

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

400U0390

HOUSE BILL NO. 1048

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
Department of Agriculture

1 FOR AN ACT ENTITLED, An Act to revise and repeal certain provisions related to the
2 Department of Agriculture.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 1-41-6 be repealed.

5 ~~1-41-6. The Department of Agriculture shall, under the direction and control of the secretary~~
6 ~~of agriculture, perform all administrative functions (as defined in § 1-32-1) of the Office of State~~
7 ~~Potato Inspector, created by chapter 38-15.~~

8 Section 2. That § 38-1-1 be amended to read as follows:

9 38-1-1. The Department of Agriculture of the State of South Dakota is continued with the
10 powers, duties, and jurisdiction enumerated in this code. It shall maintain a central office in ~~the~~
11 ~~capitol~~ at Pierre in rooms provided for the purpose, which shall be the official address of the
12 department and the place for serving process or papers of any kind upon it. ~~It~~ The department
13 shall have an official seal.

14 Section 3. That § 38-1-16 be amended to read as follows:

15 38-1-16. The secretary of agriculture may promulgate administrative rules pursuant to



1 chapter 1-26 concerning the administration of the department, the election of soybean council
2 members, and the custody, use, and preservation of records, papers, books, and property
3 pertaining to the activities of the department, and fees for permits, inspection, and reinspection
4 relating to any permits issued by the department.

5 Section 4. That § 38-1-44 be repealed.

6 ~~—38-1-44. Terms used in §§ 38-1-44 to 38-1-50, inclusive mean:~~

7 ~~—(1) "Farmer," the person responsible for planting a crop on, managing the crop, and~~
8 ~~harvesting the crop from land on which a patent infringement is alleged to have~~
9 ~~occurred; and~~

10 ~~—(2) "Transgenic organism," an organism that has been modified by genetic engineering~~
11 ~~to contain DNA from an outside source.~~

12 Section 5. That § 38-1-45 be repealed.

13 ~~—38-1-45. Before a person holding a patent on transgenic seed may enter upon any land~~
14 ~~farmed by another for the purpose of obtaining crop samples to determine whether patent~~
15 ~~infringement has occurred, the person holding the patent:~~

16 ~~—(1) Shall notify the farmer in writing of the allegation that a patent infringement has~~
17 ~~occurred and request written permission to enter upon the farmer's land; and~~

18 ~~—(2) Shall obtain the written permission of the farmer.~~

19 ~~—The farmer shall grant or deny access within seven days of receipt of request to enter the~~
20 ~~land. If the farmer withholds written permission, the person holding a patent may petition the~~
21 ~~circuit court for an order granting permission to enter upon the farmer's land.~~

22 Section 6. That § 38-1-46 be repealed.

23 ~~—38-1-46. If either party requests the secretary of agriculture to provide for the collection of~~
24 ~~samples under § 38-1-45, or to participate in or conduct any other aspect of the sampling or~~

1 ~~analysis process, the secretary shall designate an employee or enter into an agreement with a~~
2 ~~person or entity to implement the specified activity as provided in rules under § 38-1-49. The~~
3 ~~person or entity may be, but is not required to be, an employee or agency of the State of South~~
4 ~~Dakota. The patent holder shall pay the fee charged by the department under rules promulgated~~
5 ~~pursuant to § 38-1-49. The farmer and the person holding the patent may each be present at any~~
6 ~~collection of samples conducted under §§ 38-1-44 to 38-1-50, inclusive, and each shall be~~
7 ~~notified of the time and location of the sample taking in a timely manner.~~

8 Section 7. That § 38-1-47 be repealed.

9 ~~—38-1-47. If the person holding a patent believes that the crop from which samples are to be~~
10 ~~taken may be subject to intentional damage or destruction, the person may seek a protection~~
11 ~~order from the circuit court. The protection order may not interrupt or interfere with normal~~
12 ~~farming practices, including harvest and tillage.~~

13 Section 8. That § 38-1-48 be repealed.

14 ~~—38-1-48. The samples may be taken from a standing crop, from representative standing~~
15 ~~plants in the field, or from crops remaining in the field after harvest.~~

16 Section 9. That § 38-1-49 be repealed.

17 ~~—38-1-49. The secretary of agriculture may promulgate rules, pursuant to chapter 1-26, to~~
18 ~~determine the following sampling protocols:~~

19 ~~—(1)—To determine who is authorized to collect samples or conduct related activity;~~

20 ~~—(2)—To determine methods of sample storage;~~

21 ~~—(3)—To establish standards for sampling, inspecting, analyzing, and testing seeds; and~~

22 ~~—(4)—To implement fees to recover sampling and related costs.~~

23 Section 10. That § 38-1-50 be repealed.

24 ~~—38-1-50. The results of any testing conducted under §§ 38-1-44 to 38-1-50, inclusive, shall~~

1 ~~be sent by registered letter to either party by the other within thirty days after the results are~~
2 ~~reported from the testing laboratory.~~

3 Section 11. That § 38-15-2 be repealed.

4 ~~— 38-15-2. In order to develop and protect the industries in this state engaged in the growing~~
5 ~~and marketing of potatoes and to conserve and promote the welfare of the citizens of the state,~~
6 ~~the secretary of agriculture may establish potato grades, including seed grades, and inspection~~
7 ~~service to provide for proper handling and marketing of potatoes, to appoint a chief inspector~~
8 ~~and such other agents, inspectors, assistants, and clerical aids as the secretary finds necessary~~
9 ~~to assist, represent, and act for him in enforcing and otherwise carrying out the provisions of this~~
10 ~~chapter, and to fix salaries of such employees and provide for operating expenses. In order to~~
11 ~~maintain such industries, the secretary of agriculture may contract for potato inspection services~~
12 ~~with other agencies or associations.~~

13 Section 12. That § 38-15-9 be repealed.

14 ~~— 38-15-9. Every closed container containing potatoes grown in the State of South Dakota and~~
15 ~~sold, offered, or exposed for sale or consignment in carload lots or in truckload lots by a person~~
16 ~~other than the grower thereof, shall bear upon the outside by label, in plain letters and figures,~~
17 ~~the grade of the potatoes therein contained, the minimum weight thereof when packed and the~~
18 ~~variety or class name of such potatoes.~~

19 Section 13. That § 38-15-10 be repealed.

20 ~~— 38-15-10. The labeling prescribed in this chapter may be accompanied by additional marks~~
21 ~~or brands which are not inconsistent with, or in the same location more conspicuous than, or~~
22 ~~which do not in any way obscure the labeling. The secretary of agriculture shall, by regulation,~~
23 ~~prescribe the general location of the labeling on the container and the minimum size of the~~
24 ~~letters and figures used in the labeling of the potatoes.~~

1 Section 14. That § 38-15-12 be repealed.

2 ~~—38-15-12. No person either for himself or while acting as agent or servant for any other~~
3 ~~person shall sell, consign for sale, offer or expose for sale, have in possession or storage with~~
4 ~~intent for sale, or to deliver within the State of South Dakota or to convey or cause to be~~
5 ~~conveyed out of the State of South Dakota, any potatoes which are mislabeled within the~~
6 ~~meaning of this chapter or the regulations promulgated pursuant thereto, or which are falsely~~
7 ~~labeled, represented, or advertised in any respect, whether they are in closed containers or in~~
8 ~~open containers or in bulk and regardless of the quantity. Any violation of this section is a Class~~
9 ~~2 misdemeanor.~~

10 Section 15. That § 38-15-18 be repealed.

11 ~~—38-15-18. The secretary of agriculture shall adopt rules pursuant to the provisions of chapter~~
12 ~~1-26, to fix any fees charged for making grade inspections and such fees shall be uniform~~
13 ~~throughout the state for the periods of time specified.~~

14 Section 16. That § 38-15-21 be repealed.

15 ~~—38-15-21. The secretary of agriculture shall collect all fees and charges. All moneys arising~~
16 ~~from the collection of fees and other charges under the provisions of this chapter shall be first~~
17 ~~applied to contracts entered into pursuant to § 38-15-2. The balance shall be placed by the~~
18 ~~secretary with the state treasurer and shall be credited to the general fund.~~

19 Section 17. That § 38-15-24 be repealed.

20 ~~—38-15-24. The secretary of agriculture may cooperate with the United States Department of~~
21 ~~Agriculture and with similar state inspection service departments and with any person to provide~~
22 ~~for the purposes of this chapter.~~

23 Section 18. That § 38-15-25 be repealed.

24 ~~—38-15-25. The secretary of agriculture shall, pursuant to the provisions of chapter 1-26,~~

1 promulgate rules concerning:

2 ~~—(1)—The specifications for location and size of labels;~~

3 ~~—(2)—The grades of potatoes; and~~

4 ~~—(3)—The establishment of fees charged for making grade inspections.~~

5 Section 19. That § 38-15-31 be repealed.

6 ~~—38-15-31. The secretary of agriculture may seize and hold any potatoes which are wrongly~~
7 ~~labeled as to grade, quality, condition, or any other respect, according to this chapter, until such~~
8 ~~potatoes are so graded or reconditioned that they meet the requirements of the grade, or the~~
9 ~~labeling with which they are marked.~~

10 Section 20. That § 39-9-1 be repealed.

11 ~~—39-9-1. As used in this chapter, score or grade means the grading of butter by its~~
12 ~~examination for flavor and aroma, body and texture, color, salt, package, and by the use of other~~
13 ~~tests or procedures established by the State Department of Agriculture for ascertaining the~~
14 ~~quality of butter as hereinafter provided.~~

15 Section 21. That § 39-9-2 be repealed.

16 ~~—39-9-2. Butter shall be graded as follows:~~

17 ~~—(1)—Grade, South Dakota, AA--93 score;~~

18 ~~—(2)—Grade, South Dakota, A--92 score;~~

19 ~~—(3)—Grade, South Dakota, B--91-90 score;~~

20 ~~—(4)—Grade, South Dakota, undergrade--all butter below South Dakota B.~~

21 Section 22. That § 39-9-3 be repealed.

22 ~~—39-9-3. United States AA, A, and B grades shall be accepted in lieu of the corresponding~~
23 ~~South Dakota AA, A, and B grades, but all United States grades below B shall for the purpose~~
24 ~~of this chapter, correspond to South Dakota undergrade.~~

1 Section 23. That § 39-9-4 be repealed.

2 ~~—39-9-4. It is a Class 2 misdemeanor to sell, offer or expose for sale, or have in possession~~
3 ~~with intent to sell, any butter at retail unless it has been graded and the grading date is indicated~~
4 ~~on the container thereof. Every processor shall label all undergrade butter.~~

5 Section 24. That § 39-9-5 be repealed.

6 ~~—39-9-5. Butter from outside of the State of South Dakota sold within this state shall comply~~
7 ~~with the state grade and labeling standards as provided in this chapter, and, unless labeled~~
8 ~~United States AA, A, and B grades, shall indicate the grade in a manner equivalent to the~~
9 ~~requirements for butter manufactured and sold within this state.~~

10 Section 25. That § 39-9-6 be repealed.

11 ~~—39-9-6. Whenever butter is advertised for sale, the grade of the butter advertised must be~~
12 ~~stated in any price advertising.~~

13 Section 26. That § 39-9-7 be repealed.

14 ~~—39-9-7. The secretary of agriculture may promulgate rules pursuant to chapter 1-26 to~~
15 ~~establish methods and procedures to be used for ascertaining quality, grades, grading, labeling,~~
16 ~~and for arbitrating disputes with respect to grades.~~

17 Section 27. That § 39-9-8 be repealed.

18 ~~—39-9-8. If butter is mislabeled within the meaning of this chapter and the regulations issued~~
19 ~~hereunder, the same shall be deemed misbranded within the meaning of § 39-4-18 and any~~
20 ~~violation of the section or regulations issued thereunder shall be punished as provided by § 39-~~
21 ~~4-18.~~

22 Section 28. That § 39-9-9 be repealed.

23 ~~—39-9-9. The secretary of agriculture may also provide by regulation for the licensing of~~
24 ~~butter graders, if he shall determine that the same shall be necessary and shall determine the~~

1 ~~necessary qualifications and means of examination of such graders. The secretary may further~~
2 ~~provide for revocation of such licenses for violation of the law and regulations issued~~
3 ~~thereunder. If a license fee is established the same shall not exceed ten dollars per annum. A~~
4 ~~right of appeal from any decision refusing to grant a license or revoking any such license shall~~
5 ~~be allowed in accordance with the provisions of chapter 1-26.~~