

LEGISLATIVE BILL 460

Approved by the Governor June 7, 1985

Introduced by R. Johnson, 34

AN ACT relating to agriculture; to amend sections 2-1016, 2-1017, 2-1019, 2-1020, 81-216.04, 81-216.05, 81-216.24, and 81-2,147 to 81-2,147.09, Reissue Revised Statutes of Nebraska, 1943, and sections 81-201, 81-216.21, and 89-187, Revised Statutes Supplement, 1984; to create funds as prescribed; to provide for and change provisions relating to fees as prescribed; to change provisions relating to the powers and duties of the Department of Agriculture and its director; to redefine terms; to require certain persons who label seeds to obtain permits and pay fees as prescribed; to provide rules and regulations; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. There is hereby created a fund to be known as the Insect Pest and Plant Disease Administrative Cash Fund. All money received under sections 2-1001 to 2-1059 shall be paid to the state treasury and credited by the State Treasurer to such fund. All money credited to the fund shall be used by the Department of Agriculture to aid in defraying the cost of administering sections 2-1001 to 2-1059 and section 1 of this act. Any money in the Insect Pest and Plant Disease Administrative Cash Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 2. That section 2-1016, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1016. On issuing a certificate to a nurseryman or other person, after an inspection, as provided in section 2-1012, the Department of Agriculture shall collect therefor a certificate fee, the amount of which shall be determined by the Director of Agriculture, based upon the amount of nursery stock inspected, the time occupied, and the distance traveled in making the inspection. All fees shall be paid into the state treasury and credited by the State Treasurer to the ~~General~~ Insect Pest and Plant Disease Administrative Cash Fund.

Sec. 3. That section 2-1017, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1017. Upon issuing a dealer's certificate to

any dealer residing in Nebraska, but not growing nursery stock in this state, without an inspection, as provided in section 2-1013, the certificate fee shall be thirty dollars. All fees shall be paid into the state treasury and by the State Treasurer credited to the General Insect Pest and Plant Disease Administrative Cash Fund.

Sec. 4. That section 2-1019, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1019. Upon issuing an agent's permit, as provided in section 2-1015, the fee shall be five dollars; and said such fees shall be credited by the State Treasurer to the General Insect Pest and Plant Disease Administrative Cash Fund.

Sec. 5. That section 2-1020, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-1020. Any owner of florist's or greenhouse stock or annual or biennial plants, bulbs, or roots, or of field, vegetable, or flower seeds, which he or she wishes to ship into another state or country, may apply to the Department of Agriculture for an inspection of the same with reference to the presence of insect pests or plant diseases likely to prevent the acceptance of such plants, bulbs, roots, or seeds in such state or country, agreeing in the his application to pay in full the expenses of the inspection or inspections; and upon receipt of such application and agreement, or as soon thereafter as may be conveniently practicable, the department may comply with such request, and upon receipt of the expenses of the inspection and a fee of not less than ten dollars, it shall issue to the applicant a certificate to the facts disclosed. Persons who grow or sell both nursery stock and florist's greenhouse stock shall not be required to pay two fees and secure two certificates. To such persons, upon the payment of one fee and expenses of inspection, a certificate shall be issued by the department, and the said certificate shall include both nursery stock and florist's greenhouse stock, provided such stock is found to be apparently free from dangerously injurious insect pests and plant diseases. All fees shall be paid into the state treasury and by the State Treasurer credited to the General Insect Pest and Plant Disease Administrative Cash Fund.

Sec. 6. That section 81-201, Revised Statutes Supplement, 1984, be amended to read as follows:

81-201. The Department of Agriculture shall have power (1) to encourage and promote, in every practicable manner, the interest of agriculture; 7 including horticulture, the livestock industry, dairying, cheesemaking, poultry, beekeeping, the production of wool, and all other allied industries; (2) to promote methods of conducting these several industries the industry of agriculture with a view to increasing the production and facilitating the distribution thereof at the least cost; (3) to collect and publish statistics relating to crop

production, marketing and farm economies; the production and marketing of beef, pork, poultry, mutton, wool, butter, cheese, and other agricultural products, so far as such statistical information may be of value to the agricultural and allied interests of the state, and to cooperate with the federal government in the matter of collecting and publishing such statistical information; and the department shall include in its publications the reports of agricultural, horticultural, and like societies, and of livestock associations, which published statistics shall be the official agricultural statistics of the state; (4) to publish and distribute the Nebraska Weed Book and the Nebraska Insect Book and supplemental inserts thereto, for sale and distribution to the public for an amount not to exceed the cost of publication and distribution. All money collected from the sale of the publications shall be paid to the State Treasurer and deposited in the Weed and Insect Books Cash Fund; (5) to encourage the planting of trees and shrubs and the improvement of farm homes generally; (6) to produce and manufacture biological products to be distributed to livestock producers at the actual cost thereof; (7) to inquire into the causes of contagious, infectious, and communicable diseases among domestic animals and the means for the prevention and cure of the same; (8) to see that livestock and stockyards, and other like places where livestock is confined, housed, or fed, are properly cared for; (9) (6) to execute and enforce all laws relating to the inspection of foods, drugs, dairy products, vegetable oils, commission merchants, cider and vinegar, oleomargarine and butterine, sanitation of premises used for manufacturing and preparation of foods, cold storage warehouses, seeds, commercial feeding stuffs, livestock remedies, hotels and inns, weights and measures, commercial fertilizers, and other matters within its jurisdiction; and to adopt necessary rules and regulations for the administration and enforcement of such laws; and (10) (7) to employ special investigators who shall be appointed deputy state sheriffs by the Governor and who shall, upon qualifying for such office, possess all the powers which attach to such office, except that their powers and duties shall be restricted to the enforcement of the animal disease control laws of the State of Nebraska within the jurisdiction of the Department of Agriculture.

Sec. 7. That section 81-216.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-216.04. Retail Food Code shall mean the 1982 1978 Recommendations Recommendation of the Association of Food and Drug Officials and U.S. Department of Health and Human Services Administration entitled Model Retail Food Store Sanitation Ordinance, Draft of Code, as it exists on August 1, 1981 the effective date of this act, except sections 8-601, and 8-602, 9-103, and 9-105 and Parts II

and III of such code.

Sec. 8. That section 81-216.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-216.05. Food Salvage Code shall mean the 1984 Recommendation of the Association of Food and Drug Officials and U.S. Department of Health and Human Services Administration's proposed model ordinance entitled Model Food Salvage Ordinance, as referred to in the Federal Register of December 18, 1979, at page 74921 Code, as it exists on August 1, 1981 the effective date of this act, except sections 8-101, 8-201, 11-101, 12-401, and 12-402 of such code.

Sec. 9. That section 81-216.21, Revised Statutes Supplement, 1984, be amended to read as follows:

81-216.21. (1) Permits shall be required of those persons specified in the codes adopted by reference pursuant to sections 81-216.15 to 81-216.19. In addition, food processing establishments as defined in the Food Service Code and food storage establishments shall be required to hold permits. The procedures applicable to the issuance, suspension, or revocation of permits for food processing establishments and food storage establishments shall be as prescribed for food service establishments in Chapter 10 of the Food Service Code. Permits may be suspended or revoked for violation of the applicable provisions of sections 81-216.01 to 81-216.37 and the Food Processing and Storage Code.

(2) As a condition precedent to the issuance of permits required pursuant to sections 81-216.01 to 81-216.37, an applicant shall pay an initial permit fee of fifty twenty dollars.

(3) Except as provided in subsections (6) to ~~(8)~~ (9) of this section and subsection (1) of section 81-216.27, permit holders shall pay annual inspection fees on or before August 1 of each year as follows:

(a) Food service establishments, nontemporary, fifty thirty-five dollars plus fifteen dollars for each separate and distinct food preparation area within the establishment other than the first such area;

(b) Mobile food units or pushcarts, fifty thirty-five dollars plus five dollars per unit or pushcart;

(c) Temporary food service establishment, fifty twenty-five dollars plus fifteen dollars for each additional food handling operation;

(d) Food processing establishment, fifty thirty-five dollars plus fifteen dollars for each additional food handling operation within the establishment;

(e) Food storage establishment, fifty thirty-five dollars plus fifteen dollars for each additional food handling operation within the establishment;

(f) Retail food store, fifty thirty-five dollars plus fifteen dollars for each food preparation area within the store except the meat processing and produce handling areas;

(g) Salvage processing ~~plant~~ facility, fifty thirty-five dollars plus fifteen dollars for each additional food handling operation within the establishment;

(h) Salvage distributor, fifty thirty-five dollars plus fifteen dollars for each additional food handling operation within the establishment; and

(i) One to ten vending machines, five ten dollars; eleven to twenty vending machines, ten twenty dollars; twenty-one to thirty vending machines, fifteen thirty dollars; thirty-one to forty vending machines, twenty forty dollars; and over forty vending machines, twenty-five fifty dollars.

(4) Whenever an establishment is engaged in more than one of the food handling activities listed under subsection (3) of this section, the inspection fee charged shall be based upon the primary activity conducted within the establishment as determined by the department.

(5) The department may impose a penalty for inspection fees which are more than one month delinquent. Such penalty may not exceed twenty per cent of the fee for each month of delinquency.

(6) Educational Religious, charitable, and fraternal organizations, educational institutions, health care facilities, nursing homes, and governmental organizations operating any type of food service establishment other than a mobile food unit or pushcart, shall be exempt from the requirements in subsections (1) to (5) of this section.

(7) Persons whose primary food-related business activity is determined by the department to be egg handling within the meaning of sections 2-3501 to 2-3525 and who are validly licensed and paying fees pursuant to such sections, shall be exempt from the permit and inspection fee requirements of sections 81-216.01 to 81-216.37.

(8) Persons holding permits or licenses and regulated under the Nebraska Pasteurized Milk Law or the Nebraska Manufacturing Milk Act and egg handlers licensed and regulated under the Nebraska Graded Egg Act shall be exempt from the provisions of sections 81-216.01 to 81-216.37.

(9) Religious, charitable, and fraternal organizations operating any type of temporary food service establishment, mobile food unit, or pushcart shall be exempt from the requirements of subsections (1) to (5) of this section. Any such organization operating any nontemporary food service establishment prior to July 1, 1985, shall be exempt from the requirements of subsection (2) of this section.

Sec. 10. That section 81-216.24, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-216.24. It shall be unlawful for a salvage distributor or salvage processing ~~plant~~ facility to operate in a manner not in conformity with the provisions of the Food Salvage Code. It shall be the responsibility of the department to regulate the operation of salvage distributors and salvage processing ~~plants~~ facilities in the manner set out in the Food Salvage Code.

Sec. 11. That section 81-2,147, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,147. Sections 81-2,147 to 81-2,147.09 and sections 13 and 18 of this act shall be known and cited as the Nebraska Seed Law.

Sec. 12. That section 81-2,147.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,147.01. As used in ~~sections 81-2,147 to 81-2,147-09~~ the Nebraska Seed Law, unless the context otherwise requires:

(1) Person shall include any individual, partnership, corporation, company, society, or association;

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

(3) Vegetable seed shall include 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 seeds in this state;

(4) Weed seed shall include the seeds of any plant commonly known as a weed. At the discretion of the Director of Agriculture, any exotic or native plant that interferes with or threatens crop production may be classified as a weed;

(5) Screenings shall include chaff, sterile florets, immature seed, weed seed, inert matter, and other materials removed in any way from any agricultural seed in any kind of cleaning process;

(6) Noxious weed seeds are divided into two classes, prohibited noxious weed seed and restricted noxious weed seed as defined in subdivisions (a) and (b) of this subdivision, except ; ~~PROVIDED~~, that the Director of Agriculture may add to or subtract from the list of seed included under either definition whenever he or she finds after public hearing, that such additions or subtractions are within the respective definitions:

(a) Prohibited noxious weed seeds are the seeds of plants such as not only reproduce by seed but may also spread by underground roots, stems, and other reproductive parts and which, when well established, are highly destructive and difficult to control in this state by ordinary good cultural practice, as well as certain ~~annual~~ weeds, and all described as prohibited noxious weed seed by ~~section 2-953, and listed therein~~, specifically including field bindweed (*Convolvulus arvensis*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), hoary cress (*Cardaria draba*), Russian knapweed (*Centaurea repens*), 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, skeleton-leaf bursage (*Franseria discolor*), woollyleaf bursage (*Franseria tomentosa*), and puncturevine (*Tribulus terrestris*); and

(b) Restricted noxious weed seeds are the seeds of such plants as are very objectionable in fields, lawns, and gardens of this state, but can be controlled by good cultural practices, and include dodder (*Cuscuta* spp.), wild mustard (*Brassica* spp.), dock (*Rumex* spp.), quackgrass (*Agropyron repens*), pennycress (*Thlaspi arvense*), and horsenettle (*Solanum carolinense*);

(7) Labeling shall include all labels and other written, printed, or graphic representations, in any form whatsoever, accompanying or pertaining to any seed, whether in bulk or in containers, and includes representations on invoices;

(8) Advertisement shall mean 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 seed, within the scope of ~~sections 81-2,147 to 81-2,147-09~~ the Nebraska Seed Law;

(9) Record shall include all information relating to the shipment or shipments involved and includes a file sample of each lot of seed;

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

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

(12) Kind shall mean one or more related species or subspecies which singly or collectively is known by one common name, such as corn, oats, alfalfa, and timothy;

(13) Variety shall mean a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristics, by which it can be differentiated from other plants of the same kind;

(14) Lot shall mean a definite quantity of seed in bag 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;

(15) Hybrid shall mean 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 selected clones, seed lines, varieties, or species. The second generation and subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names;

(16) Pure seed, germination, and other seed labeling and testing terms in common usage shall be defined as in the current rules for seed testing published by the Association of Official Seed Analysts, except as provided by subdivision (2)(i) of section 81-2,147.02;

(17) Treated shall mean given an application of a substance or subjected to a process designed to reduce, control, or repel disease organisms, insects, or other pests which attack seeds or seedlings growing therefrom;

(18) A private hearing may consist of a discussion of facts between the person charged and the enforcement officer;

(19) Certifying agency shall mean (a) an agency authorized under the laws of a state, territory, or possession of the United States to officially certify seed, or (b) an agency of a foreign country which is determined by the United States Secretary of Agriculture to adhere to procedure and standards for seed certification comparable to those adhered to generally by seed certifying agencies under subdivision (a) of this subdivision;

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

(21) Dormant seed shall mean viable seeds, other than hard seeds, which fail to germinate when provided the specified germination conditions for the kind of seed in question. Viability of ungerminated seeds may be determined by any appropriate method or combination of methods, such as a cutting test, tetrazolium test, scarification, and application of germination-promoting chemicals;

(22) Tetrazolium test shall mean 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; and

(23) Mixture shall mean seeds consisting of more than one kind or variety, each present in excess of five per cent of the whole.

Sec. 13. (1) No person who labels for sale in Nebraska agricultural or vegetable seeds shall sell, offer

for sale, expose for sale, or transport for sale such seeds in Nebraska unless he or she holds a valid 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. Registrations shall be renewed on or before January 1 of each year.

(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. 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 the agricultural or vegetable 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 of Agriculture shall refuse to issue a permit when the application for such permit is not in compliance with the Nebraska Seed Law and may cancel any permit when it is subsequently found to be in violation of any provision of such law or when the director has satisfactory evidence that the person has used fraudulent or deceptive practices in an attempted evasion of the provisions of such law or the rules and regulations adopted and promulgated pursuant thereto, 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. 14. That section 81-2,147.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,147.02. Each container of agricultural or vegetable seeds, which is sold, offered for sale, exposed for sale, or transported 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, or any vegetable seeds or any mixture thereof, for seeding purposes, that have been treated, unless each container thereof bears a label giving the following information and statements in accordance with the rules and regulations as defined in ~~sections 81-2,147 to 81-2,147-09~~ the Nebraska Seed Law:

(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 of Agriculture as adequate for the protection of the public, such as, Do not use for food or feed or oil purposes, except ; ~~PROVIDED~~; that the caution statement for mercurials and similarly toxic substances, as defined in such 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 of Agriculture 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;

(2) For agricultural seeds except for grass seed mixtures as provided in subdivision (3) of this section:

(a) The commonly accepted name of the kind and variety of each agricultural seed component, in excess of five per cent 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 designated in regulations, is not stated, the label shall show the name of the kind and the words, Variety Not Stated. Hybrids shall be labeled as hybrids. When more than one component is required to be named, the word mixture, mixed, or blend shall be shown conspicuously on the label;

(b) The lot number or other lot identification;

(c) Origin, state, or foreign country, if known, of alfalfa, red clover, and field corn, except hybrid corn. 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 of each kind of restricted noxious weed seed per pound:

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

(ii) For all other agricultural seed or agricultural seed mixtures not included in group (i) above, 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; the percentage of hard seed, if present; and the calendar month and year the test was completed to determine such percentages. 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;

(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 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, and similar seed when extreme dormancy is encountered, the result of a tetrazolium 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 scopari
Little	Schizachyrium scoparium
Sand	Andropogon hallii
Yellow	Bothrichloa ischaemum
Dropseed, sand	Sporobolus cryptandrus

Cramas:

Side-Oats	Bouteloua curtipendula
Blue	Bouteloua gracilis
Blue	Bouteloua gracilis
Indiangrass	Sorghastrum nutans
Lovegrass, sand	Eragrostis trichodes
Needlegrass, green	Stipa viridula
Needle and thread	Stipa comata
Reedgrass, prairie sand	Calamovilfa longifolia
Ricegrass, Indian	Oryzopsis hymenoides
Wheatgrass, western	Agropyron smithii
Switchgrass	Panicum Virgatum; and
Switchgrass	Panicum virgatum; and

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

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

(a) The word mixed, mixture, 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 per cent 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;
 - (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 (3)(b) of this section;
 - (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, offers, or exposes such seed for sale within this state; and
 - (k) Net weight;
- (4) For vegetable seeds in containers of one pound or less:
- (a) The name of the kind and variety of seed;
 - (b) The calendar month and year the seeds were tested or the year for which the seed was packaged;
 - (c) For seeds which germinate less than the standard last established in the rules and regulations of the Director of Agriculture under ~~sections 81-27147 to 81-27147-09~~ the Nebraska Seed Law:
 - (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;
 - (d) The name and rate of occurrence of each kind of restricted noxious weed seed present; and
 - (e) The name and address of the person who labeled such seed or who sells, offers, or exposes such seed for sale within this state; and
- (5) For vegetable seeds in containers of more than one pound:
- (a) The name of each kind and variety present in excess of five per cent 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 (i) and (ii) the total germination and hard seed percentage may be stated as such, if desired;

(d) The name and rate of occurrence of each kind of restricted noxious weed seed present;

(e) Name and address of the person who labeled such seed or who sells, offers, or exposes such seed for sale within this state; and

(f) The labeling requirements for vegetable seeds in containers of more than one pound shall be deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser.

Sec. 15. That section 81-2,147.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,147.03. (1) It is unlawful for any person to sell, offer for sale, expose for sale, or to transport for sale any agricultural or vegetable seed within this state:

(a) Unless the test to determine the percentage of germination required in section 81-2,147.02 shall have been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation, except that seeds, packaged in hermetically sealed containers under the conditions defined in rules and regulations promulgated pursuant to ~~sections 81-2,147 to 81-2,147-09~~ the Nebraska Seed Law may be sold, exposed for sale, or offered for sale or transportation for a period of thirty-six months after the last day of the month that the seeds were tested prior to their packaging. If seeds in hermetically sealed containers are sold or exposed for sale or transportation more than thirty-six months after the last day of the month in which they were tested prior to packaging, they must 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, exposure for sale, or offer for sale or transportation;

(b) Not labeled in accordance with the provisions of ~~sections 81-2,147 to 81-2,147-09~~ the Nebraska Seed Law, or having a false and misleading labeling. In case agricultural seed is offered or exposed for sale in bulk or sold from bulk, the information required under subdivision (2) of 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;

(d) Consisting of or containing prohibited

noxious weed seeds, subject to recognized tolerances;

(e) 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;

(f) Containing more than two per cent by weight of all weed seed of which not more than one half of one per cent may be restricted noxious weed seed, except ; ~~PROVIDED~~, that this restriction shall not apply to native grasses or native grass mixtures ; ~~AND PROVIDED FURTHER~~, ~~that native grasses or native grass mixtures which~~ shall not contain more than four per cent by weight of weed seed of which not more than one half of one per cent may be restricted noxious weed seed;

(g) If any labeling, advertising, or other representation subject to ~~sections 81-2,147 to 81-2,147-09~~ the Nebraska Seed Law represents the seed to be certified or registered seed unless (i) it has been determined by a seed certifying agency that such seed was produced, ~~processed~~ 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 seed certifying agency stating that the seed is certified or registered; and

(h) By variety name seed not certified by an official seed certifying agency when it is a variety for which an application has been made for a certificate of plant variety protection under the 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 is unlawful for any person within this state:

(a) To detach, alter, deface, or destroy any label provided for in ~~sections 81-2,147 to 81-2,147-09~~ the Nebraska Seed Law or the rules and regulations made and promulgated under ~~sections 81-2,147 to 81-2,147-09~~ such law, or to alter or substitute seed in a manner that may defeat the purpose of ~~sections 81-2,147 to 81-2,147-09~~ such law;

(b) To disseminate any false or misleading advertisements concerning agricultural or vegetable 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 ~~provisions of sections 81-2,147 to 81-2,147-09~~ 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 express permission of the enforcing officer, and for the purpose specified thereby;

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

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

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

(3) All seed sold shall be labeled on the basis of tests performed.

Sec. 16. That section 81-2,147.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,147.04. Each person whose name appears on the label as handling agricultural or vegetable seeds subject to ~~sections 81-2,147 to 81-2,147-09~~ the Nebraska Seed Law shall keep for a period of two years complete records of each lot of agricultural or vegetable seed handled and keep for one year a file sample of each lot of seed after final disposition of the lot. All such records and samples pertaining to the shipment or shipments involved shall be accessible for inspection by the Director of Agriculture or his or her agent during customary business hours.

Sec. 17. That section 81-2,147.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,147.05. (1) The provisions of sections 81-2,147.02 and 81-2,147.03 do 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 ~~processing conditioning~~ establishment for cleaning or ~~processing conditioning~~, except , PROVIDED, that the invoice or labeling accompanying any shipment of such seed bears the statement Seed for ~~Processing Conditioning~~, and , AND PROVIDED FURTHER, ~~that~~ any labeling or other representation which may be made with respect to the uncleaned ~~unprocessed~~ unconditioned seed shall be subject to the ~~provisions of sections 81-2,147 to 81-2,147-09~~ Nebraska Seed Law; or

(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 , PROVIDED, ~~that~~ such carrier is not engaged in producing, ~~processing conditioning~~, or marketing agricultural or vegetable seeds subject to the ~~provisions of sections 81-2,147 to 81-2,147-09~~ Nebraska Seed Law;

(2) No person shall be subject to the penalties of ~~sections 81-2,147 to 81-2,147-09~~ the Nebraska Seed Law

for having sold or offered or exposed for sale agricultural or vegetable seed, which ~~was~~ ~~were~~ 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 that stated.

Sec. 18. There is hereby created a fund to be known as the Nebraska Seed Administrative Cash Fund. All money received pursuant to the Nebraska Seed Law shall be paid to the state treasury and credited by the State Treasurer to such fund. All money credited to the fund shall be used by the Department of Agriculture to aid in defraying the cost of administering such law. Any money in the Nebraska Seed Administrative Cash Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 19. That section 81-2,147.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,147.06. (1) The duty of enforcing the ~~provisions of sections 81-2,147 to 81-2,147-09 Nebraska Seed Law~~ and carrying out their ~~provisions~~ such law and requirements shall be vested in the Director of Agriculture. It is the duty of such officer, who may act through his or her authorized agents:

(a) To sample, inspect, make analysis of, and test agricultural and vegetable seed transported, sold, or offered or exposed for sale 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 or vegetable seed is ~~are~~ in compliance with the ~~provisions of sections 81-2,147 to 81-2,147-09 Nebraska Seed Law~~ and to notify promptly the persons who transported, sold, offered, or exposed the seed for sale, of any violation;

(b) To prescribe and, after public hearing following due public notice, to adopt and ~~promulgate~~ rules and regulations governing the method of sampling, inspecting, analyzing, testing, and examining agricultural and vegetable seed, and the tolerances to be followed in the administration of the ~~provisions of sections 81-2,147 to 81-2,147-09 Nebraska Seed 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 of the ~~provisions of sections 81-2,147 to 81-2,147-09 such law~~;

(c) To prescribe and, after public hearing following due public notice, establish, add to, or subtract therefrom by regulations a prohibited and restricted noxious weed list;

(d) To prescribe and, after public hearing following due public notice, to adopt rules and regulations establishing reasonable standards of germination for vegetable seeds; and

(e) To prescribe and, after public hearing following due public notice, establish, add to, or subtract therefrom by regulations the seeds listed in subdivision (2)(i) of section 81-2,147.02 and to which the tetrazolium test may be employed as the official test to indicate the potential viability of the seed.

(2) For the purpose of carrying out the provisions of sections 81-2,147 to 81-2,147-09 Nebraska Seed Law the Director of Agriculture, individually or through his or her authorized agents, is authorized:

(a) To enter upon any public or private premises during regular business hours in order to have access to seeds and the records connected therewith subject to sections 81-2,147 to 81-2,147-09 the Nebraska Seed Law and the rules and regulations under sections 81-2,147 to 81-2,147-09 such law, and any truck or other conveyer by land, water, or air at any time when the conveyer is accessible, for the same purpose;

(b) To issue and enforce a written or printed stop sale order to the owner or custodian of any lot of agricultural or vegetable seed which the Director of Agriculture finds is in violation of any of the provisions of sections 81-2,147 to 81-2,147-09 the Nebraska Seed Law or rules and regulations promulgated under sections 81-2,147 to 81-2,147-09 such law, which order shall prohibit further sale, precessing 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 , PROVIDED, that in respect to seed which has been denied sale, precessing conditioning, and movement as provided in this subdivision, the owner or custodian of such seed shall have the right to appeal from such order to a court of competent jurisdiction in the locality in which the seeds are found, praying for a judgment as to the justification of such order and for the discharge of such seed from the order prohibiting the sale, precessing conditioning, and movement in accordance with the findings of the court. The , AND PROVIDED FURTHER, that the provisions of this subdivision shall not be construed as limiting the right of the director to proceed as authorized by the provisions of other sections of sections 81-2,147 to 81-2,147-09 the Nebraska Seed Law;

(c) To establish and maintain or make provision for seed testing facilities, to employ qualified persons, and to incur such expenses as may be necessary to comply with these provisions;

(d) To make or provide for making purity and

germination tests of seed for farmers and dealers on request, to prescribe rules and regulations governing such testing, and to fix and collect charges for the tests made. All fees shall be remitted to the state treasury and by the State Treasurer placed in the General Nebraska Seed Administrative Cash Fund; and

(e) To cooperate with the United States Department of Agriculture and other agencies in seed law enforcement.

Sec. 20. That section 81-2,147.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,147.07. Any lot of agricultural or vegetable seed not in compliance with the provisions of sections 81-2,147 to 81-2,147-09 Nebraska Seed Law shall be subject to seizure on complaint of the Director of Agriculture to a court of competent jurisdiction in the locality in which the seed is located. In the event the court finds the seed to be in violation of sections 81-2,147 to 81-2,147-09 such law and orders the condemnation thereof, it shall be denatured, processed conditioned, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this state, except ~~PROVIDED~~; that in no instance shall the court order such disposition of the seed without first having given the claimant an opportunity to apply to the court for the release of the seed or permission to process condition or relabel it to bring it into compliance with sections 81-2,147 to 81-2,147-09 such law.

Sec. 21. That section 81-2,147.08, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,147.08. When in the performance of his or her duties the Director of Agriculture applies to any court for a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of sections 81-2,147 to 81-2,147-09 the Nebraska Seed Law or any rules and regulations under the provisions of sections 81-2,147 to 81-2,147-09 such law, such injunction is to be issued without bond.

Sec. 22. That section 81-2,147.09, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,147.09. Any person violating the provisions of sections 81-2,147 to 81-2,147-09 Nebraska Seed Law shall be guilty of a Class IV misdemeanor. When the director shall find that any person has violated any of the provisions of sections 81-2,147 to 81-2,147-09 such law, he or she or the duly authorized agent or agents may institute proceedings in a court of competent jurisdiction in the locality in which the violation occurred, to have such persons convicted therefor; or the director may file with the Attorney General, with a view of

prosecution, such evidence as may be deemed necessary, except ~~7~~ PROVIDED; that no prosecution under the provisions of sections 81-2,147 to 81-2,147-09 such law shall be instituted without the defendant first having been given an opportunity to appear before the director or his or her duly authorized agent to introduce evidence either in person or by agent or attorney at a private hearing. If, after such hearing, or without such hearing in case the defendant or his or her agent or attorney fails or refuses to appear, the director is of the opinion that the evidence warrants prosecution, he or she shall proceed as provided in this section. It is the duty of the county attorney or the Attorney General, as the case may be, to institute proceedings at once against any person charged with a violation of the provisions of sections 81-2,147 to 81-2,147-09 Nebraska Seed Law, if, in the judgment of such officer, the information submitted warrants such action. After judgment by the court in any case arising under the provisions of sections 81-2,147 to 81-2,147-09 such law, the director shall publish any information pertinent to the issuance of the judgment by the court in such media as he or she may designate from time to time.

Sec. 23. That section 89-187, Revised Statutes Supplement, 1984, be amended to read as follows:

89-187. The director shall:

(1) Maintain traceability of the state standards to the National Bureau of Standards;

(2) Enforce the provisions of sections 89-183 to 89-1,103;

(3) Promulgate reasonable regulations for the enforcement of sections 89-183 to 89-1,103, including, but not limited to, the registration of weighing and measuring device repairpersons, pit scale installation requirements, adoption of such additional standards as are not specifically provided for in sections 89-183 to 89-1,103, and such additional reasonable regulations regarding: (a) The varieties or kinds of devices; (b) attachments or parts entering into the construction or installation of weights and measures or weighing or measuring appliances which shall tend to secure correct results in the use of such appliances; and (c) the setting of laboratory fees for testing, correcting, calibrating, and verifying of standards of weights and measures and the establishment of standard laboratory operating procedures in accordance with the provisions of Chapter 84, article 9;

(4) Establish standards of weight, measure, or count, reasonable standards of fill, and standards for the presentation of cost per unit information for any packaged commodity;

(5) Upon a verified application filed with the department, upon forms furnished by the director, grant exemptions, including specific exemptions for single-use weighing and measuring devices, from the provisions of

sections 89-183 to 89-1,103 or any regulations promulgated pursuant thereto, when such application shall provide assurances, acceptable to the director, that such exemption is appropriate to the maintenance of good commercial practices within the state. Notwithstanding any other provision of sections 89-183 to 89-1,103, all weighing and measuring devices used by public utilities and those weighing and measuring devices inspected or tested by the Public Service Commission shall be exempt from the registration, inspection, and testing requirements of sections 89-183 to 89-1,103. Any such exempt weighing and measuring device may be inspected or tested by the director upon request of the person owning such device;

(6) Conduct investigations to insure compliance with sections 89-183 to 89-1,103;

(7) Delegate to appropriate personnel any of these responsibilities for the proper administration of the director's office;

(8) Test annually, and from time to time as in the director's judgment seems necessary, the standards of weight and measure used by any city or county within the state and approve the same when found to be correct;

(9) Inspect and test weights and measures kept, offered, or exposed for sale;

(10) Inspect and test annually, and from time to time as in the director's judgment seems necessary, to ascertain if they are correct, weights and measures commercially used (a) in determining the weight, measure, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or count or (b) in computing the basic charge or payment for services rendered on the basis of weight, measure, or count;

(11) Test all weights and measures used in checking the receipt or disbursement of supplies in every institution, for the maintenance of which funds are appropriated by the Legislature of the state;

(12) Register and test annually all weighing and measuring devices used for the enforcement of the provisions of sections 39-6,180, 60-329, and 60-331;

(13) Approve for use, and may mark, such weights and measures as the director finds to be correct and reject and mark as rejected such weights and measures as the director finds to be incorrect. Weights and measures that have been rejected may be seized if not corrected within the time specified or if used or disposed of in a manner not specifically authorized. The director shall condemn and may seize weights and measures found to be incorrect that are not capable of being made correct;

(14) Weigh, measure, or inspect packaged commodities kept, offered, or exposed for sale, sold, or in the process of delivery to determine whether they contain

the amounts represented and whether they are kept, offered, or exposed for sale in accordance with sections 89-183 to 89-1,103 or regulations promulgated pursuant thereto. In carrying out the provisions of this section, the director shall employ recognized sampling procedures such as are designated in the National Bureau of Standards Handbook 67 133, entitled Checking Prepackaged Commodities the Net Contents of Packaged Goods;

(15) Prescribe, by regulation, the appropriate term or unit of weight or measure to be used, whenever the director determines in the case of a specific commodity that an existing practice of declaring the quantity by weight, measure, numerical count, or combination thereof does not facilitate value comparisons by consumers or offers an opportunity for consumer confusion;

(16) Allow reasonable variations from the stated quantity of contents, which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce;

(17) On or before July 1 of each year, notify all persons who have registered any weighing or measuring device of the amount of fees which are due and that such fees shall be delinquent after August 1 of each year; and

(18) Require, on or before August 1 of each year, all persons who maintain or have in their possession for use in commerce any weighing or measuring device to: (a) Register such device with the department upon forms furnished by the director; (b) pay to the department a registration fee of three dollars per device in the amounts designated in column A; (c) pay inspection fees to the department in the following amounts designated amounts in column B:

<u>Series-</u>	<u>Dollars</u>
Up to 35 pounds capacity	4-00
<u>Multistart Series</u>	33-00
Over 35 to 600 pounds capacity	6-00
Over 600 to 4,000 pounds capacity	9-00
Over 4,000 to 20,000 pounds capacity	13-00
Over 20,000 to 50,000 pounds capacity	21-00
Over 50,000 to 75,000 pounds capacity	23-00
Over 75,000 pounds capacity	28-00
<u>Measuregraphs</u>	3-00
<u>Pumps-</u>	
Petroleum pumps	4-00
Liquid petroleum gas pumps	6-00
Double pumps or blend pumps	7-00
<u>Meters-</u>	
Vehicle tank meters and bulk meters	10-00
Liquid petroleum gas meters	18-00
Liquid fertilizer meters	21-00
Liquid feed meters	21-00

High gallon petroleum pump ***** 21-007			
Scales:	A	B	Total Fees
Up to 35 pounds capacity	3.00	4.00	7.00
Multiunit Scales	3.00	33.00	36.00
Over 35 to 600 pounds capacity	3.00	6.00	9.00
Over 600 to 4,000 pounds capacity	3.00	9.00	12.00
Over 4,000 to 20,000 pounds capacity	3.00	13.00	16.00
Over 20,000 to 50,000 pounds capacity	3.00	21.00	24.00
Over 50,000 to 75,000 pounds capacity	3.00	23.00	26.00
Over 75,000 to 150,000 pounds capacity	3.00	28.00	31.00
Over 150,000 to 400,000 pounds capacity	3.00	32.00	35.00
Length Measuring Devices	3.00	3.00	6.00
Pumps:			
Service Station Dispensers - per hose	3.00	4.00	7.00
High-capacity service station dispensers over 20 gallons per minute - per hose	3.00	10.00	13.00
Meters:			
Vehicle tank meters	3.00	10.00	13.00
Loading rack meters	3.00	10.00	13.00
Liquid petroleum gas meters	3.00	18.00	21.00
Liquid fertilizer meters	3.00	21.00	24.00
Liquid feed meters	3.00	21.00	24.00

and (d) pay a penalty, as may be required by the department, of up to twenty-five per cent per month of the fees for each month any such fees shall be delinquent. Penalties paid shall be in addition to the fees due. The department's decision regarding whether or not penalties shall be imposed, or the amount thereof, shall be based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fees.

Sec. 24. Sections 7 to 10 and 25 of this act shall become operative on July 1, 1985, and the remaining sections of this act shall become operative on their effective date.

Sec. 25. That original sections 81-216.04, 81-216.05, and 81-216.24, Reissue Revised Statutes of Nebraska, 1943, and section 81-216.21, Revised Statutes Supplement, 1984, are repealed.

Sec. 26. That original sections 2-1016, 2-1017, 2-1019, 2-1020, and 81-2,147 to 81-2,147.09, Reissue Revised Statutes of Nebraska, 1943, and sections 81-201 and 89-187, Revised Statutes Supplement, 1984, are repealed.

Sec. 27. Since an emergency exists, this act shall be in full force and take effect, from and after its