

## LEGISLATIVE BILL 263

Approved by the Governor May 9, 1997

Introduced by Dierks, 40

AN ACT relating to agriculture; to amend sections 54-854, 81-2,147.01 to 81-2,147.03, 81-2,147.06, and 81-2,147.10, Reissue Revised Statutes of Nebraska; to change noxious weed seed provisions; to define and redefine terms; to change fees and penalties; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 54-854, Reissue Revised Statutes of Nebraska, is amended to read:

54-854. A commercial feed shall be deemed to be adulterated if:

(1)(a) It bears or contains any poisonous or deleterious substance which may render it injurious to health, except that if the substance is not an added substance, such commercial feed shall not be considered adulterated under this subdivision if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health;

(b) It bears or contains any added poisonous, deleterious, or nonnutritive substance which is unsafe within the meaning of section 406, as amended, of the Federal Food, Drug, and Cosmetic Act, other than one which is (i) a pesticide chemical in or on a raw agricultural commodity or (ii) a food additive;

(c) It is or it bears or contains any food additive which is unsafe within the meaning of section 409, as amended, of the Federal Food, Drug, and Cosmetic Act;

(d) It is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a), as amended, of the Federal Food, Drug, and Cosmetic Act, except that when a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408, as amended, of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity, unless the feeding of such proposed feed will result or is likely to result in a pesticide residue in the edible product of the animal which is unsafe within the meaning of section 408(a), as amended, of the Federal Food, Drug, and Cosmetic Act; or

(e) It is or it bears or contains any color additive which is unsafe within the meaning of section 706, as amended, of the Federal Food, Drug, and Cosmetic Act;

(2) Any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor;

(3) Its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling;

(4) It contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules and regulations adopted and promulgated by the director to assure that the drug meets the requirements of the Commercial Feed Act as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In adopting and promulgating such rules and regulations, the director shall adopt and promulgate the current federal Good Manufacturing Practice Regulations for medicated feed premixes and for medicated feeds established under authority of the Federal Food, Drug, and Cosmetic Act unless he or she determines that they are not appropriate to the conditions which exist in this state;

(5) It contains primary noxious weed seeds as defined in section 81-2,147.01;

(6) It contains prohibited noxious weed seeds as defined in subdivision (18)(a) of section 81-2,147.01 in amounts exceeding the limits which the director shall establish by rule or regulation; or

~~(6)~~ (7) It has been manufactured, ground, mixed, bagged, or held under unsanitary conditions whereby it may have become contaminated with filth

or been rendered injurious to animal health. An animal feed may be deemed to be contaminated with filth if not protected by all reasonable means and as far as necessary from dust, dirt, insect, or bird, rodent, or other animal excretion, and other foreign or injurious contamination.

Sec. 2. 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 shall mean 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 shall include 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 shall mean means seeds consisting of more than one variety of a kind, each in excess of five percent by weight of the whole;

(4) Brand shall mean 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 shall mean 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 shall mean 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 shall mean means the Director of Agriculture or his or her designated employee or representative or authorized agent;

(8) Dormant seed shall mean 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 shall include 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 shall mean 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 shall mean 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 shall mean 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 shall mean means all matter not seed which shall include includes broken seeds, sterile florets, chaff, fungus bodies, and stones as established by rules and regulations;

(14) Kind shall mean 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 shall include 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 shall include includes representations on invoices;

(16) Lot shall mean 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 shall mean 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;

(18) Noxious weed seeds shall mean prohibited noxious weed seed and restricted noxious weed seed, except that the director may by rule or regulation add to or subtract from the list of seed included under either category whenever he or she finds that such additions are within or subtractions are not within the respective categories-

(a) Prohibited noxious weed seeds shall mean 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 as well as certain weeds, including field bindweed (*Convolvulus arvensis*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), hoary cress (*Cardaria draba*), Russian knapweed (*Centaurea repens*), spotted knapweed (*Centaurea maculosa*), diffuse knapweed (*Centaurea diffusa*), johnsongrass (*Sorghum halepense*), musk thistle (*Carduus nutans*), plumeless thistle (*Carduus acanthoides*), 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*);

(b) Restricted noxious weed seeds shall mean the seeds of such plants which are objectionable in fields, lawns, and gardens of this state; but can be controlled by good cultural practices, the use of herbicides, or both and include dodder (*Cuscuta spp.*), wild mustard (*Brassica spp.*), dock (*Rumex spp.*), quackgrass (*Elytrigia repens*), pennycress (*Thlaspi arvense*), purple looserife (*Lythrum salicaria*), and horse-nettle (*Solanum carolinense*);

(19) Origin shall mean 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 shall mean 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 shall include 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 the following plants: Canada thistle (*Cirsium arvense*), leafy spurge (*Euphorbia esula*), musk thistle (*Carduus nutans*), plumeless thistle (*Carduus acanthoides*), spotted knapweed (*Centaurea maculosa*), diffuse knapweed (*Centaurea diffusa*), and any other 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) (24) Pure live seed shall mean 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;

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

(24) (26) Record shall mean 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 shall include 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 81-2,147.02, the director may add to or subtract from this restricted noxious weed seeds list:

~~(25)~~ ~~(28)~~ Sale in any of its variant forms shall mean means sale, to barter, exchange, offer for sale, expose for sale, move, or transport, in any of their variant forms, or otherwise supplying;

~~(26)~~ ~~(29)~~ Screenings shall mean 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;

~~(27)~~ ~~(30)~~ Seizure shall mean means a legal process carried out by court order against a definite amount or lot of seed;

~~(28)~~ ~~(31)~~ Stop-sale order shall mean means an administrative order provided by law restraining the sale, use, disposition, and movement of a definite amount or lot of seed;

~~(29)~~ ~~(32)~~ Tetrazolium (TZ) test shall mean 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;

~~(30)~~ ~~(33)~~ Treated shall mean 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;

~~(31)~~ ~~(34)~~ Variety shall mean means a subdivision of a kind which is distinct, uniform, and stable. For purposes of this subdivision: (a) Distinct shall mean 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 shall mean means that variations in essential and distinctive characteristics are describable; and (c) stable shall mean 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;

~~(32)~~ ~~(35)~~ Vegetable seed shall include 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

~~(33)~~ ~~(36)~~ Weed seed shall include includes the seeds of any plant generally recognized as a weed within this state as established in rules and regulations and shall include includes the primary noxious weed seeds, prohibited noxious weed seeds, and restricted noxious weed seeds.

Sec. 3. 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 ~~(4)~~ (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

Little

Sand

Yellow

Dropseed, sand

Buffalograss

Gramma:

Sidecoats

Blue

Indiangrass

Lovegrass, sand

Needlegrass, green

Prairie sandreed

Ricegrass, Indian

Wheatgrass, western

Switchgrass

*Andropogon gerardii*

*Schizachyrium scoparium*

*Andropogon hallii*

*Bothriochloa ischaemum*

*Sporobolus cryptandrus*

*Buchloe dactyloides*

*Bouteloua curtipendula*

*Bouteloua gracilis*

*Sorghastrum nutans*

*Eragrostis trichodes*

*Stipa viridula*

*Calamovilfa longifolia*

*Oryzopsis hymenoides*

*Elymus smithii*

*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:

(4) (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;

(5) 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:

(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:

(5) (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;

~~(6)~~ (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;

~~(7)~~ (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;

~~(8)~~ (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

~~(9)~~ (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;

(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. 4. Section 81-2,147.03, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,147.03. (1) It shall be unlawful for any person to sell any agricultural, vegetable, or flower seed within this state:

(a) Unless the test to determine the percentage of germination required in section 81-2,147.02 has been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, except that for those seeds as established in rules and regulations, the test to determine the percentage of germination shall have been completed within a twelve-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale. Seeds packaged in hermetically sealed containers under the conditions established in rules and regulations may be sold for a period of thirty-six months after the last day of the month that the seeds were tested prior to packaging. If the seeds in hermetically sealed containers are sold more than thirty-six months after the last day of the month in which they were tested prior to packaging, they shall have been retested for germination within a nine-month period, exclusive of the calendar month in which the retest was completed, immediately prior to their sale;

(b) Not labeled in accordance with the provisions of the Nebraska Seed Law or having a false and misleading labeling. In case agricultural seed is sold in bulk or sold from bulk, the information required under section 81-2,147.02 may be supplied by a printed or written statement to be furnished to any purchaser of such seed;

(c) Pertaining to which there has been a false or misleading advertisement, statement, invoice, or declaration;

(d) Consisting of or containing primary noxious weed seeds;

~~(d) (e) Consisting of or containing prohibited noxious weed seeds, subject to recognized tolerances;~~

~~(e) (f) Consisting of or containing restricted noxious weed seeds per pound in excess of the number declared on the label attached to the container of the seed or associated with the seed, subject to recognized tolerances. The recognized tolerances shall not exceed one-half of one percent by weight;~~

~~(f) (g) Containing more than two percent by weight of all weed seed other than primary noxious weed seed, prohibited noxious weed seed, and of which not more than one-half of one percent may be restricted noxious weed seed. This subdivision does not apply to agricultural, vegetable, or flower seeds specifically allowed those kinds as established in the rules and regulations to contain which shall not contain more than four percent or less by weight of weed seed, of which not more than one-half of one percent may be restricted noxious weed seed;~~

~~(g) (h) If any labeling, advertising, or other representation subject to the Nebraska Seed Law represents the seed to be certified or registered seed unless (i) it has been determined by a certifying agency that such seed was produced, conditioned, and packaged and conforms to standards of purity as to kind or kind and variety in compliance with rules and regulations of such agency pertaining to such seed and (ii) the seed bears an official label issued for such seed by a certifying agency stating that the seed is certified or registered; and~~

~~(h) (i) For reproductive purposes which is By variety name seed not certified by an official certifying agency when it is a variety for which an application has been made or accepted or a certificate of plant variety protection is issued under the federal Plant Variety Protection Act specifying sale only as a class of certified seed, except that seed from a certified lot may be labeled as to variety name when used in a mixture by or with the approval of the owner of the variety.~~

(2) It shall be unlawful for any person within this state:

(a) To detach, alter, deface, or destroy any label provided for in the Nebraska Seed Law or established in the rules and regulations adopted and promulgated under such law or to alter or substitute seed in a manner that may defeat the purpose of such law;

(b) To disseminate any false or misleading advertisements concerning



agricultural, vegetable, or flower seeds in any manner or by any means;

(c) To hinder or obstruct in any way any authorized person in the performance of his or her duties under the Nebraska Seed Law;

(d) To fail to comply with a stop-sale order or to move or otherwise handle or dispose of any lot of seed held under a stop-sale order or tags attached thereto, except with written permission of the enforcing officer and for the purpose specified thereby;

(e) To sell screenings if they contain any seed of primary, prohibited, or restricted noxious weeds unless they have been conditioned to destroy the viability of such seed;

(f) To use the word trace as a substitute for any statement which is required;

(g) To use the word type in any labeling in connection with the name of any agricultural seed variety; or

(h) To plant seed which the person knows contains a prohibited noxious weed seed in excess of the recognized tolerances utilized in subdivision (i)(d) (1)(e) of this section or contains primary noxious weed seed; or

(i) To alter or falsify any seed label, seed test, laboratory report, record, or other document in a manner which creates a false or misleading impression as to kind, variety, history, quality, or origin of the seed.

(3) All seed sold shall be labeled on the basis of tests performed by a seed laboratory using Rules for Testing Seeds adopted by the Association of Official Seed Analysts on as of January 1, 1991 1997.

Sec. 5. Section 81-2,147.06, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,147.06. (1) The duty of enforcing the Nebraska Seed Law and carrying out such law and requirements shall be vested in the director. It shall be the duty of the director:

(a) To sample, inspect, make analysis of, and test agricultural, vegetable, and flower seed sold within this state for sowing purposes at such time and place and to such extent as he or she may deem necessary to determine whether such agricultural, vegetable, or flower seed is in compliance with the Nebraska Seed Law and to notify promptly the persons who sold the seed of any violation;

(b) To adopt and promulgate rules and regulations in compliance with the Administrative Procedure Act as are specifically authorized in the Nebraska Seed Law governing the method of sampling, inspecting, analyzing, testing, and examining agricultural, vegetable, and flower seed and the tolerances to be followed in the administration of the law, which shall be in general accord with officially prescribed practice in interstate commerce, and such other rules and regulations as may be necessary to secure the efficient enforcement and full intent of such law;

(c) To adopt and promulgate rules and regulations in compliance with the Administrative Procedure Act by establishing; adding to, or subtracting from the primary noxious weed seeds list, the prohibited noxious weed seeds list, and the restricted noxious weed list seeds list, as defined in section 81-2,147.01, whenever the director finds that a noxious weed seed should or should not be within one of these lists;

(d) To adopt and promulgate rules and regulations in compliance with the Administrative Procedure Act establishing reasonable standards of germination for agricultural, vegetable, and flower seed; and

(e) To adopt and promulgate rules and regulations in compliance with the Administrative Procedure Act to establish, add to, or subtract from the seeds listed in subdivision (2)(i) of section 81-2,147.02 and for which the tetrazolium (T2) test may be employed as the official test to indicate the potential viability of the seed.

(2) For the purpose of carrying out the law, the director may:

(a) Enter upon any public or private premises during regular business hours in order to have access to seeds and the records connected with such seeds subject to the law and the rules and regulations adopted and promulgated under such law and enter any truck or other conveyor by land, water, or air at any time when the conveyor is accessible for the same purpose;

(b) Issue and enforce a written or printed stop-sale order to the owner or custodian of any lot of agricultural, vegetable, or flower seed which the director finds is in violation of any of the provisions of the law or rules and regulations adopted and promulgated under such law, which order shall prohibit further sale, conditioning, and movement of such seed, except on approval of the enforcing officer, until such officer has evidence that the law has been complied with and he or she has issued a release from the

stop-sale order of such seed. With respect to seed which has been denied sale, conditioning, or movement as provided in this subdivision, the owner or custodian of such seed shall have the right to appeal from such order in accordance with the Administrative Procedure Act, praying for a judgment as to the justification of such order and for the discharge of such seed from the order prohibiting the sale, conditioning, or movement in accordance with the findings of the court. This subdivision shall not be construed as limiting the right of the director to proceed as authorized by other sections of the law;

(c) Establish and maintain or make provision for seed-testing facilities, employ qualified persons, and incur such expenses as may be necessary to comply with the law or rules and regulations adopted and promulgated under the law;

(d) Make or provide for making purity, noxious weed seed, tetrazolium (TZ), germination, and other tests of seed as established in rules and regulations and recommended by rule of the Association of Official Seed Analysts for persons on request, adopt and promulgate rules and regulations in compliance with the Administrative Procedure Act governing such testing, and fix and collect charges for the tests made, which charges shall not exceed the cost of such tests. All fees shall be remitted to the state treasury and by the State Treasurer placed in the Nebraska Seed Administrative Cash Fund;

(e) Cooperate with the United States Department of Agriculture and other agencies in seed law enforcement; and

(f) Cooperate and enter into agreements with any person necessary to carry out the purpose of the law.

Sec. 6. Section 81-2,147.10, Reissue Revised Statutes of Nebraska, is amended to read:

81-2,147.10. (1) No person who labels for sale in Nebraska agricultural, vegetable, or flower seeds shall sell such seeds in Nebraska unless he or she holds a valid seed permit. Application for the permit shall be made to the Department of Agriculture on forms prescribed and furnished by the department. Application forms shall be submitted to the department accompanied by an annual registration fee of fifteen dollars based on the number of pounds of agricultural, vegetable, or flower seed the applicant labeled and sold during the preceding calendar year. Registrations shall be renewed on or before January 1 of each year. If a person fails to renew the registration by January 31 of each year, such person shall also be required to pay a reinstatement penalty of fifteen dollars in addition to the registration fee delinquency fee of twenty percent per month of the amount of the fee due, not to exceed one hundred percent of the annual registration fee.

The annual registration fee shall be:

Fee:	Applicant sold:
<u>Twenty-five dollars</u>	<u>Less than ten thousand pounds of agricultural seed (other than lawn and turf seed);</u>
<u>Fifty dollars</u>	<u>Ten thousand or more pounds of agricultural seed (other than lawn and turf seed) and less than two hundred fifty thousand pounds of any kind of seed;</u>
<u>One hundred dollars</u>	<u>Two hundred fifty thousand or more pounds and less than five hundred thousand pounds of seeds;</u>
<u>Two hundred fifty dollars</u>	<u>Five hundred thousand or more pounds and less than one million pounds of seeds;</u>
<u>Three hundred fifty dollars</u>	<u>One million or more pounds and less than five million pounds of seeds;</u>
<u>Seven hundred fifty dollars</u>	<u>Five million or more pounds of seeds.</u>

(2) Subsection (1) of this section shall not apply-

(a) To any person who labels and sells less than ten thousand pounds of agricultural seed in Nebraska each calendar year, except that any person who labels and sells grass seeds and mixtures of grass seeds intended for lawn or turf purposes shall be required to obtain a permit pursuant to subsection (1) of this section; or

(b) If ~~if~~ the agricultural, vegetable, or flower seeds being labeled and sold are of the breeder or foundation seed classes of varieties developed



by publicly financed research agencies intended for the purpose of increasing the quantity of seed available.

(3) The director shall refuse to issue a permit when the application for such permit is not in compliance with the Nebraska Seed Law or any rules and regulations adopted and promulgated pursuant to such law and may cancel any permit when it is subsequently found to be in violation of any provision of such law, rule, or regulation or when the director has satisfactory evidence that the person has used fraudulent or deceptive practices in an attempted evasion of the law, rule, or regulation, except that no permit shall be refused or canceled until the person shall have been given an opportunity to be heard before the director.

Sec. 7. Original sections 54-854, 81-2,147.01 to 81-2,147.03, 81-2,147.06, and 81-2,147.10, Reissue Revised Statutes of Nebraska, are repealed.