lot of bulk seed ~~that contains information required by~~
14 ~~this chapter.~~

NOTE: The proposed language eliminates reference to the label containing "information required by this chapter," because much of this chapter sets forth what must be on a label.

15 49. 17. "Lot" means a an identified definite quantity of seed ~~identified by a lot number or~~
16 ~~other mark, every portion or bag of which~~ that is uniform, within permitted
17 tolerances, for the factors ~~which~~ that appear ~~in~~ on the labeling label.

1 ~~20.~~ 18. "Mixture" means seed consisting of more than one kind, each in excess of five
2 percent by weight of the whole.

NOTE: Is the reference to weight necessary? The Code of Federal Regulations (CFR) defines mixture as "seeds consisting of more than one kind or variety, each present in excess of 5 percent of the whole."

3 ~~24.~~ 19. "~~Noxious weed seed~~" is divided into three classes defined as:
4 a. "Prohibited ~~noxious~~ weed seed" means a ~~weed seed that is prohibited from~~
5 being present in agricultural, vegetable, flower, tree, or shrub seed and is
6 highly destructive and difficult to control by good cultural practices and the use
7 of herbicides and includes a seed of leafy spurge (*euphorbia esula* L.), field
8 bindweed (*convolvulus arvensis* L.), Canada thistle (*cirsium arvense* (L.) Scop.),
9 perennial sow thistle (*sonchus arvensis* L.), Russian knapweed (*rhaponticum*
10 *repens* L.), absinth wormwood (*artemisia absinthium* L.), hemp (*cannabis*
11 *sativa* L.) having more than three tenths of one percent tetrahydrocannabinol,
12 musk thistle (*carduus nutans* L.), spotted knapweed (*centaurea stoebe* L.
13 subsp. *micranthos*), hoary cress (*lepidium chalepense*), and yellow starthistle
14 (*centaurea solstitialis* L.);
15 a. The seed or propagule of any weed designated as noxious by the agriculture
16 commissioner in accordance with section 4.1-47-05; or
17 b. The seed or propagule of any weed determined by the seed commissioner to
18 be highly destructive and difficult to control by good cultural practices or by
19 the use of herbicides.

NOTE:

1. A propagule is any structure that can give rise to a new individual organism, especially parts of a plant that serve as means of vegetative reproduction, such as corms, tubers, offsets, or runners. Seeds and spores are also propagules. (A corm is a fleshy underground stem that is similar to a bulb but stores its food as stem tissue and has fewer and thinner leaflike scales. The crocus and gladiolus produce new shoots from corms.)
2. As proposed, prohibited weed seeds would include all state-designated noxious weed seeds and any other seeds designated by the Seed Commissioner.
3. This subsection needs to be relocated in accordance with the Legislative Council drafting requirements for alphabetical order.

20 ~~b.~~ 20. "Restricted ~~noxious~~ weed seed" means a seed that is ~~objectionable~~ determined by
21 the seed commissioner to be:

- 1 a. Objectionable in agricultural crops, lawns, and gardens ~~in this state and can~~
2 be controlled; and
- 3 b. Controllable by good cultural practices or the use of herbicides ~~and~~
4 ~~includes the seed of dodder (cuscuta species), hedge bindweed (calystegia~~
5 ~~sepium L.), wild oats (avena fatua L.), and quackgrass (elymus repens subsp.~~
6 ~~repens).~~

NOTE:

1. It is not necessary to include a representative list of restricted weed seed sources.
2. This subsection needs to be relocated in accordance with the Legislative Council drafting requirements for alphabetical order.

7 e. ~~"Undesirable grass seed" means a seed of grass species declared by the~~
8 ~~commissioner to be a restricted noxious weed seed when found in lawn or turf~~
9 ~~seed.~~

10 ~~22.~~ 21. "Official seed-certifying agency" means:

- 11 a. An agency that is authorized under the laws of a state, territory, or possession
12 to officially certify seed and which has standards and procedures approved by
13 the United States secretary of agriculture to assure the genetic purity and
14 identity of ~~the any seed certified~~ the agency certifies; or
- 15 b. An agency of a foreign country ~~determined by~~ if the United States secretary of
16 agriculture ~~to adhere to~~ has determined that the agency adheres to seed
17 certification procedures and standards ~~for seed certification that are~~
18 comparable to those generally adhered to ~~generally~~ by a seed-certifying
19 ~~agencies under agency meeting and criteria set forth in~~ subdivision a.

NOTE: The NDCC currently references an "official seed-certifying agency" and an "officially recognized seed-certifying agency." It is recommended that a selection be made between the two references.

20 ~~23.~~ ~~"Pest" means any invertebrate animal, pathogen, parasitic plant, or similar~~
21 ~~organism causing or capable of causing injury or damage to any plant or part of a~~
22 ~~plant or any processed, manufactured, or other product of a plant.~~

NOTE: Because the term "pest" is used only in the definition of a phytosanitary certificate, it would be preferable to define a pest where the definition requires it.

23 ~~24.~~ ~~"Phytosanitary certificate" means a document issued or authorized by the~~
24 ~~commissioner indicating that the seed or tubers were inspected and considered to~~

1 ~~be free from quarantine pests and practically free from injurious pests according to~~
2 ~~the sanitary requirements of the importing country.~~

NOTE: Because the phrase "phytosanitary certificate" is used only in Section 4-09-06.1, it is recommended that the definition be included in that section rather than here.

3 ~~25.~~ 22. "Pure seed" means agricultural and vegetable seed, ~~exclusive of~~ excluding all inert
4 matter, and all other seed not of the kind or variety being considered.

5 ~~26.~~ 23. "Record" means all information relating to lot identification, source, origin, variety,
6 amount, processing, testing, labeling, distribution, and file sample of the seed.

NOTE: Is there anything else that ought to be listed? If there is that possibility, the definition should state: Record "includes" rather than record "means."

7 ~~27.~~ 24. "Selection" means a subgroup of a variety and ~~commonly used terms include line~~
8 ~~selection, clonal selection, or strain selection~~ includes clones, lines, and strains.

9 ~~28.~~ ~~"Stop sale" means an administrative order provided by law restraining the sale,~~
10 ~~use, disposition, and movement of a definite amount of seed.~~

NOTE: This is a well-known legal directive. It is not necessary to define it.

11 ~~29.~~ 25. "Treated" means a seed has received an application of a substance, or a claim has
12 been made that the seed has been subjected to a process.

NOTE: The FSA states that "treated" means the seed has been "given an application of a substance or subjected to a process designed to reduce, control, or repel disease organisms, insects or other pests which attack seeds or seedlings growing therefrom."

13 ~~30.~~ ~~"Tree and shrub seed" includes seed of woody plants commonly known and sold~~
14 ~~as tree and shrub seed in this state.~~

NOTE: Because this definition is not particularly helpful, it is suggested that it be eliminated.

15 ~~31.~~ 26. "Type" means a group of ~~variety~~ varieties so nearly similar that the individual
16 varieties cannot be clearly differentiated except under special conditions.

NOTE: This definition parallels that used in the FSA. Should the phrase "special conditions" be clarified?

17 ~~32.~~ 27. "Variety" means a subdivision of a kind that is distinct, uniform, and stable.

18 "Distinct" means the variety can be differentiated by one or more identifiable
19 morphological, physiological, or other characteristics from all varieties of public

20 knowledge. "Uniform" means the variations in essential and distinctive

21 characteristics are describable. "Stable" means the variety will remain unchanged

- 1 in its essential and distinctive characteristics and uniformity when reproduced or
2 reconstituted as required by the different categories of varieties.

NOTE:

1. If this definition is to be retained in substantially this form, it is recommended that the "subdefinitions" be incorporated as follows:
 - a. Can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all varieties of public knowledge;
 - b. Has describable variations in essential and distinct characteristics; and
 - c. Will remain unchanged in its essential and distinct characteristics and uniformity when reproduced or reconstituted, as required by the different categories of varieties.
2. Minnesota provides that "variety" means a "subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristics by which it can be differentiated from other plants of the same kind."

It is suggested that consideration be given to the level of complexity required within the definition.

- 3 ~~33. "Vegetable seed" means a seed of a crop that is grown in a garden or on a truck~~
4 ~~farm, and which is generally known and sold under the name of vegetable seed~~
5 ~~within this state.~~

NOTE: Because this definition is not particularly helpful, it is suggested that it be eliminated.

- 6 ~~34.~~ 28. "Weed seed" means the seed of a plant generally recognized as a weed within this
7 state, including noxious weed seed.

NOTE:

1. Do we need to reference restricted weed seeds as well?
2. Is this definition necessary? Does it lend any clarity to a commonly used term?

- 8 **SECTION 2. AMENDMENT.** Section 4-09-02 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **4-09-02. Seed department - ~~Offices and laboratories~~ Location.**

- 11 1. ~~There must be maintained a~~ The North Dakota seed department ~~of the state of~~
12 ~~North Dakota, which is designated as~~ is the official seed certification agency of the
13 state. ~~The department's headquarters, main offices, and other principal operating~~
14 ~~facilities and equipment~~ department must be located ~~at the~~ on the campus of North
15 Dakota state university of agriculture and applied science.

NOTE: Rather than referencing main offices, operating facilities, equipment, etc., the rewrite proposes to state that the department must be located on the campus of NDSU. The phrase "at the North Dakota state university ..." is both archaic and unclear.

1 The commissioner, subject to the approval and supervision of the commission,
2 shall provide ~~and~~, maintain ~~necessary~~, and appropriately equip offices,
3 laboratories, and other facilities ~~properly equipped to make analyses, tests, and~~
4 ~~variety and disease determinations of seeds and plants, and to do work and effect~~
5 ~~other results as may be necessary to carry out this chapter.~~

NOTE:

1. If the stated directive to the Seed Commissioner is subject to the approval and supervision of the Seed Commission, should the directive in fact be addressed to the Seed Commission?
2. It is not necessary to include a representative list of the work contemplated by this chapter.
3. This concept should be in a separate section pertaining to either the duties of the Seed Commissioner or the duties of the Seed Commission.

6 For these purposes, the commissioner may utilize the premises, space, and
7 equipment at North Dakota state university as may be assigned to the
8 commissioner by the university.

NOTE:

1. Earlier in this section, the commissioner was required to provide laboratories and properly equipped facilities. Now the language authorizes the commissioner to use space and equipment assigned by NDSU. If a contractual arrangement is contemplated, the authority to contract for such purposes should be included in a "powers" section. It is suggested that a determination be made regarding the authority to contract. Should that be within the purview of the Seed Commission or the Seed Commissioner?
2. This sentence provides that the seed "commissioner may utilize the premises, space, and equipment at North Dakota state university as may be assigned to the commissioner by the university." That also means the Seed Commissioner does not have to utilize such premises. In the second sentence of this section, however, the seed department's headquarters, main offices, and other principal operating facilities and equipment must be located at NDSU. Once the intent of this section is clarified, the language can then be crafted to reflect that intent.

9 The commissioner shall permit the facilities and services of the official laboratories
10 to be used by the university at convenient times.

NOTE: It is university property and the commissioner is to allow the university to use its facilities and services. What is the language trying to accomplish? Is this trying to authorize a sharing of laboratory space, etc.? Is the determination regarding convenient time up to the commissioner? Perhaps, this could be placed in the section listing the commissioner's powers.

- 1 2. The commission may locate and establish branch offices and laboratories at other
2 locations in this state as in the commissioner's judgment are necessary to carry out
3 properly and effectively the provisions of this or other chapters in which the
4 department is charged with duties and responsibilities.

NOTE: Perhaps this could be placed in a section listing the powers of the commission. As currently worded, there appears to be some uncertainty regarding hierarchy--e.g., does the commissioner act at the direction of the commission or vice versa?

5 **SECTION 3. AMENDMENT.** Section 4-09-02.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **4-09-02.1. Limitation on authority of political subdivisions regarding seed.** A
8 political subdivision, including a home rule city or county, may not adopt or continue in effect
9 any ordinance, resolution, initiative, or home rule charter regarding the registration, labeling,
10 distribution, sale, handling, use, application, transportation, or disposal of seed. This section
11 does not apply to city zoning ordinances.

NOTE: It appears that this concept, if it is to be retained, should be placed in chapters of the code pertaining to political subdivisions (counties, cities, townships).

12 **SECTION 4. AMENDMENT.** Section 4-09-03 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **4-09-03. ~~State seed~~ Seed commission - Members - Meetings - Appointment and**
15 **duties of commissioner.**

- 16 1. The commission is the governing board of the department.

NOTE: The role of the commission vis-a-vis the commissioner is in need of discussion.

- 17 2. The commission consists of ~~a representative of the following nine members:~~
18 a. An individual appointed by the North Dakota crop improvement association,~~a~~
19 ~~representative of;~~
20 b. An individual appointed by the North Dakota certified seed potato growers
21 ~~association, a representative of;~~
22 c. An individual appointed by the North Dakota dry edible bean seed growers
23 ~~association, a representative of;~~
24 d. An individual appointed by the North Dakota agricultural association,~~an~~
25 ~~elected;~~

- 1 e. An individual who is a member of the North Dakota potato council, selected
2 by the North Dakota potato council,~~a representative of;~~

NOTE: Is there a concern that the North Dakota Potato Council might select someone who does not represent its interests? Would it be sufficient to simply list "an individual appointed by the North Dakota potato council"?

- 3 f. A resident of this state appointed by the Red River valley northern plains
4 potato growers association ~~who is a North Dakota resident, a representative~~
5 ~~of the North Dakota grain dealers association selected by the association's~~
6 ~~board of directors;~~

- 7 g. An individual who operates a state-approved seed conditioning plant, selected
8 by the North Dakota grain dealers association;

NOTE: Is it necessary to reference a "state-approved" seed conditioning plant?

- 9 h. The director of the agricultural experiment station or the director's designee;
10 and ~~the~~

- 11 i. The agriculture commissioner, or the commissioner's designee,~~who.~~

NOTE: Because current law defines "commissioner" as the state Seed Commissioner, this section literally provides that the final seat on the Seed Commission is occupied by the Agriculture Commissioner or by a designee of the Seed Commissioner.

- 12 3. The agriculture commissioner shall serve as chairman.

13 ~~The director of the experiment station, or the director's designee, of the college of~~
14 ~~agriculture of the North Dakota state university of agriculture and applied science is~~
15 ~~a voting member of the commission.~~

NOTE:

1. Rather than specifically indicating that the director of the Agricultural Experiment Station is a voting member of the commission, it is proposed that the director simply be added to the list of commission members--see subsection 2(h) of this section.

2. The designation of a chairman should be placed in a separate section.

- 16 3. 4. The commission shall meet a minimum of two times at least twice each calendar
17 ~~year and may hold special meetings at the call of the chairman or by request of any~~
18 ~~year. The chairman shall call all regular and special meetings of the commission.~~
19 The chairman must call a special meeting within seven days, when petitioned to do
20 so by two members of the commission.

NOTE: This concept should be placed in a separate section.

1 5. Each member of the commission, except the agriculture commissioner and the
2 director of the agricultural experiment station, is entitled to receive compensation at
3 the rate of one hundred thirty-five dollars per day and reimbursement for expenses
4 as provided by law for state officers ~~for~~ if the member is attending a commission
5 meetings. Compensation under this section may not be paid to any member who
6 receives compensation or salary as a regular state employee or official meeting or
7 performing duties directed by the commission.

NOTE:

1. This concept should be placed in a separate section.
2. Under current law, the per diem and reimbursement is denied to any member who receives compensation or salary as a regular state employee or official. This is intended to preclude the Agriculture Commissioner or the director of the Agricultural Experiment Station from being paid twice for the same day's work. However, as currently worded, it would literally preclude an individual who is a farmer and otherwise legitimately appointed to the commission from obtaining a per diem and reimbursement if that individual was employed by the state (e.g., janitor, state trooper, secretary, etc.). The rewording to exempt the Agriculture Commissioner and the director of the Agricultural Experiment Station addresses this concern.

8 ~~A commission member unable to attend a meeting of the commission may be~~
9 ~~represented by a proxy who has written authorization from the absent commission~~
10 ~~member.~~

NOTE: Seed Department personnel have suggested that the preceding sentence allowing for proxy voting be deleted.

11 4. ~~6.~~ a. The commission shall appoint ~~a qualified manager of the department who~~
12 ~~must be known as~~ the state seed commissioner. ~~The commission shall fix the~~
13 ~~salary of the commissioner within legislative appropriation and shall establish~~
14 the commissioner's salary.

NOTE: Are members of the Seed Commission also called seed commissioners?

15 b. The commission shall annually review the commissioner's appointment ~~must~~
16 ~~be reviewed annually by the commission, and the.~~ The commissioner is
17 subject to removal for cause. ~~In the event of a vacancy in~~
18 c. If the office of the commissioner becomes vacant, the commission may
19 appoint ~~a temporary commissioner~~ an individual to serve as the acting
20 commissioner until the appointment of such time as the commission appoints
21 a permanent commissioner.

1 7. The commissioner ~~has responsibility for preparing~~ shall manage the seed
2 department, prepare the biennial budget and annual salary schedules ~~that must be~~
3 ~~approved by the commission before submission,~~ and with the approval of the seed
4 commission submit the department's biennial budget to the state office of
5 management and budget director. The seed commissioner ~~is directly responsible~~
6 ~~to the commission and shall make~~ provide semiannual reports to the commission
7 and perform any other reports as requested duties as directed by the commission.

NOTE:

1. Several of these subsections should be placed in separate sections.
2. The content of subsection 8 appears to be "duties" of the Seed Commissioner.
3. California utilizes a seed advisory board.

8 **SECTION 5. AMENDMENT.** Section 4-09-04 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **4-09-04. Official seal.** The department shall have and use an official departmental
11 ~~seal of the department as that has been~~ recorded in the office of the secretary of state ~~must be~~
12 ~~used exclusively in connection with the affairs of the department. The use of the seal contrary~~
13 ~~to this chapter or the commissioner's regulations is punishable as provided in section 4-09-24.~~

NOTE:

1. The penalty provisions set forth in Section 4-09-24 are applicable to the entire chapter. Therefore, the last sentence of the section is unnecessary.
2. Under Section 4-09-24, the criminal penalty for misusing the department seal is a Class A misdemeanor (one year imprisonment and/or \$2,000 fine). Under Section 54-02-01, the penalty for misusing the great seal of the state of North Dakota is a Class B misdemeanor (30 days imprisonment and/or \$1,000 fine).

14 **SECTION 6. AMENDMENT.** Section 4-09-05 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **4-09-05. Rulemaking and delegating authority.** The commissioner may adopt rules
17 as authorized by chapter 28-32. The commissioner may delegate any duty or power of the
18 commissioner to an agent.

NOTE:

1. It is recommended that this section be repealed. Section 28-32-02 authorizes each administrative agency to adopt rules.

2. As for the matter of delegation, it is clearly understood that the head of an agency is not expected to personally carry out each statutory directive but rather to ensure that the directives are carried out.

1 **SECTION 7. AMENDMENT.** Section 4-09-05.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-09-05.1. Noxious weed seeds - Classifications.** The commissioner ~~may~~, by rule,
4 may add to or delete from the lists of noxious weed seeds defined in section 4-09-01.

NOTE: In the definition section, it was proposed that prohibited weed seeds include those designated as noxious by the Agriculture Commissioner and any others that the Seed Commissioner determines to be highly destructive and difficult to control by good cultural practices or the use of herbicides. This accomplishes the same end but does not engender the confusion that could be created by two official state noxious weed lists.

5 **SECTION 8. AMENDMENT.** Section 4-09-06 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **4-09-06. Examination of seed by commissioner - Right of access to premises -**
8 **Stop-sale order.**

- 9 1. The commissioner ~~may inspect, examine, analyze, and test any seed sold, offered,~~
10 ~~or exposed for sale, held, or distributed within this state for planting purposes, at a~~
11 ~~time and place, and to an extent, as determined by the commissioner.~~
- 12 2. ~~At a reasonable time, the commissioner has the right of free access to the~~
13 ~~premises or structures controlled, owned, or operated by any person who may be,~~
14 ~~or whose seed, or the seed the person may be holding or storing or transporting,~~
15 ~~may be, investigated or proceeded against, and to any premises or structures or~~
16 ~~any kind of vehicle or conveyance where any seed may be located or in the~~
17 ~~process of transportation within the state, to inspect, examine, and sample any~~
18 ~~seed or seed plant, at any time, may enter upon real property and access any~~
19 ~~structure and personal property to inspect, sample, and test seed for compliance~~
20 ~~with this chapter and to inspect records for compliance with this chapter.~~

NOTE:

1. The proposed rewording is a simplification of the authority that subsections 1 and 2 appear to grant.
2. It was suggested by the Seed Department that a reference to "record inspections" should be included in the proposed rewording of this section.
- 21 3. ~~Any person involved in any way in the handling, transportation, storage, planting,~~
22 ~~buying, or selling of seed shall cooperate with the commissioner and shall render~~

1 ~~all possible assistance to aid the commissioner in the carrying out and enforcement~~
2 ~~of this chapter.~~

NOTE: It is recommended that this subsection be removed because it appears to require self-incrimination. Under Section 12.1-08-01, a person may be guilty of a Class A misdemeanor for intentionally obstructing, impairing, impeding, hindering, preventing, or perverting the administration of law or other governmental function. A person does not however have to "provide all possible assistance."

3 4. 2. a. The commissioner may issue ~~and enforce~~ a written stop-sale order to the
4 owner or custodian of any lot of seed that the commissioner finds to be in
5 violation of this chapter. The commissioner shall do all things necessary and
6 proper to enforce a stop-sale order issued under this section.
7 b. The stop-sale order shall must prohibit any further sale, conditioning, and
8 movement, or sale of the seed, except under written permission of the
9 commissioner. The prohibition must remain in effect until the commissioner
10 has evidence is satisfied that the law has been complied with and has issued
11 a release violation no longer exists. Upon making such determination, the
12 commissioner shall remove the stop-sale order.

NOTE: Following the lead of other states, the phrase "except under written permission of the commissioner" was added. There could be circumstances under which seed that is subject to a stop-sale order needs to be further conditioned or moved in order to mitigate any loss of value especially if the order might not be upheld on appeal or if the violation is remediable.

13 3. As to seed that has been denied sale, conditioning, and movement, the owner or
14 custodian of seeds has the right to appeal from Any person subject to a stop-sale
15 order under this section may appeal the order to a court of competent jurisdiction in
16 the locality in which the seed is found, praying for a judgment as to the justification
17 of the order and for the discharge of the order in accordance with the findings of
18 the court.

NOTE: It is not necessary to state what must be addressed in the appeal of a stop-sale order.

19 ~~This subsection does not limit the right of the commissioner to proceed as~~
20 ~~authorized by other sections of this chapter.~~

NOTE: Because this section is authorizing the commissioner to issue a stop-sale order, rather than mandating its issuance, it is not necessary to include the final sentence.

1 **SECTION 9. AMENDMENT.** Section 4-09-06.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-09-06.1. Inspection - Export certification - Fees.** The commissioner may inspect
4 agricultural seed, flower seed, vegetable seed, tree and shrub seed, and Irish potato tubers
5 when the seed or tubers are offered for export. The commissioner may issue a phytosanitary
6 certificate to plant quarantine officials and may make reasonable charges for this service. The
7 commissioner may withhold the certificate if the product does not meet sanitary requirements
8 and all state licensing and bonding requirements. The name and address of the consignee on
9 the phytosanitary certificate is confidential.

NOTE:

1. Seed Department personnel indicated that this provision should be placed in Chapter 4-10.
2. Because the phrase "phytosanitary certificate" is used only in Section 4-09-06.1, it is recommended that the definition be included in that section, regardless of where the section is ultimately placed, rather than in the definition section for Chapter 4-09.

10 **SECTION 10. AMENDMENT.** Section 4-09-07 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **4-09-07. Certificates and reports - Publication.**

13 4. When a report or certificate relating to the findings and determinations made in a
14 laboratory is issued and signed by the commissioner, the document must be
15 accepted as prima facie evidence of the statements contained in the document; but
16 the commissioner is subject to court order for a review of findings as set forth in the
17 document.

NOTE: The Attorney General's staff may have an opinion on whether the intent of this section is appropriately reflected, e.g. Is it intended to be applicable only to findings and determinations made in a laboratory?

18 ~~2. The commissioner may publish reports or explanatory material concerning seed or~~
19 ~~inspections, tests, analyses, or other determinations made by the commissioner~~
20 ~~and may expand the same with material setting forth the value or condition of the~~
21 ~~seed stocks which are produced in this state or in which North Dakota persons are~~
22 ~~interested. The commissioner also may publish lists of certified seed.~~

NOTE: Subsection 2 merely authorizes the publication of reports, materials, and lists. Unless this activity is to be a mandate, nothing currently precludes the commissioner from publishing such documents, i.e., the language is not necessary.

1 **SECTION 11. AMENDMENT.** Section 4-09-08 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-09-08. Public laboratory service - Fees for tests.** The commissioner shall accept
4 samples submitted for testing and shall determine the types of tests to be conducted on the
5 samples.

NOTE: This sentence may need to be incorporated with the content of Section
4-09-09. At the very least, additional verbiage is needed to answer questions such as:
Samples of what? (seeds, plants, tubers, etc.) Testing for what?

6 The commissioner, with the approval of the commission, shall establish and charge fees for
7 laboratory tests and services.

NOTE: It appears as if the approval of fees could be incorporated in a section setting
forth the duties of the Seed Commission and the charging of fees could be included in a
section delineating the duties of the commissioner.

8 **SECTION 12. AMENDMENT.** Section 4-09-09 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **4-09-09. Testing seeds and plants - Regulations made by commissioner.** The
11 commissioner may ~~make rules and regulations governing the size and nature of the sample of~~
12 ~~seed or plants submitted to the laboratory, as may be necessary to make a reliable or official~~
13 ~~test, analysis, description, or determination of grade, quality, or condition of disease infection~~
14 not conduct an official test or analysis, provide an official description, or make an official
15 determination regarding grade, quality, or disease infection, on any lot of seed or plants, unless
16 the sample submitted to the commissioner meets all requirements established by the
17 commissioner.

NOTE: Should the requirements for samples be in rule or simply by policy?

18 ~~The commissioner may prescribe the necessary manner of taking samples from given lots of~~
19 ~~seed in order to represent properly the various circumstances and purposes for which samples~~
20 ~~are taken, and to preserve the identity, and to provide for proper delivery to the laboratory, of~~
21 ~~the seed samples or plant specimens.~~

NOTE: If the section will be amended to provide that all samples must meet the
requirements of the commissioner, it is not necessary to statutorily suggest provisions
that the commissioner may want to include in the rules or policies.

22 **SECTION 13. AMENDMENT.** Section 4-09-10 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **4-09-10. Labeling requirements for agricultural seed.**

1 ~~must be listed in the order of its predominance. When more than one component~~
2 ~~is named, the word "mix", "mixed", "mixture", or "blend" must be appropriately~~
3 ~~stated with the name of the mixture or blend.~~

STAFF COMMENT: The content of this subsection is addressed in Section 16.

4 6. ~~For each container of agricultural seed, the label must contain:~~ be labeled.
5 b. If seed is offered for sale in bulk, the label must be properly delivered.

NOTE: Current law indicates that with respect to bulk sales or movements of agricultural seed, the label must be "properly delivered." What does this mean?

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

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

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

8 3. A label required by this section must include:
9 a. ~~Let~~ The lot number or other lot identification;
10 b. (1) ~~The origin, state or foreign country, where in which the seed was~~
11 ~~grown. If the origin is unknown, that fact must be stated;~~ or
12 (2) A statement indicating that the origin of the seed is unknown;
13 c. The percentage by weight of all weed seed;
14 d. The name and rate of occurrence per pound [453.59 grams] of each kind of
15 restricted noxious weed seed present, if the restricted noxious weed seed is
16 present singly or collectively in amounts in seeds of grasses and small
17 seeded legumes in excess of thirteen seeds per pound [453.59 grams], or in
18 other agricultural seeds, including the cereals, oil seed crops, millets, and
19 seeds of similar size, in excess of five seeds per pound [453.59 grams];

NOTE: The rewording of this provision is contingent upon changes made to the definition of "restricted noxious weed seed."

20 e. The percentage by weight of agricultural seed that may be designated as crop
21 seed, other than those required to be named on the label;

NOTE: Please explain.

22 f. The percentage by weight of inert matter;

NOTE: In the rewrite of Section 4-09-01, it is proposed that the definition of "inert matter" be changed to the following:

"Inert matter" means ~~all matter not seed and includes the broken seed, a sterile floret, chaff, a fungus body, and a stone~~ anything other than unbroken seeds.

In the alternative, the definition of "inert matter" could be removed from Section 4-09-01 if this subsection would state:

e. "The percentage by weight of any matter other than seed." (The phrase does not appear to be used elsewhere.)

- 1 g. (1) The percentage of germination, exclusive of hard seed;
2 (2) The percentage of hard seed; and
3 (3) The calendar month and year the percentages were determined; and

NOTE: Subsection 6 also includes the following: "[I]f desired, the total germination and hard seed for each agricultural seed." This was removed because it appears to be self-evident from paragraphs 1 and 2.

- 4 h. The full name and address of the person who labeled the seed ~~or who sells,~~
5 ~~offers for sale, or exposes the seed for sale within this state.~~

NOTE: Section 4-09-10(6) requires the "full name and address of the person who labeled the seed or who sells, offers for sale, or exposes the seed for sale within this state." Because labeling of the seed and selling of the seed could be two separate activities, Seed Department personnel indicated that the statutory requirement should be the inclusion of the labeler's name and address.

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

- 6 i. ~~h~~
- 7 4. In addition to any other requirements set forth in this section, if the seed is has
8 been treated, for which a separate the label may be used, a word or statement
9 indicating that the seed has been treated, or a separate label, must indicate that
10 the treatment has occurred and must include the commonly accepted, coined,
11 chemical, or abbreviated chemical name of the applied any substance; and if used
12 in the treatment.
- 13 a. If the amount of the substance in the amount present remaining with the seed
14 is harmful to human humans or to other vertebrate animals, a caution the
15 label must contain a cautionary statement prohibiting the use of the seed for
16 food, feed, or oil purposes and for mercurials and similar toxic substances a
17 poison.
- 18 b. If the substance used to treat the seed is a mercurial or a similarly toxic
19 substance, the label must contain a statement or and symbol. If indicating
20 that the substance is poison.

NOTE: While existing state law indicates that in the case of a mercurial or other similarly toxic substance, there must be a statement or symbol indicating poison, the FSA requires both the poison symbol and a statement indicating that the seed has been treated with poison.

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

- 1 5. In addition to any other requirements set forth in this section, if the seed is has
2 been treated with an inoculant, the label must contain the date beyond which the
3 inoculant is claimed not to be ~~considered~~ effective.
4 ~~j. The seed container is hermetically sealed.~~
5 ~~k. A disease test result for seedborne diseases.~~

NOTE: While existing state law references the date beyond which the inoculant is not to be considered effective, the FSA references the date beyond which the inoculant is "claimed" not to be effective.

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

NOTE:

1. Section 4-09-10(6) states that:

For each container of agricultural seed, the label must contain:

...

- j. The seed container is hermetically sealed. [sic]

Is there a requirement that agricultural seed containers be hermetically sealed? If yes, then the requirement needs to be in a different section as opposed to the one pertaining to label content. If the intent is to have the label indicate whether or not the container has been hermetically sealed, then placement of the concept in this section is acceptable.

2. Section 4-09-10(6) states that:

For each container of agricultural seed, the label must contain:

...

- k. A disease test result for seedborne diseases.

This provision has been eliminated at the direction of Seed Department personnel.

6 **SECTION 14. Agricultural seed - Additional label requirements - Limited**
7 **applicability.**

- 8 1. a. In addition to any other requirements set forth in section 13 of this Act, the
9 label on each container of barley, canola, dry beans, durum, field peas, flax,

- 1 oats, rye, soybeans, and wheat seed offered for sale in this state, for planting
2 purposes, must include:
3 (1) The kind of each agricultural seed;
4 (2) The variety of each agricultural seed component constituting more than
5 five percent of the whole; and
6 (3) The percentage by weight of each agricultural seed component
7 constituting more than five percent of the whole.
8 b. Paragraphs 2 and 3 of subdivision a of subsection 1 are not applicable to
9 agricultural seed labeled as being for vegetative cover only.

NOTE:

1. Is there some reason to reference durum and wheat separately?
2. Section 4-09-10(2) also provides that:

"Seed listed in this subsection may be sold by brand if the true variety name or number is clearly stated on the label in a type size equal to or greater than the brand."

Because this section concerns what must be on the label, and because the label already is required to contain the variety, is it necessary to state the conditions for "selling by brand" in this section?

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

- 10 2. In addition to any other requirements set forth in section 13 of this Act, the label on
11 each container of agricultural seed other than barley, canola, dry beans, durum,
12 field peas, flax, oats, rye, soybeans, and wheat seed, offered for sale in this state,
13 for planting purposes:
14 a. Must include the kind of each agricultural seed;
15 b. May include the variety of each agricultural seed component constituting more
16 than five percent of the whole; and
17 c. Must include the percentage by weight of each agricultural seed component
18 constituting more than five percent of the whole.

NOTE:

1. It is not clear how this differs from the requirement for wheat, durum, barley, etc., other than the must versus may.
2. Is there some reason to reference durum and wheat separately?
3. Is the reference to field peas intended to distinguish them from wild peas? If so, is this a distinction that needs to be made?

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

1 **SECTION 15. Canola seed - Additional label requirements.** In addition to any other
2 requirements set forth in section 13 of this Act, the label on each container of canola seed must
3 contain a statement indicating that the seed has been:

- 4 1. Certified by the commissioner as meeting the standards of this chapter; or
5 2. Certified by another state or province having canola certification standards that
6 meet or exceed standards adopted by this chapter.

NOTE: Although this section has been somewhat reworked, there are still several concerns. Who determines whether another state or province has certification standards that meet or exceed those adopted by this chapter? (see subsection 2) Should the reference in fact be to standards adopted by the commissioner? (see subsections 1 and 2) Is the section in fact trying to prohibit the sale of any canola seed that has not been certified?

7 **SECTION 16. Agricultural seed components - Label requirements - Mixture**
8 **designation.** When more than ten percent of the whole consists of an aggregate of agricultural
9 seed components, each present in an amount not exceeding five percent of the whole, the label
10 must contain each component in excess of one percent of the whole named together with the
11 percentage by weight of each. Each component must be listed in the order of its
12 predominance. When more than one component is named, the word "mix", "mixed", "mixture",
13 or "blend" must be appropriately stated with the name of the mixture or blend.

NOTE: This is not new. It has merely been moved from its current location in the section.

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

14 **SECTION 17. AMENDMENT.** Section 4-09-11 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **4-09-11. Labeling requirements for vegetable seed.**

- 17 1. Each container of vegetable seed ~~which is sold, offered for sale, exposed for sale,~~
18 ~~transported for sale, or held in storage with the intent to sell for planting purposes~~
19 ~~within in this state, for planting purposes, must bear, or have attached a~~
20 ~~conspicuous, plainly printed label in the English language with the information~~
21 ~~required by this section, which may not be modified or denied in the labeling be~~
22 labeled.

NOTE: The FSA provides that it is unlawful for any person to "transport or deliver for transportation in interstate commerce" any vegetable seeds, unless "each container bears a label ..." Precisely which activities need to be prohibited?

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

SOURCE: Section 4-09-11.

- 3 3. The label for packets of vegetable seed in packets as prepared designed for use in
4 home gardens or household plantings or vegetable seed by home gardeners and
5 the label for vegetable seed on prepared mats, tapes, or in preplanted containers;
6 mats, tapes, or other planting devices must include:
7 a. ~~The name of~~ kind and variety of seed;
8 b. ~~Lot identification by~~ The lot number or other means: lot identification;

NOTE: The FSA separates requirements by the weight of the package, i.e., containers of one pound or less and containers of more than one pound. Is that a more accurate reference than packets "designed for use by home gardeners."

- 9 c. ~~For seed that germinates less than the standard established by the~~
10 ~~commissioner, the percentage of germination, exclusive of hard seed; the~~
11 ~~percentage of hard seed, if present; and the words "below standard" in not~~
12 ~~less than eight point type.~~

NOTE: The content of this subdivision has been placed in a new section.

- 13 d. The full name and address of the person who that labeled the seed or who
14 sells, offers for sale, or exposes the seed for sale within this state.; and

NOTE: Section 4-09-11(2)(d) requires the "name and address of the person who labeled the seed or who sells, offers for sale, or exposes the seed for sale within this state." Because labeling of the seed and selling of the seed could be two separate activities, Seed Department personnel indicated that the statutory requirement governing a similar provision with respect to agricultural seed should be the inclusion of the labeler's name and address. Is that position appropriate in this case?

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

- 15 e. d.(1) (a) The calendar month and year in which the germination test was
16 completed and a statement stating the sell by; and
17 (b) The date by which the seed should be sold, provided that the
18 stated date may not be no more than twelve months from the
19 date of the germination test, exclusive of the month of test; or
20 the

- 1 (2) (a) The percentage of germination; and the calendar
2 (b) The month and year the germination test was completed to
3 ~~determine the percentage if the germination, provided the test~~
4 was completed within the previous twelve months, exclusive of
5 ~~the month of test.~~

NOTE: Current law provides that the label must contain:

- e. The calendar month and year the germination test was completed and a statement stating the sell by date that may be no more than twelve months from the date of test, exclusive of the month of test, or the percentage germination and the calendar month and year the test was completed to determine the percentage if the germination test was completed within twelve months, exclusive of the month of test.
1. Does the phrase "exclusive of the month of the test" mean 12 calendar months after the month in which the germination test was completed?
 2. It appears that the labeler is given two options.

Under the first option, the labeler may provide the month and year of the germination test and a "sell by" date, which can be no more than 12 months from the date of the test. Is there a problem if one sells seed after the "sell by" date? Is it being assumed that the germination test meets the commissioner's standards unless otherwise noted (as in current law Section 4-09-11(c))?

Under the second option, the labeler may provide the results of the germination test, provided the test was conducted within 12 months. Does this mean within 12 months of the date of sale? Again, is there a problem if one sells seed after the 12-month date?

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

- 6 f. ~~For seeds placed in a germination medium, mat, tape, or other device in a~~
7 ~~way as to make it difficult to determine the quantity of seed without removing~~
8 ~~the seed, a statement to indicate the minimum number of seeds in the~~
9 ~~container.~~

NOTE: The content of this subdivision has been placed in Section 19.

- 10 ~~3. For vegetable seed in containers other than packets prepared for use in home~~
11 ~~gardens or household plantings and other than preplanted containers, mats, tapes,~~
12 ~~or other planting devices:~~
- 13 a. ~~The name of each kind and variety of vegetable seed present in excess of five~~
14 ~~percent and the percentage by weight of each in order of its predominance.~~
 - 15 b. ~~Lot number or other lot identification.~~

- 1 e. ~~For each named vegetable seed, the percentage of germination, exclusive of~~
2 ~~hard seed, and the percentage of hard seed if present, and if desired, the total~~
3 ~~germination and hard seed. In addition, the calendar month and year the test~~
4 ~~was completed to determine these percentages.~~
- 5 d. ~~The name and address of the person who labeled the seed, or who sells,~~
6 ~~offers for sale, or exposes said seed for sale within this state.~~
- 7 e. ~~The labeling requirements for vegetable seed in a container of more than one~~
8 ~~pound [.45 kilogram] are satisfied if the seed is weighed from a properly~~
9 ~~labeled container in the presence of the purchaser.~~
- 10 4. ~~For vegetable seed in any size container, the label for treated seed, for which a~~
11 ~~separate label may be used, must contain a word or statement indicating that the~~
12 ~~seed has been treated; the commonly accepted, coined, chemical, or abbreviated~~
13 ~~chemical name of the applied substance; and if the substance in the amount~~
14 ~~present with the seed is harmful to human or other vertebrate animals, a caution~~
15 ~~statement prohibiting use for food, feed, or oil purposes and for mercurials and~~
16 ~~similar toxic substances a poison statement or symbol. If the seed is treated with~~
17 ~~an inoculant, the label must contain the date beyond which the inoculant is not to~~
18 ~~be considered effective.~~
- 19 5. ~~The labeling requirements for vegetable seed in containers of more than one~~
20 ~~pound [.45 kilogram] are deemed to have been met if the seed is weighed from a~~
21 ~~properly labeled container in the presence of the purchaser.~~
- 22 6. ~~For vegetable seed in any size container, the label must state the seed container is~~
23 ~~a hermetically sealed container.~~

NOTE: The content of subsections 3 through 6 has been placed in several new sections.

24 **SECTION 18. Vegetable seed - Additional label requirements.** If the germination
25 test required by subdivision d of subsection 3 of section 4-09-11 results in a finding that the
26 seed does not meet the standards for germination, as established by the commissioner, the
27 label must include:

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

NOTE: Are the standards of germination established by the commissioner the same as those established by the United States Secretary of Agriculture?

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

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

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

5 **SECTION 20. Vegetable seed other than for use by home gardeners - Label**
6 **requirement.**

7 1. The label for any vegetable seed other than that referenced in subsection 3 of
8 section 4-09-11 must include:

9 a. (1) The kind and variety of vegetable seed present in excess of five
10 percent;

NOTE: Is this by weight or by number or does it matter?

11 (2) The percentage by weight of each seed referenced in paragraph 1, in
12 order of its predominance;

13 (3) The percentage of germination for each seed referenced in
14 paragraph 1, exclusive of hard seed;

15 (4) The percentage of hard seed, if present; and

16 (5) The month and year that the germination test was completed;

NOTE: Section 4-09-11(3)(c) states:

For each named vegetable seed, the percentage of germination, exclusive of hard seed, and the percentage of hard seed if present, and if desired, the total germination and hard seed. In addition, the calendar month and year the test was completed to determine these percentages.

Unless the underlined phrase was intended to be an alternative to the other requirements, it is "optional" and therefore does not need to be in the list of statutory requirements.

17 b. The lot number or other lot identification; and

18 c. The full name and address of the person who labeled the seed, or who sells,
19 offers for sale, or exposes said seed for sale within this state.

NOTE: Section 4-09-11(3)(d) requires the "name and address of the person who labeled the seed, or who sells, offers for sale, or exposes said seed for sale within this

state." Because labeling of the seed and selling of the seed could be two separate activities, Seed Department personnel indicated that the statutory requirement governing a similar provision with respect to agricultural seed should be the inclusion of the labeler's name and address. Is that position appropriate in this case?

- 1 2. If a person purchases more than one pound of seed, the container into which the
2 seed is placed is exempt from the label requirements of this section, provided that,
3 in the presence of the purchaser, the seed is removed from a properly labeled
4 container and weighed.

SOURCE: Section 4-09-11(3)(e).

NOTE: Section 4-09-11(3)(e) provides that "[t]he labeling requirements for vegetable seed in a container of more than one pound [.45 kilogram] are satisfied if the seed is weighed from a properly labeled container in the presence of the purchaser." Are there any reasons why one would want to deem a container "labeled" as opposed to exempting it from the requirements of the section?

SOURCE: The provisions of this section are not new. They are found in Section 4-09-11(3).

- 5 **SECTION 21. Treated vegetable seed - Additional requirements.** In addition to any
6 other requirements set forth in sections 17 through 20 of this Act, if the vegetable seed has
7 been treated, the label, or a separate label, must indicate that the treatment has occurred and
8 must include the commonly accepted, coined, chemical, or abbreviated chemical name of the
9 substance used in the treatment.

- 10 1. If the amount of the substance remaining with the seed is harmful to humans or to
11 other vertebrate animals, the label must contain a cautionary statement prohibiting
12 the use for the seed for food, feed, or oil purposes.
13 2. If the substance used to treat the seed is a mercurial or a similarly toxic substance,
14 the label must contain a statement and symbol indicating that the substance is
15 poison.

NOTE: While existing state law indicates that in the case of a mercurial or other similarly toxic substance, there must be a statement or symbol indicating poison, the FSA requires both the poison symbol and a statement indicating that the seed has been treated with poison.

- 16 3. If the seed has been treated with an inoculant, the label must contain the date
17 beyond which the inoculant is not claimed to be effective.

NOTE: While existing state law references the date beyond which the inoculant is not to be considered effective, the FSA references the date beyond which the inoculant is "claimed" not to be effective.

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

1 **SECTION 22. Vegetable seed - Hermetically sealed containers.** For vegetable seed
2 in any size container, the label must state the seed container is a hermetically sealed container.

NOTE: Is it the intent of this section to require that all vegetable seed containers must be hermetically sealed? May the seeds be sold if they are in a container that is not hermetically sealed? This is existing law, which has been moved into a separate section.

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

3 **SECTION 23. AMENDMENT.** Section 4-09-11.1 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **4-09-11.1. Labeling requirements for flower seed.**

6 1. Each container of flower seed ~~that is sold, offered for sale, exposed for sale, or~~
7 ~~transported within~~ in this state for planting purposes must ~~bear or have attached a~~
8 ~~conspicuous, plainly printed label in the English language with the information~~
9 ~~required by this section, which statement may not be modified or denied in the~~
10 ~~labeling~~ be labeled.

NOTE: The FSA appears to limit itself to agricultural and vegetable seeds. Please review the activities which may not be engaged in, unless the product is appropriately labeled.

11 2. ~~For all~~ The label must be conspicuously placed on or attached to the container and
12 plainly printed in English.

13 3. a. If the flower seed has been treated, the label must ~~contain a word or~~
14 ~~statement indicating whether the seed has been treated;~~ indicate that the
15 treatment has occurred and must:

16 (1) Include the commonly accepted coined, chemical, or abbreviated
17 chemical name of ~~the applied~~ any substance used in the process; or
18 ~~description of~~

19 (2) Describe the treatment process used; and ~~if.~~

NOTE:

1. If the flower seed has not been treated, must the label indicate this fact?
2. Current law requires a description of the treatment process or the names of any applied chemicals. A description of the treatment process can be accomplished without reference to specific chemicals. Is it the intent to allow an "or" in this instance?

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

- 1 b. If the amount of the substance in the amount present remaining with the seed
2 is harmful to ~~human~~ humans or to other vertebrate animals, the label must
3 contain a caution cautionary statement prohibiting the use of the seed for
4 food, feed, or oil purposes and for mercurials and.
- 5 c. If the substance used to treat the seed is a mercurial or a similarly toxic
6 substances-a poison substance, the label must contain a statement and
7 symbol indicating that the substance is poison.
- 8 d. If the seed is treated with an inoculant, the label must contain the date beyond
9 which the inoculant is not claimed to be ~~considered~~ effective. ~~For~~
- 10 ~~3.~~ 4. The label for packets of flower seed in packets prepared designed for use in home
11 gardens or household plantings or flower seed by home gardeners and the label
12 for flower seed on prepared mats, on tape, or in preplanted containers, mats,
13 tapes, or other planting devices, the label must contain include:
- 14 a. ~~For all kinds of flower seed, the name of the~~
15 (1) The kind and variety; ~~or a statement of~~
16 (2) The type and performance characteristics as required by the
17 commissioner, the calendar;

NOTE: What are performance characteristics? Should they be included in the statute? Must the commissioner define the performance characteristics by rule or are there more informal means of establishing them, e.g., policy letters, guidance, etc.?

- 18 b. (1) The month and year in which the seed was tested; ~~the~~
19 (2) The year for which the seed was packaged; ~~and the~~
- 20 c. The full name and address of the person who that labeled the seed or who
21 sells, offers, or exposes the seed for sale within this state.

NOTE: Because labeling of the seed and selling of the seed could be two separate activities, Seed Department personnel indicated that the statutory requirement governing a similar provision with respect to agricultural seed should be the inclusion of the labeler's name and address. Is that position appropriate in this case?

- 22 b. ~~For seed of these kinds~~
- 23 5. If the flower seed is of a kind for which standard testing procedures are prescribed
24 and which germinate less than the if the seed does not meet the standard for
25 germination standard last established under this chapter, the label must include

1 the percentage of germination exclusive of hard seeds and the words "below
2 standard" in not less than at least eight-point type.

NOTE: Who prescribes the standard testing procedures?

3 e. ~~6. For seed placed in a~~ If the flower seeds are on a mat, on tape, or in some other
4 germination medium, mat, tape, or other device so as to make it difficult to
5 determine and the quantity of seed without removing the seeds from the medium,
6 mat, tape, or device, a statement to indicate cannot be readily determined, the
7 label must include the minimum number of seeds in the container per definable
8 unit.

9 4. ~~7. For~~ The label for any flower seed in containers other than packets prepared for use
10 in home flower gardens or household plantings and other than preplanted
11 containers, mats, tapes, or other planting devices the label that referenced in
12 subsections 4 through 6 of this section must contain include:

13 a. (1) ~~The name of the~~ kind and variety of the flower seed; or a
14 (2) ~~The type of flower seed and a statement of type and the seed's~~
15 performance characteristics, as prescribed in rules and regulations
16 promulgated under the provisions of this chapter adopted by the
17 commissioner.

18 b. The lot number or other lot identification;

19 c. (1) ~~The calendar~~ month and year that in which the seed was tested; or ~~the~~

20 (2) ~~The~~ year for which the seed was packaged;

21 d. The full name and address of the person who that labeled the seed or who
22 sells, offers, or exposes the seed for sale within this state; and

23 e. ~~For these kinds of~~ If the flower seed is of a kind for which standard testing
24 procedures are prescribed, the label must include the percentage germination
25 exclusive of hard seed and the percentage of hard seed, if present.

26 **SECTION 24. AMENDMENT.** Section 4-09-11.2 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **4-09-11.2. Labeling requirements for tree and shrub seeds.**

29 1. Each container of tree and shrub seed ~~which is sold, offered for sale, or exposed~~
30 ~~for sale, or transported within~~ in this state for planting purposes; ~~must bear or have~~

1 ~~attached a conspicuous, plainly printed label in the English language, giving the~~
2 ~~information required by this section, which may not be modified or denied in the~~
3 ~~labeling, except that labeling of seed supplied under a contractual agreement may~~
4 ~~be by invoice accompanying the shipment or by an analysis tag attached to the~~
5 ~~invoice if each container is clearly identified by a lot number stenciled on the~~
6 ~~container or if the seed is in bulk~~ be labeled.

NOTE: This subsection also provides that "labeling of seed supplied under a contractual agreement may be by invoice accompanying the shipment or by an analysis tag attached to the invoice if each container is clearly identified by a lot number stenciled on the container or if the seed is in bulk."

1. What is meant by the phrase "seed supplied under a contractual agreement"?
2. Please review the phrases in this sentence and clarify the intended grammatical modifications.

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

7 2. ~~For all~~ The label must be conspicuously placed on or attached to the container and
8 plainly printed in English.

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

- 9 3. a. ~~If the tree and shrub seed has been treated,~~ the label must contain:
10 a: ~~A word or statement indicating whether the seed has been treated;~~ indicate
11 that the treatment has occurred and must:
12 (1) Include the commonly accepted coined, chemical, or abbreviated
13 chemical name of ~~the applied~~ any substance used in the process; or
14 description of
15 (2) Describe the treatment process used; and if,

NOTE:

1. If the tree and shrub seed has not been treated, must the label indicate this fact?
2. Current law requires a description of the treatment process or the names of any applied chemicals. A description of the treatment process can be accomplished without reference to specific chemicals. Is it the intent to allow an "or" in this instance?

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

16 b. If the amount of the substance ~~in the amount present~~ remaining with the seed
17 is harmful to human humans or to other vertebrate animals, ~~a caution the~~

- 1 label must contain a cautionary statement prohibiting the use of the seed for
2 food, feed, or oil purposes and for mercurials ~~and~~.
- 3 c. If the substance used to treat the seed is a mercurial or a similarly toxic
4 ~~substances a poison~~ substance, the label must contain a statement and
5 symbol indicating that the substance is poison.
- 6 d. If the seed has been treated with an inoculant, the label must contain the date
7 beyond which the inoculant is not claimed to be ~~considered~~ effective.

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

- 8 4. A label required by this section must include:
- 9 ~~b.~~ a. The common name of the species of seed and subspecies, if appropriate,
10 subspecies of tree or shrub seed;
- 11 ~~e.~~ b. The scientific name of the genus and, the species, and, if appropriate, the
12 ~~subspecies, if appropriate.~~ of tree or shrub seed;
- 13 ~~e.~~ c. The lot number or other lot identification;
- 14 ~~e.~~ The origin for seed collected from a predominately indigenous stand as
15 ~~identified by the area the trees are growing and collected given by latitude and~~
16 ~~longitude, geographic description, or political subdivision and for seed~~
17 ~~collected from other than a predominantly indigenous stand as identified by~~
18 ~~the place from which the seeds or plants were originally introduced or state~~
19 ~~"origin not indigenous".~~

NOTE: Because of comprehension issues, this foregoing sentence is contained in Section 25.

- 20 ~~f.~~ d. The elevation at which or the upper and lower limits of elevations within which
21 the seed was collected;
- 22 ~~g.~~ e. The purity as a percentage of pure seed by weight.

NOTE: Please explain.

- 23 ~~h.~~ For those species for which standard germination testing procedures are
24 ~~prescribed, the percentage germination exclusive of hard seed; the~~
25 ~~percentage of hard seed, if present; and the calendar month and year test~~
26 ~~was completed to determine the percentages. In lieu of this subdivision, the~~
27 ~~seed may be labeled "Test is in process, results will be supplied upon~~

1 request". ~~For those species for which standard germination testing~~
2 ~~procedures have not been prescribed, the calendar year in which the seed~~
3 ~~was collected;~~ and

NOTE: The content of this subdivision is addressed in Section 27.

4 i. f. The full name and address of the person who labeled the seed ~~or who sells,~~
5 ~~offers, or exposes the seed for sale within this state.~~

6 **SECTION 25. Statement of origin.** In addition to any other label requirements set
7 forth in section 4-09-11.2, the label of tree or shrub seed must include a statement regarding
8 the seed's origin.

- 9 1. If the seed was collected from a predominately indigenous stand, the label must
10 identify the location of the indigenous stand by:
11 a. Latitude and longitude;
12 b. Geographic description; or
13 c. Political subdivision.

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

NOTE: The current language provides that the label must contain:

The origin for seed collected from a predominately indigenous stand as identified by the area the trees are growing and collected given by latitude and longitude, geographic description, or political subdivision ..."

What is meant by "latitude and longitude" versus "geographic description"? Might a geographic description be so broad as to be ineffective?

- 14 2. If the seed was collected from a location other than a predominantly indigenous
15 stand, the label must identify the place from which the seeds or plants were
16 originally introduced or state "origin not indigenous".

NOTE: Although the language of this subsection parallels current law, it appears to be in need of clarification.

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

17 **SECTION 26. Percentage of germination - Label requirements.**

- 18 1. If the tree or shrub seed belong to a species for which standard germination testing
19 procedures are prescribed, the label must include:
20 a. (1) The percentage of germination, exclusive of hard seed;
21 (2) The percentage of hard seed; and

- 1 (3) The month and year in which the percentages of germination were
2 determined; or
3 b. A statement indicating that the test to determine the percentage of
4 germination is not yet completed and that the results will be supplied upon
5 request.
6 2. If the tree or shrub seed belong to a species for which standard germination testing
7 procedures are not prescribed, the label must include the year in which the seed
8 was collected.

NOTE: Who prescribes the standard germination testing procedures referred to in this section?

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

9 **SECTION 27. AMENDMENT.** Section 4-09-12 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **4-09-12. Invoice and records.** Each person whose name appears on the label and
12 handles seed shall keep for a period of three years¹ ~~complete~~ records² of each lot of seed
13 handled, and shall keep a file sample³ of each lot of seed for a period of one year after final
14 disposition⁴ of the lot. All records pertaining to the lot involved must be accessible for
15 inspection⁵ by the commissioner at any time during customary business hours⁶.

NOTE:

- 1 1 When does the three-year period begin and end?
- 2 2 The definition of a record in Section 4-09-01 references "all" listed information. This would seem to constitute a "complete" record.
- 3 3 Is there a common understanding of what constitutes a "file sample"?
- 4 4 Is "final disposition" intended to mean something different than "disposition"?
- 5 5 Do the records have to be on the premises? Available electronically?
- 6 6 Would it be preferable to merely allow inspection of the records by the commissioner upon request, rather than determining which hours constitute customary business hours?

16 **SECTION 28. AMENDMENT.** Section 4-09-13 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **4-09-13. Tolerances.** The tolerances used in determining correctness and accuracy in
19 labeling seed as described in this chapter must be those tolerances used under the Federal

1 Seed Act of August 9, 1939 [53 Stat. 1275; 7 U.S.C. 1551 et seq.], and subsequent
2 amendments as of June 30, 2009, except that the tolerance for yellow starthistle must be zero
3 and the commissioner ~~may~~, by rule, may establish tolerances that are more strict than the
4 Federal Seed Act tolerances.

NOTE: Are the tolerances zero for all weeds on the state noxious weed list or just yellow starthistle?

5 **SECTION 29. AMENDMENT.** Section 4-09-14 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **4-09-14. Prohibitions.**

8 1. ~~A person may not sell, offer for sale, expose for sale, transport for sale, or hold or~~
9 ~~store with the intent to sell, any agricultural, vegetable, flower, or tree and shrub~~
10 ~~seed~~ The following activities are prohibited within this state:

NOTE: Please review the use of the phrase "within this state." What specifically is it intended to modify?

11 a. ~~Unless~~ Selling, offering for sale, exposing for sale, transporting for sale, or
12 holding or storing with the intent to sell, any agricultural seed, unless a test to
13 determine the percentage of germination, as required ~~under~~ by section
14 4-09-10, ~~has~~ has been completed within a nine-month period, exclusive of the
15 calendar month in which the test was completed or the seed is offered for sale
16 beyond the sell by date exclusive of the calendar month in which the seed
17 was to have been sold;

NOTE:

1. Is it the intent to require that the germination test must have taken place within the nine months prior to the listed activity? If one is not going to count the month in which the germination test took place, should one also not count the month in which the listed activity took place?

2. This subsection appears to be saying that one cannot sell certain seed unless a germination test has taken place within nine months or unless the seed is outdated. Is that the intent?

18 b. ~~Unless for~~ Selling, offering for sale, exposing for sale, transporting for sale, or
19 holding or storing with the intent to sell, any flower, vegetable, native grass, or
20 forb seed, unless a test to determine the percentage of germination, as
21 required ~~under~~ by sections 4-09-10, 4-09-11, and 4-09-11.1 has been

1 completed within a twelve-month period, exclusive of the calendar month in
2 which the test was completed;

NOTE: Is it the intent to require that the germination test must have taken place within the 12 months prior to the listed activity? If one is not going to count the month in which the germination test took place, should one also not count the month in which the listed activity took place?

3 c. ~~Unless~~ Selling, offering for sale, exposing for sale, transporting for sale, or
4 holding or storing with the intent to sell, any cool season lawn and turf
5 grasses, including Kentucky bluegrass, red fescue, chewings fescue, hard
6 fescue, tall fescue, perennial rye grass, intermediate rye grass, annual rye
7 grass, colonial bent grass, creeping bent grass, and mixtures or blends of
8 those grasses, unless a test to determine the percentage of germination has
9 been completed within a fifteen-month period, exclusive of the calendar month
10 in which the test was completed;

NOTE: Is it the intent to require that the germination test must have taken place within the 15 months prior to the listed activity? If one is not going to count the month in which the germination test took place, should one also not count the month in which the listed activity took place?

Is it necessary to specifically mention 10 types of grasses in this subsection?

11 d. ~~Unless~~ Selling, offering for sale, exposing for sale, transporting for sale, or
12 holding or storing with the intent to sell, any tree, shrub, agricultural, flower,
13 wildflower, or vegetable seed¹ packaged in a hermetically sealed container
14 under conditions as defined by the commissioner, unless a test to determine
15 the percentage of germination has been completed within a thirty-six-month
16 period after the last day of the month that the seed was tested for germination
17 before packaging².

NOTE:

¹ Which items in the list must be packaged in a hermetically sealed container in order to come under the requirements for this subsection?

² The intent of this phrase is not clear.

18 However, if seed in a hermetically sealed container is offered for sale more
19 than thirty-six months after the last day of the month in which the seed was
20 tested before packaging, the seed must be retested within a twelve-month
21 period, exclusive of the calendar month in which the retest was completed;

NOTE: Offering a seed in a hermetically sealed container if the germination test is more than 36 months old is a prohibited act.

- 1 e. ~~If the~~ Selling, offering for sale, exposing for sale, transporting for sale, or
2 holding or storing with the intent to sell, any seed is that:
3 (1) Is not labeled in accordance with this chapter; or ~~bears~~
4 (2) Is false or misleading labeling label;
5 f. ~~If there has been~~ Engaging in false or misleading advertising in connection
6 with the seed;

NOTE: Current law provides that a person may not sell, offer for sale, expose for sale, transport for sale, or hold or store with the intent to sell, any agricultural, vegetable, flower, or tree and shrub seed within this state if there has been false or misleading advertising in connection with the seed. Should the subsection prohibit false or misleading advertising rather than the sale of seed subject to false or misleading advertising?

- 7 g. ~~If the~~ Selling, offering for sale, exposing for sale, transporting for sale, or
8 holding or storing with the intent to sell, any seed that contains prohibited
9 noxious weed seeds;

NOTE: Is this literally the intent? How does one know? Should tolerances be referenced?

- 10 h. ~~Unless~~ Selling, offering for sale, exposing for sale, transporting for sale, or
11 holding or storing with the intent to sell, any agricultural or vegetable seed, the
12 seed is labeled to show the rate of occurrence of restricted ~~noxious~~ weed
13 seeds, as required under sections 4-09-10 and 4-09-11;

NOTE: Current law requires the label to show the rate of occurrence of restricted noxious weed seeds. Is it the intent to provide that it is a Class A misdemeanor if the label does not provide this information and a Class A misdemeanor for someone to sell a product that is not labeled with this information?

- 14 i. ~~If~~ Selling, offering for sale, exposing for sale, transporting for sale, or holding
15 or storing with the intent to sell any agricultural, vegetable, flower, or tree and
16 shrub seed, if the seed is designated, offered, represented, or advertised
17 under any variety name or identification other than the variety name by which
18 the seed was known originally;

NOTE: Please explain.

- 19 j. ~~If~~ Selling, offering for sale, exposing for sale, transporting for sale, or holding
20 or storing with the intent to sell any agricultural, vegetable, flower, or tree and

1 shrub seed, if the seed contains restricted ~~noxious~~ weed seeds in excess of
2 twenty-five seeds per pound [453.59 grams]; or

NOTE: Is this literally the intent? How does one know?

3 k. if Selling, offering for sale, exposing for sale, transporting for sale, or holding
4 or storing with the intent to sell any agricultural, vegetable, flower, or tree and
5 shrub seed, if the percentage by weight of all weed seeds in the seed
6 exceeds one percent.

NOTE: Is this literally the intent? How does one know?

7 2. The purchaser, vendor, or any person receiving any seed shipped into this state
8 from ~~without~~ outside the state shall have the same labeled in accordance with this
9 chapter¹. Certain standardized grades and labeling of seed in use elsewhere may
10 be permitted by the commissioner in connection with shipments of seed into this
11 state from points outside this state in lieu of the labeling provided for in this
12 chapter².

NOTE:

¹ What if seed is ordered and received and it is not "labeled in accordance with this chapter"?

² This subsection authorizes the commissioner to waive/change certain statutory requirements. How is this communicated?

13 3. A person ~~in this state~~ may not:

NOTE: North Dakota laws would not apply to a person in South Dakota engaging in the listed activity.

14 a. Detach, alter, deface, or destroy any label provided for in this chapter ~~or to~~
15 ~~alter~~ with the intent to defeat the purpose of this chapter;

16 b. Alter or substitute seed in any manner with the intent to defeat the purpose of
17 this chapter;

18 ~~b-~~ c. Disseminate any false or misleading advertisement concerning agriculture or
19 vegetable seed ~~in any manner or by any means;~~

NOTE: Disseminate means to "distribute." Is that the intent of this subdivision? What about trees and shrubs?

20 ~~e-~~ d. Hinder or obstruct in any way any authorized person in the performance of the
21 person's duties under this chapter;

22 ~~e-~~ e. Fail to comply with a stop-sale order;

- 1 e- f. Use on seed labels or tags, or to use or attach to literature, or to state in any
2 manner or form of wording designed as a "disclaimer" or "nonwarranty" clause
3 with the intent to disclaim responsibility of the vendor of the seed for the data
4 on the label required by law;
- 5 f- g. Use the words "type" or "trace" on any ~~labeling~~ label in connection with the
6 name and description of any agricultural and vegetable seed;
- 7 g- h. Move or otherwise handle or dispose of any lot of seed held under a stop-sale
8 order, except with the written permission of the commissioner and only for the
9 purpose specified in this written permission;
- 10 h- i. Use the name of the department or the name of the official laboratory for
11 advertising purposes in connection with seed analyzed or tested by the
12 department or official laboratory, except in the case of registered or certified
13 seed; or
- 14 i- j. Plant any seed labeled "for vegetative cover only" with the intent to harvest for
15 seed or grain.

NOTE: How is this proven?

16 **SECTION 30. AMENDMENT.** Section 4-09-14.1 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **4-09-14.1. Seed sales - Seed labeling fee permit - Exception.** A person may not
19 label agricultural, vegetable, flower, or tree or shrub seed within, or for delivery within, this state
20 unless a seed labeling fee permit has been obtained from the commissioner and has been
21 issued to the labeler pursuant to section 4-09-14.4.

NOTE:

1. The first phrase provides that unless a labeling permit has been obtained, a person may not label any seed in this state and the second phrase provides that unless a labeling permit has been obtained, a person may not label any seed "for delivery within this state." Is this referring to intrastate movement or is it referring to delivery from another state into North Dakota?

2. What is a seed labeling "fee" permit?

22 **SECTION 31. AMENDMENT.** Section 4-09-14.2 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **4-09-14.2. Seed labeling fee permit ~~Cost added to selling price.~~** The labeler shall
25 remit fees required by section 4-09-14.1 to the state seed department.

NOTE: Should there be some additional phraseology governing the second portion of the caption, i.e., "**Cost added to selling price**"?

1 **SECTION 32. AMENDMENT.** Section 4-09-14.4 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-09-14.4. Permit.** The commissioner may issue a permit to any person to label
4 agricultural, vegetable, flower, and tree and shrub seeds in North Dakota. The person shall
5 apply to the commissioner for a permit and shall furnish the commissioner with an annual
6 statement of all seeds sold in this state when requested by the commissioner.

NOTE: If as part of the permit application, a person must furnish the commissioner with an annual statement of all seeds sold in this state, what does the commissioner do with this information? Is the amount of seed sold a criteria for receiving the permit or is the permit based strictly on submission of a statement?

7 Statements that must be furnished for each reporting period must be delivered to the
8 commissioner not later than thirty-one days after the end of each reporting period and must be
9 accompanied by the appropriate fee.

NOTE: What is the reporting period?

10 A penalty fee of ten dollars, or five percent of the total amount due, whichever is greater, ~~will be~~
11 is assessed for reports that are not postmarked within thirty-one days after the end of the
12 reporting period. Any person to whom a permit is granted shall show any information in
13 connection with the permit as the commissioner may require as part of the label on all seed
14 sold.

NOTE: Is this requirement person-specific or generic and applicable to all labelers?

15 The commissioner has the right at all reasonable times to examine the records of any
16 permitholder to verify the correctness of its statements.

NOTE: Because there may be some concern about what constitutes a "reasonable time," it would be preferable to state that the commissioner may examine records upon request.

17 **SECTION 33. AMENDMENT.** Section 4-09-15 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **4-09-15. Exemptions.**

20 1. This chapter does not apply to:

21 a. Potatoes, ~~whether sold or intended for food, manufacturing, or planting~~
22 purposes.

NOTE: If the chapter does not apply to potatoes, the reason for which the potatoes were sold does not matter.

- 1 b. Seed or grain that is not intended for planting purposes. The seller shall
2 indicate on a form provided by the seller the purpose for which the seed or
3 grain is purchased. The form must be available for inspection by the
4 commissioner. It is unlawful for the seller or buyer to make a false
5 representation as to the use of the seed or grain. A farmer selling the
6 farmer's own seed or grain to a commercial establishment is exempt from the
7 recordkeeping requirements of this subsection.
- 8 c. Seed stored by or consigned to a seed cleaning or conditioning plant for the
9 purpose of cleaning or conditioning. However, any labeling or other
10 representation made with respect to uncleaned or unconditioned seed is
11 subject to the requirements of this chapter.
- 12 d. A common carrier with respect to any seed transported or delivered for
13 transportation in the ordinary course of business.

NOTE: In other sections of this chapter, current law provides that each container of seed which is sold, offered for sale, exposed for sale, transported for sale, or held in storage with the intent to sell for planting purposes must have a label.

- 14 e. A farmer who grows the farmer's own seed and sells only the farmer's own
15 seed and does not advertise or use a third party as an agent or broker to bring
16 buyer and seller together. However, a variety for which a certificate plant
17 variety protection has been applied for or issued is not exempt from this
18 chapter. The sale or transfer of protected varieties between farmers for the
19 purpose of planting without the approval of a variety owner or developer is
20 prohibited.
- 21 2. A person is not subject to the penalties of this chapter for having sold, exposed for
22 sale, or transported for sale in this state any agricultural, vegetable, flower, or tree
23 and shrub seed that was incorrectly labeled or incorrectly represented as to kind,
24 variety, or origin and which could not be identified through examination, unless the
25 person has failed to obtain an invoice or grower's declaration stating the kind, or
26 kind and variety, and origin, if required, or has failed to take other precautions as
27 may have been necessary to ensure that the seed was properly identified.

1 **SECTION 34. AMENDMENT.** Section 4-09-16 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-09-16. Certified seed.** ~~The commissioner shall:~~

4 1. ~~Establish~~ The commissioner shall establish a seed certification system for this
5 state and adopt rules governing application for service, acceptance of suitable
6 seed stocks for the production of a foundation, registered, certified, or inspected
7 crop, field inspection, bin inspections, harvesting, handling, storage, conditioning,
8 and preparation and handling of the seed for market.

NOTE: Is it necessary to state what must be in the rules?

9 2. ~~Accept~~ The commissioner shall accept for certification kinds, varieties, selections,
10 and names of seed stocks, and establish standards of quality, degree of disease
11 infection, and amounts of any admixtures, foreign seeds, noxious weeds, or other
12 weed seeds that are allowed in any lot or stock of seed, which may be or which
13 may become eligible for field inspection or for final certification of the seed crop.

NOTE:

1. Determine whether the commissioner "shall" accept for certification kinds, varieties, selections, and names of seed stocks or whether the commissioner "may" accept for certification kinds, varieties, selections, and names of seed stocks.
2. Is it the intent that the commissioner be required to establish the various standards of quality, etc., or is it the intent that the commissioner be authorized to establish such standards.
- 14 3. ~~Accept~~ The commissioner shall accept from any person a sample of seed which
15 the person claims to be a new variety, distinct from any commonly known variety of
16 the seed, together with a proposed, distinctive name. The commissioner shall
17 determine the eligibility of a variety for certification based on factors including
18 whether:
 - 19 a. The variety has been accepted into a certification program by a
20 national-designated or state-designated certification authority according to
21 established rule or regulation.
 - 22 b. The variety or selection is sufficiently distinguishable from existing varieties to
23 allow for seed certification.
 - 24 c. The variety or selection has been released by a public or private industry
25 breeding program through an acceptable release process or policy.

1 d. Technical information regarding physical traits or genetic markers of the
2 variety or selection has been provided to the commissioner for use in field and
3 laboratory certification programs.

4 4. ~~Prescribe~~ The commissioner shall prescribe all labels, seals, certificates, ~~or similar~~
5 and statements that must be used for, or in relation to, any seed, or the various
6 kinds and qualities grown, handled, stored, held for sale, sold, or offered or
7 exposed for sale in this state as "breeders", "foundation", "registered", or "certified"
8 seed, and shall specify ~~what the words, terms, or figures~~ and information required
9 to be on the labels, seals, certificates, or ~~the seed~~ containers of the seed must
10 bear.

11 5. ~~Cooperate~~ The commissioner shall cooperate with the managers of any seed
12 conditioning plants, or any commercially established seed firm, or any person
13 within or outside of the state having proper facilities and equipment to store,
14 condition, and otherwise handle seed ~~which that~~ is eligible for certification, and for
15 the purposes of handling and marketing "breeders", "foundation", "registered", or
16 "certified" seed.

NOTE: What is being asked of the commissioner by this subsection?

17 6. ~~Cooperate~~ The commissioner shall cooperate in the selection, testing, and growing
18 of seed for certification purposes and in the arrangement for increase of foundation
19 seed stocks suitable for the production of certified seed.

NOTE: What is being asked of the commissioner by this subsection?

20 7. ~~Establish~~ The commissioner shall establish an equitable schedule of fees and
21 charges, which must be uniform throughout the state, for inspecting, testing,
22 analyzing, and recording the seed, and for other work and duties incident to the
23 growing, handling, marketing, and certifying of North Dakota seed, and shall collect
24 all the fees and charges.

NOTE: Section 4-09-08 also provides that the commissioner, with the approval of the
commission, shall establish and charge fees for laboratory tests and services.

25 **SECTION 35. AMENDMENT.** Section 4-09-17 of the North Dakota Century Code is
26 amended and reenacted as follows:

1 **4-09-17. Certified seed - ~~Regulations~~ Rules governing labeling and representing.**
2 Seed grown in North Dakota, or grown elsewhere and transported into this state, which is sold,
3 offered or exposed for sale, stored, transported, or distributed, or held with intent to sell or plant
4 the same, may not be represented, advertised, labeled, or characterized in any way, either
5 orally or in writing, with or by the use of the term "breeders", "foundation", "registered",
6 "certified", "pedigreed", or "elite" seed, or any term or terms conveying a meaning substantially
7 equivalent to the meaning of any of said terms, without the approval and authorization of the
8 commissioner, ~~who may adopt such rules as the commissioner finds necessary for the proper~~
9 ~~regulation and protection of the certified seed industry.~~

NOTE:

1. This appears to be a prohibition.
2. Because the commissioner is already authorized to adopt rules under Chapter 28-32, it is not necessary to provide additional authorization in this chapter.

10 **SECTION 36. AMENDMENT.** Section 4-09-17.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **4-09-17.1. Plant Variety Protection Act.** Any seed advertised, offered for sale, or sold
13 by variety name and for which a certificate of plant variety protection has been issued under the
14 Plant Variety Protection Act, as amended [Pub. L. 91-577; 84 Stat. 1551; 7 U.S.C. 2481 et seq.,
15 effective as of July 1, 2009], as being for sale only as a class of certified seed must be certified
16 by an official seed certifying agency in order for the seed to be advertised, offered for sale, or
17 sold by variety name in the state of North Dakota. Seed from a certified lot may be labeled as
18 to variety name when used in a blend or mixture by or with approval of the owner of the variety.

19 **SECTION 37. AMENDMENT.** Section 4-09-18 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **4-09-18. Certified seed standards.**

- 22 1. The rules¹ and requirements² for certification of crop seeds, other than potatoes,
23 must be published in the department bulletin³.

NOTE:

- ¹ Is this a reference to administrative rules?
- ² What is meant by "requirements"?
- ³ Is this an official publication of the department?

- 24 2. The rules and requirements for seed potato certification must be published in the
25 department bulletin.

NOTE: This appears to be saying that the rules and requirements for crop seed certification (except for potatoes) must be published in the bulletin and then that the rules and requirements for seed potato certification must be published in the bulletin.

1 **SECTION 38. AMENDMENT.** Section 4-09-19 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-09-19. Cooperation by commissioner with institutions, agencies, and**
4 **organizations.** The commissioner may ~~cooperate and enter into agreements with the United~~
5 ~~States department of agriculture and with the state departments and agricultural colleges of any~~
6 ~~of the states, and with organized agricultural fairs or exhibitions, or other organizations or~~
7 ~~persons in matters relating~~ contract with any person for any purpose related to the protection,
8 inspection, analysis, testing, registering, and certifying of North Dakota seed, and the promotion
9 and protection of the interests and welfare of North Dakota seed ~~growers~~ and crop producers.
10 The commissioner may recognize and deal with ~~growers~~ seed producers, organizations, and
11 institutions as agencies affiliating with the commissioner in pure seed matters.

NOTE: Please explain the second sentence.

12 **SECTION 39. AMENDMENT.** Section 4-09-20 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **4-09-20. Fees and collections - Continuing appropriation - Disposition.** All
15 ~~moneys arising from the collection of fees and other charges~~

- 16 1. The commissioner shall forward all moneys received under this chapter ~~must be~~
17 ~~deposited by the commissioner with~~ to the state treasurer ~~and credited to~~ for
18 deposit in a special fund known as the seed department revolving fund, ~~and must~~
19 ~~be disbursed, within the limits of legislative appropriations, upon vouchers signed~~
20 ~~by the commissioner and warrant checks prepared by.~~ All moneys in the seed
21 department fund are appropriated on a continuing basis to the seed department to
22 carry out this chapter.
- 23 2. The commissioner shall approve all expenditures made pursuant to this chapter
24 and shall submit an itemized voucher to the office of management and budget for
25 payment.
- 26 3. Royalty, research, or patent fees will be collected on protected varieties when
27 necessary by the commissioner and disbursed less cost of collection.

NOTE: Is the commissioner limited in the amount that may be charged for collection costs?

1 4. The state treasurer ~~shall~~, at the direction of the commission, shall provide for the
2 investment of available moneys from the revolving fund. The state treasurer shall
3 deposit twenty percent of the income from the investment of the moneys in the
4 general fund and the remaining eighty percent of the investment income in the
5 seed department ~~revolving~~ fund.

NOTE: Does the first sentence of this subsection require the permission of the commission before the State Treasurer invests any dollars in the fund or does it require the commission to consent to the State Treasurer's investment choices? Section 4-24-09 contains a similar provision which is applicable to the commodity group funds. It states:

The state treasurer ... shall invest ... all available moneys in the [various commodity funds]. ... The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer, by rule, shall establish, in cooperation with the agricultural commodity organizations, guidelines to be followed regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services when provided without cost by the state to the agricultural commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund.

6 **SECTION 40. AMENDMENT.** Section 4-09-20.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **4-09-20.1. Liability of commission, department, commissioner, and certified or**
9 **noncertified agricultural seed producers.** A warranty of any kind, either expressed or
10 implied, including a warranty of merchantability, fitness for a particular purpose, or absence of
11 disease, is not made by the commission, the department, the commissioner, or certified or
12 noncertified agricultural seed producers as to the quantity or quality of the crop produced from
13 the agricultural seeds or as to other produce which is inspected and certified, except as
14 provided in this section. The sole warranty made is that the agricultural seeds or other produce
15 were produced, graded, packed, and inspected under the rules of the department or United
16 States department of agriculture. The commissioner functions and serves only in an official
17 regulatory manner.

18 **SECTION 41. AMENDMENT.** Section 4-09-20.2 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **4-09-20.2. Seed arbitration board - Petition - Arbitration hearing.**

- 1 1. The state seed arbitration board consists of the following six members:
2 a. The agriculture commissioner, ~~the~~;
3 b. The state seed commissioner, ~~the~~;
4 c. The director of the North Dakota state university extension service, ~~the~~;
5 d. The director of the North Dakota agricultural experiment station, ~~the~~;
6 e. The chairman of the North Dakota seed trade committee of the North Dakota
7 agriculture association; ~~i~~ and a
8 f. A representative of a major North Dakota farm organization appointed by the
9 agriculture commissioner or an authorized designee. ~~Each board member is~~

NOTE: With respect to subdivision f, which farm organizations are considered to be "major"? Also with respect to subdivision f, is it the intent to allow either the Agriculture Commissioner or the commissioner's designee to appoint an individual or is the representative of the farm organization authorized to name a designee to sit in place of the farm organization representative?

- 10 2. The chairman of the North Dakota seed trade committee of the North Dakota
11 agriculture association and the representative of a major North Dakota farm
12 organization are entitled to receive ~~as per diem~~ compensation in the amount of one
13 hundred thirty-five dollars ~~and per day plus~~ reimbursement ~~of~~ for expenses as
14 provided by law for state ~~officers while~~ officials, if the individual is attending
15 meetings or performing duties directed by the board, ~~except that~~. The
16 compensation ~~under~~ and reimbursement for expenses required by this subsection
17 ~~may not be paid to any member who receives compensation or salary as a regular~~
18 ~~state employee or official. Compensation and expenses for board members who~~
19 ~~do not receive compensation or salary as a regular state employee or official must~~
20 ~~be paid by the department of~~ must be paid by the agriculture commissioner.

NOTE:

- 1 1. This subsection was reworded because four of the six seed arbitration board
2 members are state employees or officials.
3 2. Who serves as the chairman? Who provides staff support? Where does the
4 board meet?
5 2. 3. a. A seed labeler, seed dealer, or seed customer may petition the agriculture
6 commissioner ~~in writing~~ for a hearing to settle a dispute involving a seed
7 transaction.

NOTE: Petitions are by their very nature "in writing."

- 1 b. The agriculture commissioner shall submit the dispute to the seed arbitration
2 board, and the board shall arbitrate the dispute.

NOTE: If the Agriculture Commissioner has no discretion regarding the request for a hearing, why is the petition not filed directly with the board?

- 3 c. The board, within thirty days after the hearing, shall make a nonbinding
4 recommendation for the resolution of the dispute. ~~Evidence~~

NOTE: Is there any expectation that the hearing take place within a certain period of time after the request is filed?

Must a quorum be present during the hearing?

- 5 d. ~~Any evidence and testimony presented to the board at the hearing~~ and any
6 findings or recommendations by the board are admissible ~~as evidence~~ in any
7 subsequent proceeding.

- 8 e. The board shall adopt rules of operation and ~~procedures~~ procedure for
9 arbitration ~~proceedings~~ hearings, including a formula for reimbursement by
10 the parties of the expenses of the arbitration process.

NOTE: Does the prevailing party receive reimbursement or is this intended to reimburse the Agriculture Commissioner for expenses incurred in bringing the board together?

11 **SECTION 42. AMENDMENT.** Section 4-09-21 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **4-09-21. Enforcement - Hearing by commissioner - Application of chapter 28-32.**

- 14 1. The commissioner shall do all things necessary and proper to enforce this chapter
15 ~~and the regulations made thereunder~~ its applicable rules.
16 2. Whenever the commissioner is of the opinion that a violation of this chapter or of
17 the regulations made thereunder exists, the commissioner shall hold a hearing as
18 provided by chapter 28-32. If after the hearing, or without hearing if the person
19 involved fails or refuses to appear, the commissioner decides that the evidence
20 warrants prosecution, the commissioner shall proceed as hereinafter provided.

NOTE: Is it the intent to require that a hearing be held under Chapter 28-32, even if a person is violating a stop-sale order?

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

NOTE: This is covered under Chapter 28-32 and does not need to be reiterated in this chapter.

1 **SECTION 43. AMENDMENT.** Section 4-09-22 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-09-22. Prosecution for violations - Duty of attorney general and state's attorney.**

4 Upon a complaint by the commissioner alleging a violation of this chapter or of any ~~regulation~~
5 ~~duly made thereunder~~ applicable rule, the attorney general, or the state's attorney of the county
6 ~~wherein~~ in which the case arises, shall ~~cause appropriate~~ initiate legal proceedings ~~to be~~
7 ~~commenced and prosecuted for the enforcement of the penalties provided in this chapter.~~

NOTE: Under what circumstances would the Attorney General become involved as opposed to a state's attorney?

8 **SECTION 44. AMENDMENT.** Section 4-09-23 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **4-09-23. Seizure and injunction - Action.**

11 1. Any lot of ~~agricultural, flower, tree and shrub, or vegetable~~ seed not in compliance
12 with ~~the provisions~~ of this chapter is subject to seizure on complaint of the
13 commissioner, or the commissioner's agent, to a court of competent jurisdiction in
14 the locality in which the seed is located. ~~In the event that~~ If the court finds the seed
15 to be in violation of this chapter and orders the condemnation of ~~said~~ the seed, ~~it~~
16 the seed must be denatured, processed, destroyed, relabeled, or otherwise
17 disposed of in compliance with the laws of this state. ~~Provided, that in no instance~~
18 ~~may the~~

NOTE: Which laws?

19 2. A court may not order ~~such~~ disposition of ~~said~~ the seed without first having given
20 the claimant an opportunity to apply to the court for the release of ~~said~~ the seed, or
21 permission to process or relabel it in compliance with the provisions of this chapter.

NOTE: The claimant is normally the party who initiates a lawsuit--the equivalent of a plaintiff or a complaining witness in a criminal trial. Is this what was intended?

22 3. Any violation of this chapter may be enjoined in a court of competent jurisdiction
23 without bringing any other civil or criminal action.

24 **SECTION 45. AMENDMENT.** Section 4-09-24 of the North Dakota Century Code is
25 amended and reenacted as follows:

1 **4-09-24. Penalty - Criminal - Civil.**

- 2 1. A Any person ~~who violates~~ willfully violating this chapter or any rules adopted
3 under this chapter is guilty of a class A misdemeanor.
- 4 2. When construing and enforcing the provisions of this chapter, the act, omission, or
5 failure of any officer, agent, or other person acting for or employed by any person
6 must in every case be also deemed to be the act, omission, or failure of such
7 person as well as that of the person employed.
- 8 3. A Any person found guilty of violating this chapter or the rules adopted under this
9 chapter is subject to a civil penalty in an amount not to exceed five thousand
10 dollars for each violation. The civil penalty may be imposed by a court in a civil
11 proceeding or by the commissioner through an administrative hearing pursuant to
12 chapter 28-32.

13 **SECTION 46. AMENDMENT.** Section 4-09-25 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **4-09-25. Plant and seed records - Exempt Exemption.** The following records of the
16 ~~state seed~~ commission are exempt from section 44-04-18:

- 17 1. Records of any plant or seed inspection, analysis, or testing and germination,
18 purity, variety, or disease determinations conducted by the state seed department
19 on a fee-for-service basis for nonpublic entities or persons.
- 20 2. Information received by the seed commission under chapter 4-09, 4-10, or 4-42
21 from a nonpublic entity or person that the nonpublic entity or person determines is
22 proprietary information or a trade secret.

NOTE: It is recommended that records which are exempt from Section 44-04-18 be
referenced in Section 44-04-18, rather than in this chapter.