

LEGISLATIVE BILL 37

Approved by the Governor February 13, 1990

Introduced by R. Johnson, 34

AN ACT relating to the Nebraska Seed Law; to amend sections 81-2,147.01 to 81-2,147.05 and 81-2,147.07 to 81-2,147.10, Reissue Revised Statutes of Nebraska, 1943, and section 81-2,147.06, Revised Statutes Supplement, 1988; to define and redefine terms; to change provisions relating to labeling; to change provisions relating to the testing and sale of seeds; to change provisions relating to powers and duties of the Director of Agriculture; to provide for enforcement; to provide a penalty; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. 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 the Nebraska Seed Law:

(1) 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 sowing, within the scope of the Nebraska Seed Law;

(2) Agricultural seed shall include 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 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 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 (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 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 the Director of Agriculture or his or her designated employee or representative or authorized agent:

(8) 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:

(9) Flower seed shall include 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 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 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 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 all matter not seed which shall include broken seeds, sterile florets, chaff, fungus bodies, and stones as established by rules and regulations:

(14) Kind shall mean 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 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 representations on invoices;

(16) Lot shall mean 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 seeds consisting of more than one kind, each present in excess of five percent by weight of the whole;

(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*), 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*), and horsenettle (*Solanum carolinense*);

(19) Origin shall mean 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 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 any corporation, company, society, association, body politic and corporate, community, individual, partnership, or joint-stock company or the public generally;

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

(24) Record shall mean 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 seed samples and records of declarations, labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests, and examinations;

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

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

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

(29) Tetrazolium (TZ) 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;

(30) Treated shall mean 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) Variety shall mean a subdivision of a kind which is distinct, uniform, and stable. For purposes of this subdivision: (a) Distinct shall mean 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 that variations in essential and distinctive characteristics are describable; and (c) stable shall mean 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) 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 or herb seeds in this state; and

(33) Weed seed shall include the seeds of any plant generally recognized as a weed within this state as established in rules and regulations and shall include the noxious weed seeds, 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 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 weeds, 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 acanthum*); 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*); pennywress (*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 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 percent of the whole.

Sec. 2. 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, or flower 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, or any flower seeds or any mixture thereof for seeding sowing purposes, that have been treated, unless each seed container thereof bears a label giving the following information and statements in accordance with as established in the rules and regulations: as defined in 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 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 defined established in such 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 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 (Date of expiration);

(2) For agricultural seeds except for grass seed mixtures as provided in subdivision ~~(3)~~ (4) 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 designated established in the rules and 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, 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, 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 per pound 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 smooth brome,

crimson clover, Brassica spp., flax, ~~Agropyron spp.~~
wheatgrass, 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 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, 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. 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, and the percentage of dormant seed, if present, and
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~~
Yellow
Dropseed, sand
Buffalograss
Gramas Grama:
Side-Oats
Sideoats

Andropogon gerardii
Schizachyrium scoparium
Andropogon hallii
~~Bethrichia ischaemum~~
Bothriochia ischaemum
Sporobolus caryandrus
Buchloe dactyloides

Beuteloua curtipendula
Bouteloua curtipendula

Blue	<i>Bouteloua gracilis</i>
Indiangrass	<i>Sorghastrum nutans</i>
Lovegrass, sand	<i>Eragrostis trichodes</i>
Needlegrass, green	<i>Stipa viridula</i>
Needle and thread	<i>Stipa comata</i>
Reedgrass, prairie sand	<i>Calamovilfa longifolia</i>
Prairie sandreed	<i>Calamovilfa longifolia</i>
Ricegrass, Indian	<i>Oryzopsis hymenoides</i>
Wheatgrass, western	<i>Agropyron smithii</i>
Wheatgrass, western	<i>Elymus smithii</i>
Switchgrass	<i>Panicum virgatum;</i>
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 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;

~~(3)~~ (4) 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 ~~(3)~~(b) (b) of this section 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, offers, or exposes such seed for sale within this state; and

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

~~(4)~~ (5) For vegetable seeds in containers of one pound or less 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;

~~(b)~~ (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);

~~(e)~~ (d) For seeds which germinate less than the standard last established in the rules and regulations of the Director of Agriculture under 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)~~ (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

~~(e)~~ (g) 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)~~ (6) For vegetable seeds in containers of more than one pound 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 ~~(i)~~ and ~~(ii)~~ 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 such the 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.~~
- (7) 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;
 - (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) 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;

(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) 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. 3. 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 shall be unlawful for any person to sell, offer for sale, expose for sale, or to transport for sale any agricultural, or vegetable, or flower seed within this state:~~

(a) ~~Unless the test to determine the percentage of germination required in section 81-2,147.02 shall have has 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 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 seeds, packaged in hermetically sealed containers under the conditions defined established in rules and regulations promulgated pursuant to 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 the 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 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; ; exposure for sale; or offer for sale or transportation;~~

(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 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, statement, invoice, or declaration;~~

(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 percent by weight of all weed seed of which not more than one-half of one percent may be restricted noxious weed seed, except that this restriction shall not apply to ~~native grasses or native grass mixtures~~ those kinds as established in rules and regulations which shall not contain more than four percent by weight of weed seed of which not more than one-half of one percent may be restricted noxious weed seed;

(g) 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 seed 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 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 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 ~~is~~ 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 made 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, ~~or~~ 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~~ stop-sale order or tags

attached thereto, except with express written 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 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; ~~or~~

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

(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 the operative date of this act.

Sec. 4. 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, ~~or~~ flower seeds subject to the Nebraska Seed Law shall keep for a period of ~~two~~ three years complete records of each lot of agricultural, ~~or~~ vegetable, ~~or~~ flower 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 director during customary business hours.

Sec. 5. 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 Sections 81-2,147.02 and 81-2,147.03 do shall not apply:

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

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

unconditioned seed shall be subject to the Nebraska Seed Law; 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 such carrier is not engaged in producing, conditioning, or marketing agricultural, ~~or~~ vegetable, ~~or~~ flower seeds subject to the Nebraska Seed Law.

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

Sec. 6. That section 81-2,147.06, Revised Statutes Supplement, 1988, be amended to read as follows:

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 of Agriculture~~ director. ~~It is shall be~~ the duty of such ~~officer, who may act through his or her authorized agents~~ the director:

(a) To sample, inspect, make analysis of, and test agricultural, and vegetable, and flower 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, ~~or~~ flower seed is in compliance with the Nebraska Seed Law and to notify promptly the persons who transported, sold, ~~offered, or exposed~~ the seed for sale 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 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, and flower seed and the tolerances to be followed in the administration of the Nebraska Seed Law 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 prescribe and, after public hearing following due public notice, to establish, add to, or subtract therefrom by rules and regulations adopt and promulgate rules and regulations in compliance with the Administrative Procedure Act by establishing, adding to, or subtracting from a prohibited and restricted noxious weed list;

(d) To prescribe and, after public hearing following due public notice, to adopt and promulgate rules and regulations in compliance with the Administrative Procedure Act establishing reasonable standards of germination for agricultural, vegetable, and flower seeds; and

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

(2) For the purpose of carrying out the Nebraska Seed Law the Director of Agriculture, individually or through his or her authorized agents, is authorized law, the director may:

(a) To enter ~~Enter~~ upon any public or private premises during regular business hours in order to have access to seeds and the records connected therewith with such seeds subject to the Nebraska Seed 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) To ~~issue~~ Issue and enforce a written or printed stop-sale order to the owner or custodian of any lot of agricultural, or vegetable, or flower seed which the Director of Agriculture director finds is in violation of any of the provisions of the Nebraska Seed Law 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, and 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, ~~and 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 Nebraska Seed Law;

(c) ~~To establish~~ 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 the law or rules and regulations adopted and promulgated under the law;

(d) ~~To make~~ Make or provide for making purity, noxious weed seed, tetrazolium (TZ), and germination, and other tests of seed as established in rules and regulations and recommended by rule of the Association of Official Seed Analysts for farmers and dealers persons on request, to prescribe adopt and promulgate rules and regulations in compliance with the Administrative Procedure Act governing such testing, and to 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; and

(e) ~~To cooperate~~ 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. 7. That section 81-2,147.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,147.07. (1) Any lot of agricultural, ~~or~~ vegetable, ~~or~~ flower seed not in compliance with the Nebraska Seed Law shall be subject to seizure on complaint of the ~~Director of Agriculture~~ director 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 such law and orders the condemnation thereof, it shall be denatured, conditioned, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this state, except 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 condition or relabel it to bring it into compliance with such law.

(2) It shall be the duty of the county attorney of the county in which the seed is located or the Attorney General when notified by the Department of Agriculture of such need for seizure to institute appropriate proceedings without delay.

Sec. 8. 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 the Nebraska Seed Law or any rules and regulations under such law, such injunction is to be issued without bond. The director may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person who has violated, is violating, or is threatening to violate any of the provisions of the Nebraska Seed Law or any rules or regulations adopted and promulgated under such law. The district court of the county in which the violations have occurred, are occurring, or are about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

Sec. 9. 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 Nebraska Seed Law shall be guilty of a Class IV misdemeanor.

It shall be the duty of the county attorney of the county in which any violation has occurred, is occurring, or is about to occur or the Attorney General when notified by the Department of Agriculture of a violation or a threatened violation to institute appropriate proceedings, either criminal or injunctive, or both, without delay. Before the director reports a violation, an opportunity shall be given to the person against whom proceedings will be brought to present such person's views to the director at a hearing held pursuant to the Administrative Procedure Act. When the director shall find that any person has violated any of the provisions of such law, he or she or the duty

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 that no prosecution under 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 The county attorney or the Attorney General, as the case may be, ~~to~~ shall institute proceedings at once against any person charged with a violation of the Nebraska Seed Law, if, in the judgment of ~~such officer, the director~~ the information submitted warrants such action.

After judgment by the court in any case arising under 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. 10. That section 81-2,147.10, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-2,147.10. (1) No person who labels for sale in Nebraska agricultural, ~~or vegetable, or flower~~ seeds shall sell, ~~offer for sale, expose for sale, or transport for sale~~ 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. 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 be required to pay a reinstatement penalty of fifteen dollars in addition to the registration fee.

(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 - 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, ~~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 of Agriculture~~ 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 provisions of such law, rule, or regulation, 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. 11. This act shall become operative on January 1, 1991.

Sec. 12. That original sections 81-2,147.01 to 81-2,147.05 and 81-2,147.07 to 81-2,147.10, Reissue Revised Statutes of Nebraska, 1943, and section 81-2,147.06, Revised Statutes Supplement, 1988, are repealed.