

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 770

Introduced by Carlson, 38.

Read first time January 04, 2012

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend sections 81-2,147.01 and
2 81-2,147.03, Reissue Revised Statutes of Nebraska; to
3 change provisions of the Nebraska Seed Law; and to repeal
4 the original sections.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-2,147.01, Reissue Revised Statutes
2 of Nebraska, is amended to read:

3 81-2,147.01 As used in the Nebraska Seed Law:

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

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

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

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

20 (5) Certifying agency means (a) an agency authorized
21 under the laws of a state, territory, or possession of the United
22 States to officially certify seed and which has standards and
23 procedures approved by the United States Secretary of Agriculture to
24 assure genetic purity and identity of the seed certified or (b) an
25 agency of a foreign country which is determined by the United States

1 Secretary of Agriculture to adhere to procedures and standards for
2 seed certification comparable to those adhered to generally by
3 certifying agencies under subdivision (a) of this subdivision;

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

8 (7) Director means the Director of Agriculture or his or
9 her designated employee or representative or authorized agent;

10 (8) Dormant seed means viable seeds, other than hard
11 seeds, which fail to germinate when provided the specified
12 germination conditions for the kind of seed in question;

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

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

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

24 (12) Hybrid means the first generation seed of a cross
25 produced by controlling the pollination and by combining (a) two or

1 more inbred lines, (b) one inbred or a single cross with an open-
2 pollinated variety, or (c) two varieties or species except open-
3 pollinated varieties of corn (*Zea mays*). The second generation and
4 subsequent generations from such crosses shall not be regarded as
5 hybrids. Hybrid designations shall be treated as variety names;

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

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

12 (15) Labeling includes all labels and other written,
13 printed, stamped, or graphic representations, in any form whatsoever,
14 accompanying or pertaining to any seed, whether in bulk or in
15 containers, and includes representations on invoices;

16 (16) Lot means a definite quantity of seed in containers
17 or bulk identified by a lot number or other mark, every portion of
18 which is uniform within recognized tolerances for the factors that
19 appear in the labeling;

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

23 (18) Mulch means a protective covering of any suitable
24 material placed with seed which acts to retain sufficient moisture to
25 support seed germination and sustain early seedling growth and aids

1 in preventing the evaporation of soil moisture, controlling weeds,
2 and preventing erosion;

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

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

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

13 (22) Primary noxious weed seeds means the seeds of ~~the~~
14 ~~following plants: Canada thistle (Cirsium arvense), leafy spurge~~
15 ~~(Euphorbia esula), musk thistle (Carduus nutans), plumeless thistle~~
16 ~~(Carduus acanthoides), spotted knapweed (Centaurea maculosa), diffuse~~
17 ~~knapweed (Centaurea diffusa), and any other plant designated by the~~
18 ~~director as a noxious weed pursuant to the Noxious Weed Control Act.~~
19 Pursuant to subdivision (1)(c) of section 81-2,147.06, the director
20 may add to or subtract from this primary noxious weed seeds list;

21 (23) Prohibited noxious weed seeds means the seeds of
22 plants which are highly destructive and difficult to control in this
23 state by ordinary good cultural practice, the use of herbicides, or
24 both and includes field bindweed (Convolvulus arvensis), hoary cress
25 (Cardaria draba), Russian knapweed (Centaurea repens), johnsongrass

1 (Sorghum halepense), Scotch thistle (Onopordum acanthium), morning
2 glory (Ipomoea purpurea) when found in field crop seeds, skeletonleaf
3 bursage (Ambrosia discolor), woollyleaf bursage (Ambrosia tomentosa),
4 serrated tussock (Nassella trichotoma), and puncturevine (Tribulus
5 terrestris). Pursuant to subdivision (1)(c) of section 81-2,147.06,
6 the director may add to or subtract from this prohibited noxious weed
7 seeds list;

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

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

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

21 (27) Restricted noxious weed seeds means the seeds of
22 plants which are objectionable in fields, lawns, and gardens of this
23 state but can be controlled by ordinary good cultural practice, the
24 use of herbicides, or both and includes dodder (Cuscuta spp.), wild
25 mustard (Brassica spp.), dock (Rumex spp.), quackgrass (Elytrigia

1 repens), pennycress (*Thlaspi arvense*), purple loosetrife (*Lythrum*
2 *salicaria*), and horsenettle (*Solanum carolinense*). Pursuant to
3 subdivision (1)(c) of section 81-2,147.06, the director may add to or
4 subtract from this restricted noxious weed seeds list;

5 (28) Sale in any of its variant forms means sale, to
6 barter, exchange, offer for sale, expose for sale, move, or
7 transport, in any of their variant forms, or otherwise supplying;

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

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

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

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

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

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

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

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

18 Sec. 2. Section 81-2,147.03, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 81-2,147.03 (1) It shall be unlawful for any person to
21 sell any agricultural, vegetable, or flower seed within this state:

22 (a) Unless the test to determine the percentage of
23 germination required in section 81-2,147.02 has been completed within
24 a nine-month period, exclusive of the calendar month in which the
25 test was completed, immediately prior to sale, except that for those

1 seeds as established in rules and regulations, the test to determine
2 the percentage of germination shall have been completed within a
3 twelve-month period, exclusive of the calendar month in which the
4 test was completed, immediately prior to sale. Seeds packaged in
5 hermetically sealed containers under the conditions established in
6 rules and regulations may be sold for a period of thirty-six months
7 after the last day of the month that the seeds were tested prior to
8 packaging. If the seeds in hermetically sealed containers are sold
9 more than thirty-six months after the last day of the month in which
10 they were tested prior to packaging, they shall have been retested
11 for germination within a nine-month period, exclusive of the calendar
12 month in which the retest was completed, immediately prior to their
13 sale;

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

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

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

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

25 (f) Consisting of or containing restricted noxious weed

1 seeds per pound in excess of the number declared on the label
2 attached to the container of the seed or associated with the seed,
3 subject to recognized tolerances. The recognized tolerances shall not
4 exceed one-half of one percent by weight;

5 (g) Containing more than two percent by weight of all
6 weed seed other than primary noxious weed seed, prohibited noxious
7 weed seed, and restricted noxious weed seed. This subdivision does
8 not apply to agricultural, vegetable, or flower seeds specifically
9 allowed in the rules and regulations to contain four percent or less
10 by weight of weed seed;

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

20 (i) For reproductive purposes which is not certified by
21 an official certifying agency when it is a variety for which an
22 application has been made or accepted or a certificate of plant
23 variety protection is issued under the federal Plant Variety
24 Protection Act specifying sale only as a class of certified seed,
25 except that seed from a certified lot may be labeled as to variety

1 name when used in a mixture by or with the approval of the owner of
2 the variety.

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

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

9 (b) To disseminate any false or misleading advertisements
10 concerning agricultural, vegetable, or flower seeds in any manner or
11 by any means;

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

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

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

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

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

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

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

9 (3) All seed sold shall be labeled on the basis of tests
10 performed by a seed laboratory using Rules for Testing Seeds adopted
11 by the Association of Official Seed Analysts as of January 1, ~~1997-~~
12 2012.

13 Sec. 3. Original sections 81-2,147.01 and 81-2,147.03,
14 Reissue Revised Statutes of Nebraska, are repealed.