LEGISLATIVE BILL 544

Introduced by Harr, 8.

Read first time January 21, 2015

Committee: Agriculture

A BILL FOR AN ACT relating to agriculture; to amend sections 81-2,147.01 and 81-2,147.05, Reissue Revised Statutes of Nebraska; to adopt the Community Gardens Act; to define and redefine terms; to provide for applicability; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 81-2,147.01, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,147.01 As used in the Nebraska Seed Law:

(1) Advertisement means all representations, other than those on the label, disseminated in any manner or by any means relating to seed, including farm grain represented as suitable for sowing, within the scope of the Nebraska Seed Law;

(2) Agricultural seed includes the seeds of grass, forage, cereal, oil and fiber crops, and lawn and mixtures of such seeds and any other kinds of seed commonly recognized within this state as agricultural seeds and may include the seed of any plant that is being used as an agricultural crop when the Director of Agriculture establishes in rules and regulations that such seed is being used as agricultural seed;

(3) Blend means seeds consisting of more than one variety of a kind, each in excess of five percent by weight of the whole;

(4) Brand means a word, name, symbol, number, or design to identify seed of one person to distinguish it from seed of another person;

(5) Certifying agency means (a) an agency authorized under the laws of a state, territory, or possession of the United States to officially certify seed and which has standards and procedures approved by the United States Secretary of Agriculture to assure genetic purity and identity of the seed certified or (b) an agency of a foreign country which is determined by the United States Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by certifying agencies under subdivision (a) of this subdivision;

(6) Conditioning means drying, cleaning, scarifying, or other operations which could change the purity or germination of the seed and require the seed lot or any definite amount of seed to be retested to determine the label information;

(7) Director means the Director of Agriculture or his or her
(8) Dormant seed means viable seeds, other than hard seeds, which fail to germinate when provided the specified germination conditions for the kind of seed in question;

(9) Flower seed includes seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and commonly known and sold under the name of flower or wildflower seeds in this state;

(10) Germination means the emergence and development from the seed embryo of those essential structures which for the kind of seed in question are indicative of the ability to produce a normal plant under favorable conditions;

(11) Hard seed means seeds which remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat;

(12) Hybrid means the first generation seed of a cross produced by controlling the pollination and by combining (a) two or more inbred lines, (b) one inbred or a single cross with an open-pollinated variety, or (c) two varieties or species except open-pollinated varieties of corn (Zea mays). The second generation and subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names;

(13) Inert matter means all matter not seed which includes broken seeds, sterile florets, chaff, fungus bodies, and stones as established by rules and regulations;

(14) Kind means one or more related species or subspecies which singly or collectively are known by one common name, such as corn, oats, alfalfa, and timothy;

(15) Labeling includes all labels and other written, printed, stamped, or graphic representations, in any form whatsoever, accompanying or pertaining to any seed, whether in bulk or in containers, and includes representations on invoices;
(16) Lot means a definite quantity of seed in containers or bulk identified by a lot number or other mark, every portion of which is uniform within recognized tolerances for the factors that appear in the labeling;

(17) Mixture, mix, or mixed means seeds consisting of more than one kind, each present in excess of five percent by weight of the whole;

(18) Mulch means a protective covering of any suitable material placed with seed which acts to retain sufficient moisture to support seed germination and sustain early seedling growth and aids in preventing the evaporation of soil moisture, controlling weeds, and preventing erosion;

(19) Origin means a foreign country or designated portion thereof, a state, the District of Columbia, Puerto Rico, or a possession of the United States, where the seed was grown;

(20) Other crop seed means seed of plants grown as crops, other than the kind or variety included in the pure seed, as established by rules and regulations;

(21) Person includes any corporation, company, society, association, body politic and corporate, community, individual, partnership, limited liability company, or joint-stock company or the public generally;

(22) Primary noxious weed seeds means the seeds of any plant designated by the director as a noxious weed pursuant to the Noxious Weed Control Act. Pursuant to subdivision (1)(c) of section 81-2,147.06, the director may add to or subtract from this primary noxious weed seeds list;

(23) Prohibited noxious weed seeds means the seeds of plants which are highly destructive and difficult to control in this state by ordinary good cultural practice, the use of herbicides, or both and includes field bindweed (Convolvulus arvensis), hoary cress (Cardaria draba), Russian knapweed (Centaurea repens), johnsongrass (Sorghum halepense), Scotch thistle (Onopordum acanthium), morning glory (Ipomoea purpurea) when found in field crop seeds, skeletonleaf bursage (Ambrosia discolor),
woollyleaf bursage (Ambrosia tomentosa), serrated tussock (Nassella trichotoma), and puncturevine (Tribulus terrestris). Pursuant to subdivision (1)(c) of section 81-2,147.06, the director may add to or subtract from this prohibited noxious weed seeds list;

(24) Pure live seed means the product of the percent of germination plus percent of hard or dormant seed multiplied by the percent of pure seed divided by one hundred. The result shall be expressed as a whole number;

(25) Pure seed means seed exclusive of inert matter and all other seeds not of the seed being considered as established by rules and regulations;

(26) Record means any and all information which relates to the origin, treatment, germination, purity, kind, and variety of each lot or definite amount of seed handled in this state. Such information includes seed samples and records of declarations, labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests, and examinations;

(27) Restricted noxious weed seeds means the seeds of plants which are objectionable in fields, lawns, and gardens of this state but can be controlled by ordinary good cultural practice, the use of herbicides, or both and includes dodder (Cuscuta spp.), wild mustard (Brassica spp.), dock (Rumex spp.), quackgrass (Elytrigia repens), pennycress (Thlaspi arvense), purple loosestrife (Lythrum salicaria), and horsenettle (Solanum carolinense). Pursuant to subdivision (1)(c) of section 81-2,147.06, the director may add to or subtract from this restricted noxious weed seeds list;

(28) Sale in any of its variant forms means sale, to barter or exchange in the ordinary course of business or commerce, offer for sale, expose for sale, move, or transport, in any of their variant forms, but does not include any transaction, supply, distribution, barter, exchange, movement, or transport that is noncommercial in nature, or otherwise

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supplying;

(29) Screenings means the results of the process which removes, in any way, weed seed, inert matter, and other materials from any agricultural, vegetable, or flower seed in any kind of cleaning process;

(30) Seed library means a nonprofit, governmental, or cooperative organization that donates and receives donations of seeds with the purposes of promoting seed saving, educating the public about seeds, and providing access to free seeds;

(31) Seizure means a legal process carried out by court order against a definite amount or lot of seed;

(32) Stop-sale order means an administrative order provided by law restraining the sale, use, disposition, and movement of a definite amount or lot of seed;

(33) Tetrazolium (TZ) test means a type of test in which chemicals are used to produce differential staining of strong, weak, and dead tissues, which is indicative of the potential viability of seeds;

(34) Treated means that the seed has been given an application of a substance or subjected to a process or coating for which a claim is made or which is designed to reduce, control, or repel disease organisms, insects, or other pests which attack seeds or seedlings growing therefrom;

(35) Variety means a subdivision of a kind which is distinct, uniform, and stable. For purposes of this subdivision: (a) Distinct means that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge; (b) uniform means that variations in essential and distinctive characteristics are describable; and (c) stable means that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties;

(36) Vegetable seed includes the seeds of those crops which are
grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state; and

(37 36) Weed seed includes the seeds of any plant generally recognized as a weed within this state as established in rules and regulations and includes the primary noxious weed seeds, prohibited noxious weed seeds, and restricted noxious weed seeds.

Sec. 2. Section 81-2,147.05, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,147.05 (1) Sections 81-2,147.02 and 81-2,147.03 shall not apply:

(a) To seed or grain not intended for sowing purposes;

(b) To seed in storage in, or being transported or consigned to, a cleaning or conditioning establishment for cleaning or conditioning, except that the invoice or labeling accompanying any shipment of such seed shall bear the statement Seed for Conditioning, and any labeling or other representation which may be made with respect to the uncleaned unconditioned seed shall be subject to the Nebraska Seed Law;

(c) To any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier if such carrier is not engaged in producing, conditioning, or marketing agricultural, vegetable, or flower seeds subject to the Nebraska Seed Law; or

(d) To seed libraries.

(2) No person shall be subject to the penalties of the Nebraska Seed Law for having sold agricultural, vegetable, or flower seed which was incorrectly labeled or represented as to kind, variety, or origin, if required, which seeds cannot be identified by examination thereof, unless he or she has failed to obtain an invoice, genuine grower's declaration, or other labeling information and to take such other precautions as may be reasonable to insure the identity to be as stated.

Sec. 3. Sections 3 to 7 of this act shall be known and may be cited
as the Community Gardens Act.

Sec. 4. (1) The Legislature finds and declares that:

(a) Community gardens provide significant health, educational, and social benefits to the general public, especially for those who reside in urban and suburban areas of this state;

(b) The community garden movement (i) continues to provide low-cost food that is fresh and nutritious for those who may be unable to readily afford fresh fruits and vegetables for themselves or their families, (ii) promotes public health and healthier individual lifestyles by encouraging better eating habits and increased physical activity by growing food, (iii) fosters the retention and expansion of open spaces, particularly in urban environments, (iv) enhances urban and suburban environmental quality and community beautification, (v) provides inexpensive community building activities, recreation, and physical exercise for all age groups, (vi) establishes a safe place for community involvement and helps to reduce the incidence of crime, (vii) engenders a closer relationship between urban residents, nature, and the local environment, and (viii) fosters green job training and ecological education at all levels; and

(c) It is the public policy of this state to promote and foster growth in the number of community gardens and the acreage of such gardens.

(2) It is the intent of the Legislature and the purpose of the Community Gardens Act to foster growth in the number, size, and scope of community gardens in this state by encouraging state agencies, municipalities, and private parties in their efforts to promote community gardens.

Sec. 5. For purposes of the Community Gardens Act:

(1) Community garden means public or private land upon which individuals have the opportunity to raise a garden on land which they do not themselves own;

(2) Garden means a piece or parcel of land appropriate for
cultivation of herbs, fruits, flowers, nuts, honey, poultry for egg
production, maple syrup, ornamental or vegetable plants, nursery
products, or vegetables;

(3) Municipality means any county, village, or city or any office or
agency of a county, village, or city;

(4) State agency means any department or other agency of the State
of Nebraska;

(5) Use means to avail oneself of or to employ without conveyance of
title gardens on vacant public land by any individual or organization;
and

(6) Vacant public land means any land owned by the state or another
governmental subdivision, including a municipality, that is not in use
for a public purpose, is otherwise unoccupied, idle, or not being
actively utilized for a period of at least six months, and is suitable
for garden use.

Sec. 6. (1) A state agency or municipality having title to vacant
public land may permit community organizations to use such lands for
community garden purposes. Such use of vacant public land may be
conditioned on the community organization having liability insurance and
accepting liability for injury or damage resulting from use of the vacant
public land for community garden purposes. State agencies and
municipalities may adopt and promulgate rules, regulations, ordinances,
or resolutions to establish an application process for a community
garden. The applicant may include a request for access to a fire hydrant
or other source of water owned or operated by the state agency or
municipality or by a utility district in order to provide water to the
community garden. The state agency, municipality, or utility district
shall consider whether to supply the water to the applicant at a reduced
or fixed rate.

(2) A state agency or municipality which receives an application
pursuant to this section shall respond to the applicant within sixty days
from the date on which the application is received and shall make a final
determination within one hundred eighty days from such date.

Sec. 7. (1) The Director of Agriculture shall establish a community
gardens task force on or before August 1, 2015, to identify and develop
ways to encourage state agencies, municipalities, and individuals to
establish and expand community gardens. The director shall designate a
chairperson of the task force. The members of the task force shall be
appointed by the director and shall include no more than nine members. At
least three of the members shall be representatives of nonprofit
organizations involved with community gardens. The remaining members may
include representation from appropriate state agencies, existing
community gardens, counties, cities, towns, villages, utility districts,
and school districts.

(2) The director may request the assistance of other state agencies
to carry out the work of the task force.

(3) The goals of the task force may include, but are not limited to,
the study, evaluation, and development of recommendations (a) to
encourage the establishment and expansion of community gardens by state
agencies, municipalities, and individuals, (b) to encourage cooperation
between the activities and operations of community gardens and the
provision of donated food to local voluntary food assistance programs for
the poor and disadvantaged, and (c) to increase the benefits that
community gardens may provide to the community in which they are located.

(4) In carrying out its duties under subsection (3) of this section,
the task force may consider recommendations that (a) encourage the
execution of conservation easements by state agencies, municipalities, or
individuals to establish or protect community gardens, (b) encourage the
creation of mechanisms to transfer development rights to protect
community gardens or encourage the donation or lease of lands for
community gardens, (c) encourage development of model zoning codes, local
land use laws, or other municipal policies that could encourage the
establishment or retention of community gardens, and (d) provide for any
other activity to achieve the goals deemed appropriate by the task force.
(5) The task force shall issue a preliminary report to the
Department of Agriculture and electronically to the Legislature no later
than December 15, 2015, and shall issue a final report to the Department
of Agriculture and electronically to the Legislature no later than
December 15, 2016.
Sec. 8. Original sections 81-2,147.01 and 81-2,147.05, Reissue
Revised Statutes of Nebraska, are repealed.
Sec. 9. Since an emergency exists, this act takes effect when
passed and approved according to law.