

## LEGISLATIVE BILL 166

Approved by the Governor May 7, 2013

Introduced by Schilz, 47.

FOR AN ACT relating to agriculture; to amend section 81-2,147.02, Reissue Revised Statutes of Nebraska; to change labeling requirements of seed containers; to repeal the original section; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 81-2,147.02, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,147.02 Each container of agricultural, vegetable, or flower seeds which is sold within this state for sowing purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language giving the following information, which statement shall not be modified or denied in the labeling or on another label attached to the container:

(1) For any agricultural seeds or any mixture thereof, any vegetable seeds or any mixture thereof, or any flower seeds or any mixture thereof for sowing purposes that have been treated, unless each seed container bears a label giving the following information and statements as established in the rules and regulations:

(a) A word or statement indicating that the seeds have been treated;

(b) The commonly accepted coined, chemical (generic), or abbreviated chemical name of any substance used in such treatment;

(c) If the substance used in such treatment in the amount remaining with the seeds is harmful to humans or other vertebrate animals, an appropriate caution statement approved by the director as adequate for the protection of the public such as, "Do Not Use For Food Or Feed Or Oil Purposes", except that the caution statement for mercurials and similarly toxic substances, as established in the rules and regulations, shall be a representation of a skull and crossbones and a statement such as, "This Seed Has Been Treated With POISON", in red letters on a background of distinctly contrasting color;

(d) A description approved by the director for the protection of the public of any process used in such treatment; and

(e) If the seed is treated with an inoculant, the year and month beyond which the inoculant, if shown in the labeling, is no longer claimed to be effective (Date of expiration);

(2) For agricultural seeds except for grass seed mixtures as provided in subdivision (5) of this section:

(a) The commonly accepted name of the kind and variety of each agricultural seed component, in excess of five percent of the whole, and the percentage by weight of each in the order of its predominance, except that if the variety of the kinds which are generally labeled as to their variety as established in the rules and regulations is not stated, the label shall show the name of the kind and the words, "Variety Not Stated". When more than one component is required to be named, the word mixture, mix, mixed, or blend shall be shown conspicuously on the label. Hybrids shall be labeled as hybrids except when the pure seed contains less than seventy-five percent hybrid seed. If the percentage of the hybrid seed is equal to or greater than seventy-five percent but less than ninety-five percent, the percentage of hybrid shall be labeled parenthetically following the variety;

(b) The lot number or other lot identification;

(c) Origin, if known. If the origin is unknown, the fact shall be stated;

(d) The percentage by weight of all weed seed;

(e) The name and rate of occurrence per pound of each kind of restricted noxious weed seed:

(i) For *Agrostis* spp., bluegrass, timothy, orchardgrass, fescue, alsike clover, white clover, reed canarygrass, ryegrass, foxtail millet, alfalfa, red clover, sweetclover, lespedeza, smooth brome, crimson clover, *Brassica* spp., flax, wheatgrass, and other agricultural seed of similar size and weight, or mixtures within such group, when present singly or collectively in excess of eighteen seeds per pound; and

(ii) For all other agricultural seed or agricultural seed mixtures not included in subdivision (i) of this subdivision, when present, label as found;

(f) Percentage by weight of agricultural seeds which may be

designated as other crop seed other than those required to be named on the label;

(g) The percentage by weight of inert matter;

(h) For each named agricultural seed, the percentage of germination exclusive of hard seed and the percentage of hard seed if present. Following the percentage of germination exclusive of hard seed and the percentage of hard seed, if present, the total germination and hard seed percentage may be stated if desired. The calendar month and year the test was completed to determine such percentages or an expiration date for those seeds labeled for lawn and turf purposes shall also be stated;

(i) For each of the following named grasses the percentage of germination exclusive of dormant seed, the percentage of dormant seed if present, or the percentage of viability as indicated by a tetrazolium (TZ) test and the calendar month and year the test was completed to determine such percentages. Following the percentage of germination, exclusive of dormant seed and the percentage of dormant seed, if present, the total germination and dormant seed may be stated if desired. Also, for each of the following named grasses when extreme dormancy is encountered, the result of a tetrazolium (TZ) test may be shown in lieu of the percentage of germination to indicate the potential viability of the seed:

Bluestem:

Big Andropogon gerardii

Little Schizachyrium scoparium

Sand Andropogon hallii

Yellow Bothriochia ischaemum

Dropseed, sand Sporobolus cryptandrus

Buffalograss Buchloe dactyloides

Grass:

Sideoats Bouteloua curtipendula

Blue Bouteloua gracilis

Indiangrass Sorghastrum nutans

Lovegrass, sand Eragrostis trichodes

Needlegrass, green Stipa viridula

Prairie sandreed Calamovilfa longifolia

Ricegrass, Indian Oryzopsis hymenoides

Wheatgrass, western Elymus smithii

Switchgrass Panicum virgatum; and

(j) The name and address of the person who labeled such seed or who sells such seed within this state;

(3) For agricultural, vegetable, and flower seeds that are coated:

(a) The percentage of pure seeds with coating material removed;

(b) The percentage of coating material should be shown as a separate item in close association with the percentage of inert matter; and

(c) The percentage of germination should be determined on four hundred pellets with or without seeds;

(4) For products which claim to be a combination of mulch, seed, and fertilizer the word combination shall be followed by the words "Mulch - Seed -

Fertilizer". The word combination must appear on the upper thirty percent of the principal display panel and must be the largest and most conspicuous type on the container, equal to or larger than the product name. The words "Mulch - Seed - Fertilizer" shall be no smaller than one-half the size of, and in close proximity to, the word combination. Such product shall contain a minimum of seventy percent mulch;

(5) For seed mixtures for lawns and turf purposes in containers of fifty pounds or less:

(a) The word mixed, mixture, mix, or blend;

(b) Commonly accepted name, in order of its predominance of the kind and variety, or kind of each agricultural seed present in excess of five percent of the whole;

(c) Percentage by weight of pure seed of each agricultural seed named;

(d) For each agricultural seed named under subdivision (b) of this subdivision:

(i) Percentage of germination exclusive of hard seed;

(ii) Percentage of hard seed if present; and

(iii) Calendar month and year the test was completed to determine such percentages or an expiration date;

(e) Percentage by weight of all weed seed;

(f) Percentage by weight of all agricultural seeds, which may be designated as crop seed, other than those stated under subdivision (b) of this subdivision;

(g) Percentage by weight of inert matter;

(h) Lot number or other lot identification;

(i) The name and rate of occurrence of each kind of restricted noxious weed seed per pound when present singly or collectively in excess of the numbers shown in subdivision (2)(e)(i) of this section;

(j) Name and address of the person who labeled such seed or who sells such seed within this state; and

(k) Origin, if known. If the origin is unknown, the fact shall be stated; and

(l) For cool season lawn and turf grass seed and mixtures, including kentucky bluegrass, red fescue, chewings fescue, hard fescue, tall fescue, perennial rye grass, intermediate rye grass, annual rye grass, colonial bentgrass, and creeping bentgrass:

(i) The calendar month and year the germination test was completed to determine the percentage required under subdivision (5)(d)(i) of this section and the germination test date for each component or, if each component does not show a germination test date, the oldest germination test date shall be used for the mixture; or

(ii) In place of the test date, the statement "sell by (date)", which date shall not be more than fifteen months after the date of the germination test exclusive of the month of the germination test;

(6) For grass seed for which claims are made regarding the beneficial presence of Acremonium species:

(a) The seed shall have on the analysis label or on a separate label which is in close proximity to the analysis label the actual percentage of viable endophyte present in each component and the month and year that a viable endophyte test was performed to establish the percentage of endophyte present. For mixtures, the oldest test date shall be used. The test date shall be stated as "Endophyte Test Date". Freshly harvested seed may be labeled and shipped based on a seed endophyte test until October 1 of the harvest year; and

(b) The viable endophyte test must have been conducted within the last nine months, not including the month of the test. If the test date exceeds nine months the seed lot must be retested and relabeled or all references to endophyte must be removed from the label;

(7) For vegetable seeds in containers prepared for use in home gardens or household plantings or vegetable seeds in preplanted containers, mats, tapes, or other planting devices:

(a) The name of the kind and variety of seed;

(b) Lot number or other lot identification;

(c) The calendar month and year the seeds were tested or the year for which the seed was packaged for sale as "Packed for (year)";

(d) For seeds which germinate less than the standard last established in the rules and regulations:

(i) Percentage of germination exclusive of hard seed;

(ii) Percentage of hard seed if present;

(iii) The calendar month and year the test was completed to determine such percentages; and

- (iv) The words "Below Standard" in not less than eight-point type;
  - (e) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or other device, a statement to indicate the minimum number of seeds in the container;
  - (f) The name and rate of occurrence per pound of each kind of restricted noxious weed seed present; and
  - (g) The name and address of the person who labeled such seed or who sells such seed within this state;
  - (8) For vegetable seeds in containers other than containers prepared for use in home gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices:
    - (a) The name of each kind and variety present in excess of five percent and the percentage by weight of each in order of its predominance;
    - (b) Lot number or other lot identification;
    - (c) For each named vegetable seed:
      - (i) The percentage of germination exclusive of hard seed;
      - (ii) The percentage of hard seed if present; and
      - (iii) The calendar month and year the test was completed to determine such percentages. Following the information prescribed in subdivisions (i) and (ii) of this subdivision, the total germination and hard seed percentage may be stated as such, if desired;
    - (d) The name and rate of occurrence per pound of each kind of restricted noxious weed seed present; and
    - (e) Name and address of the person who labeled the seed or who sells such seed within this state;
  - (9) For flower seeds in containers prepared for use in home gardens or household plantings or flower seeds in preplanted containers, mats, tapes, or other planting devices:
    - (a) For all kinds of flower seeds:
      - (i) The name of the kind and variety or a statement of type and performance characteristics as established in rules and regulations. Mixtures shall be listed on the label as mixture, mix, or mixed. Seeds described as native wildflower seeds shall only be seeds from flowers that are indigenous to North America. Seeds described as introduced wildflower seeds shall only be seeds from flowers that are not indigenous to North America;
      - (ii) The calendar month and year the seed was tested or the year for which the seed was packaged for sale as "Packed for (year)"; and
      - (iii) The name and address of the person who labeled the seed for sale within this state;
    - (b) For seeds of those kinds for which standard testing procedures are prescribed, such as methods published by the Association of Official Seed Analysts or other generally recognized methods, and which germinate less than the germination standard last established in the rules and regulations:
      - (i) Percentage of germination exclusive of hard seeds; and
      - (ii) The words "Below Standard" in not less than eight-point type;
- and
- (c) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container;
  - (10) For flower seeds in containers other than packets prepared for use in home flower gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices:
    - (a) The name of the kind and variety or a statement of type and performance characteristics as established in rules and regulations. Mixtures shall be listed on the label as mixture, mixed, or mix. Seeds described as native wildflower seeds shall only be seeds from flowers that are indigenous to North America. Seeds described as introduced wildflower seeds shall only be seeds from flowers that are not indigenous to North America;
    - (b) The percentage by weight of pure seed for each flower seed named;
    - (c) Lot number or other lot identification;
    - (d) Percentage by weight of all weed seed when present in flower seed;
    - (e) Name and rate of occurrence per pound of each kind of restricted noxious weed seed, if present, listed under the heading noxious weed seeds;
    - (f) The calendar month and year that the seed was tested;
    - (g) The name and address of the person who labeled the seed or who sells the seed within this state; and
    - (h) For those kinds of seed for which standard testing procedures are prescribed in generally recognized official methods:

- (i) Percentage of germination exclusive of hard seed; and
  - (ii) Percentage of hard seed if present; and
  - (11) For agricultural seeds sold on a pure live seed basis, as established in the rules and regulations, the information required by subdivision (2)(a) of this section, except as modified in this subdivision:
    - (a) The label need not show:
      - (i) The percentage by weight of each agricultural seed component as required by subdivision (2)(a) of this section; or
      - (ii) The percentage by weight of inert matter as required by subdivision (2)(g) of this section; and
    - (b) The label shall, instead of the information required by subdivision (2)(h) of this section or subdivision (2)(i) of this section when appropriate, show for each named agricultural seed:
      - (i) The percentage of pure live seed as established in the rules and regulations; and
      - (ii) The calendar month and year in which the test determining the percentage of pure live seed was completed.
- Sec. 2. Original section 81-2,147.02, Reissue Revised Statutes of Nebraska, is repealed.
- Sec. 3. Since an emergency exists, this act takes effect when passed and approved according to law.