

FIRST REGULAR SESSION

SENATE BILL NO. 485

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR JOHNSON.

Read 1st time February 24, 1999, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S2031.011

AN ACT

To repeal sections 266.021, 266.031, 266.051, 266.071, 266.076, 266.080, and 266.101, RSMo 1994, and section 266.091, RSMo Supp. 1998, relating to the Missouri seed law, and to enact in lieu thereof ten new sections relating to the same subject, with penalty provisions and an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 266.021, 266.031, 266.051, 266.071, 266.076, 266.080, and 266.101, RSMo 1994, and section 266.091, RSMo Supp. 1998, are repealed and ten new sections enacted in lieu thereof, to be known as sections 266.021, 266.031, 266.051, 266.062, 266.071, 266.076, 266.080, 266.091, 266.101, and 266.102, to read as follows:

266.021. When used in sections 266.011 to 266.111:

(1) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this law[.];

(2) "Agricultural seeds" includes the seeds of grass, forage, cereal, **oil** and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural or field seeds, except Johnson grass[.];

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

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

(5) "Certified seed" means certified, registered, foundation or any term conveying a similar meaning when referring to seed that has been produced, processed and labeled in accordance with

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

the procedures and in compliance with the rules and regulations of a legally constituted and officially recognized seed certifying agency as provided for in this law[.];

[(4)] (6) "Controlling the pollination" means to use a method of hybridization which will produce pure seed which is at least seventy-five percent hybrid seed. Hybrid designations shall be treated as variety names[.];

[(5)] (7) "Coated or encrusted seed" means seed that has been covered by a layer of materials that obscure the original shape and size of the seed resulting in a substantial weight increase. The coating or encrusting may contain biologicals, identifying colorants or dyes, pesticides, polymers or other ingredients;

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

(9) "Department" or "department of agriculture" means the state department of agriculture, and when by this law the said department of agriculture is charged to perform a duty it shall be understood to authorize the performance of such duty by the director of the department of agriculture or his duly authorized deputies subject to his instructions[.];

[(6)] (10) "Director" means the director of the Missouri state department of agriculture[.];

[(7)] (11) "Dormant" means viable seed, excluding hard seed, which failed to germinate when provided the specified germination conditions for the kind of seed in question. Viability of ungerminated seeds may be determined by the tetrazolium test and percentage of dormant seed may be labeled in addition to the percentage of germination;

(12) "Film-coated seed" means seed that retains the shape and the general size of the raw seed with a minimal weight gain. The film coating may contain biologicals, identifying colorants or dyes, pesticides, polymers or other ingredients. The film coating shall result in a continuous covering;

(13) "Genetic engineering" means the transfer of DNA from a donor plant species to a recipient species by means of a bacterial plasmid virus or other vector;

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

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

(16) "Hermetically sealed seed" means seed packed in a moisture-proof container when the container and the seed in the container meet the requirements specified by the suggested rules and regulations of the recommended uniform state seed law;

(17) "Hybrid" applied to kinds or varieties of seed means the first generation seed of a cross produced by controlling the pollination and by combining;

- (a) Two or more inbred lines;
- (b) One inbred or a single cross with an open pollinated variety;
- (c) [Two selected clones, seed lines, varieties, or species.

(8) Two varieties or species, except open-pollinated varieties of corn (*Zea mays*).

The second generation of subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names;

(18) "Inert matter" means all matter not seed, which includes broken seeds, sterile florets, chaff, fungus bodies and stones as determined by methods defined by rule;

(19) "Inoculated seed" means seed which has received a coating of a preparation containing a microbial product, e.g. *Rhizobium sp*;

(20) "Kind" means one or more related species or subspecies which singly or collectively is known by one common name, for example, corn, oats, alfalfa, or timothy[.];

[(9)] (21) "Label" means any tag, label, brand, or device attached to, or written, stamped, printed, or stenciled on any container of seed or supplied with any bulk lot of seeds[.] purporting to set forth the information required on the seed label by sections 266.011 to 266.111, and it may include any other information relating to the labeled seed;

[(10)] (22) "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform, within permitted tolerances for factors which appear in the labeling[.];

[(11)] (23) "Mixture, mix, mixed" means seed consisting of more than one kind, each in excess of five percent by weight of the whole;

(24) "Native cool-season grasses" means graminoids that are indigenous to the geographic region in reference (e.g. Missouri, the eastern tallgrass prairie) whose primary growth is between 40° and 80° F, and which become dormant or semidormant when temperatures exceed 80° F. Species include, but may not be limited to, Canada wildrye (*Elymus canadensis*), Virginia wildrye (*Elymus virginicus*), western wheatgrass (*Pascopyrum smithii*), and sea oats, inland;

(25) "Native warm-season grasses" means graminoids that are indigenous to the geographic area in reference (e.g. Missouri, the eastern tallgrass prairie) whose primary season of growth is the warmest months of the year, when temperatures average between 80° and 100° F. Species include, but may not be limited to, big bluestem (*Andropogon gerardii*), little bluestem (*Schizachyrium scoparium*), indiagrass (*Sorghastrum nutans*), switchgrass (*Panicum virgatum*), side-oats grama (*Bouteloua curtipendula*), eastern gamagrass (*Tripsacum dactyloides*), prairie cordgrass (*Spartina pectinata*), buffalograss (*Buchloe dactyloides*), prairie dropseed (*Sporobolus heterolepis*), and tall dropseed (*Sporobolus asper*);

(26) "Off type" means any seed or plant not a part of the variety in that it

deviates in one or more characteristics from the variety as described and may include:

- (a) A seed or plant of another variety;**
- (b) A seed or plant not necessarily of any variety;**
- (c) A seed or plant resulting from cross-pollination by another kind or variety;**
- (d) A seed or plant resulting from uncontrolled self-pollination during**

production of hybrid seed; or

- (e) Segregates from any of the above;**

(27) "Official sample" is a sample taken from a lot of seed by a representative of a seed regulatory official or a state or federal government agency following prescribed methods;

(28) "Other crop seed" means seed of plants grown as crops (other than the kind or variety included in the pure seed) as determined by methods defined by rule;

(29) "Person" includes any individual, partnership, corporation, company, society, receiver, trustee, agent or association[.];

[(12)] (30) "Place of business" is that place from which seed is sold and includes a:

(a) "Retail place of business" where seed is held for sale and sold, or held for sale and offered for sale to the end user;

(b) "Wholesale place of business" where seed is held for sale and sold, or held for sale and offered for sale to a seed dealer[.];

[(13)] (31) "Pelleted seed" means coated or encrusted seed that also improves the plantability or singulation of the seed;

(32) "Plant variety protection act" shall mean the United States Plant Variety Protection Act, 7 U.S.C. Section 2321 et seq., as now in effect or hereafter amended. The United States Plant Variety Protection Act provides patent-like protection (plant breeder's rights) for sexually (i.e. seed) and tuber reproduced plants;

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

(34) "Pure seed" means seed exclusive of inert matter and all other seeds not of the seed being considered as determined by methods defined by rule;

(35) "Record" includes all information relating to the shipment and sale of seed[.];

[(14)] (36) "Seed broker" means any person or business who sells or distributes seed not of their own labeling on a wholesale basis for a commission or profit;

(37) "Seizure" means a legal process for obtaining seed as granted by court order[.];

[(15)] (38) "Stop-sale" means an administrative order provided by law, restraining the sale, use, disposition, and movement of a definite amount of seed, of a specific lot number if the seed is distinguished by lots[.];

[(16)] "Treated" means that the seed has received an application of a substance, or that it

has been subjected to a process for which a claim is made.

(17) "Variety" means 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.

(18) **(39) "Transgenic seed" is seed which has been gene altered via genetic engineering changing the genetic makeup for specific characteristics or traits;**

(40) "Treated seed" means seed with a minimal covering of material whose objective is to reduce or control disease organisms, insects or other pests attacking the seed or seedlings growing therefrom and may contain identifying colorants or dyes;

(41) "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions;

(42) "Variant" means any seed or plant which is distinct within the variety but occurs naturally in the variety, is stable and predictable with a degree of reliability comparable to other varieties of the same kind, within recognized tolerances, when the variety is reproduced or reconstituted, and was originally a part of the variety as released. A variant is not an off type;

(43) "Variety" means a subdivision of a kind which is distinct, uniform and stable; "distinct" in the sense that the variety can be differentiated by one or more identifiable morphological, physiological or other characteristics from all other varieties of public knowledge; "uniform" in the sense that the variations in essential and distinctive characteristics are describable; and "stable" in the sense 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;

(44) "Vegetable seeds" includes the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seeds in this state[.];

[(19)] (45) "Weed seeds" includes the seeds of all plants generally recognized as weeds within this state, as determined by methods defined by rule and includes [(a) noxious-weed seeds which are the seeds of weeds which are highly objectionable in fields, lawns or gardens of Missouri, and which are difficult to control by good cultural practices, and (b) prohibited weed seeds which are the seeds of weeds which, when established, are highly destructive and difficult to control in this state by good cultural practices. The species of weeds seed declared to be noxious and the species of weeds seed declared to be prohibited shall be established by regulation.] prohibited and restricted noxious weed seeds. "Noxious weed seeds" are divided into two classes, prohibited noxious weed seeds and restricted noxious weed seeds:

(a) "Prohibited noxious weed seeds" are those weed seeds which are prohibited from being present in agricultural crops, lawns and gardens of Missouri. They are the seeds of weeds which are highly destructive and difficult to control through good cultural practices and the use of herbicides;

(b) "Restricted noxious weed seeds" are those weed seeds which are

objectionable in agricultural crops, lawns or gardens of Missouri, and which can be controlled through good cultural practices or use of herbicides.

266.031. 1. Any person who sells, distributes, offers or exposes for sale any agricultural or vegetable seed in the state of Missouri shall obtain a seed permit from the director of agriculture unless exempted [as in] **pursuant to** section 266.080. [Seed dealers must purchase permits for each seed sales classification performed, selling or taking orders for seed from other than an established place of business, selling seed from a retail place of business, selling seed from a wholesale place of business, or negotiating sales as a broker.] A separate permit shall be required for each place of business from which seed regulated by this law is sold[. A separate permit shall also be required of] **or from** each person selling or taking orders for seed from other than an established place of business. [Seed permit fees will be assessed as follows:

- (1) Place of business selling vegetable seed packets of one pound or less or lawn seed packages to the end user \$5.00
- (2) Person that sells only labeled seed grown on their own property \$5.00
- (3) Retail place of business or person not otherwise identified that sells or offers for sale agricultural seed or offers for sale agricultural seed or bulk vegetable seed to the end user and which does not provide storage facilities \$5.00
- (4) Retail place of business or person not otherwise identified that sells or offers for sale agricultural seed or offers for sale agricultural seed or bulk vegetable seed to the end user and which provides storage facilities. A permit to sell agricultural or bulk vegetable seed will suffice for selling seed as listed in (1) and (2) \$15.00
- (5) Wholesale place of business selling labeled seed for resale, or negotiating sales as a seed broker \$100.00]

Seed permits shall be divided into four categories:

(1) Any person or facility selling only labeled prepackaged (one pound or less) vegetable seed packets not from bulk stocked seed on a retail level shall pay a five dollar fee;

(2) Any person or facility selling prepackaged vegetable seed (greater than one pound), bulk vegetable seed, lawn or agricultural seed labeled by others on a retail basis to the end user shall pay a ten dollar fee;

(3) Any person acting as farmer or grower who produces, and labels under his or her own name, and sells seed only of his or her own production shall pay a twenty dollar fee;

(4) Any person or facility selling wholesale, labeled agricultural, lawn or vegetable seed for resale or negotiating sales as a seed broker shall pay a one hundred dollar fee.

2. Farmers and seed producers shall be classed as seedsmen **or seed dealers** and must comply with all the provisions of sections 266.011 to 266.111 when the farmers or seed producers:

(1) Offer, sell or expose for sale seed not of their own production;

(2) Offer, sell or expose for sale seed grown in a state or country other than Missouri;

(3) Offer, sell or expose for sale seed on a regular basis as a seed dealer or seed business;

(4) Offer, sell or expose for sale unlabeled seed in locations other than their own farm, including locations where conditioning, processing or distribution may occur;

(5) Sell and deliver seed to a purchaser by way of common carrier;

[(3)] (6) Sell seed by any public sales service, including, but not limited to, a regularly scheduled advertised public auction or like sales organization;

[(4)] (7) Advertise or label seed referring to the purity, variety or germination.

3. No permit is transferable. All persons holding a Missouri seed permit shall post the permit in a conspicuous place in the place of business to which it applies. The licensing year shall be twelve months, or any fraction thereof, beginning on January first and ending December thirty-first. All permit fees shall be paid to the Missouri department of agriculture and shall be deposited in the state treasury.

4. If the application for renewal of any seed permit is not filed prior to expiration date in any year, a penalty of fifty percent shall be assessed and added to the original fee and shall be paid by the applicant before that renewal license shall be issued; provided, that such penalty shall not apply if the applicant furnishes an affidavit certifying that he has not engaged in selling, distributing, offering or exposing seed for sale, subsequent to the expiration date of his license.

5. The department may refuse to issue a permit to any person not in compliance with the provisions of sections 266.011 to 266.111. The department may suspend or revoke any permit issued to any person found not to be in compliance with any provision of sections 266.011 to 266.111. No license shall be suspended, revoked or refused unless the applicant or permittee shall first be given an opportunity to be heard before the director or a hearing officer designated by the director in order to comply with the requirements of sections 266.011 to 266.111.

266.051. 1. Each container of agricultural seed of more than one pound and vegetable seed in any amount which is sold, offered for sale, transported, or exposed for sale, within this state for

seeding 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:

(1) For agricultural **and lawn** seeds, **except for grass seed mixtures, as provided in subdivision (2) of this subsection; for hybrids which contain less than ninety-five percent hybrid seed as provided in subdivision (3) of this subsection; and for seed sold on a pure live seed basis as provided in subdivision (4) of this subsection:**

(a) [Commonly accepted name of (A) kind or (B) kind and variety, of each agricultural seed component in excess of five percent of the whole by weight. When more than one component is required to be named, the work "mixture" or the word "mixed" shall be shown conspicuously on the label;

(b) **The name of the kind and the variety for each agricultural seed component present in excess of five percent of the whole and the percentage by weight of each, provided that if the variety of those kinds generally labeled as to variety as designated in the regulations is not stated, the label shall show the name of the kind and the words, "Variety Not Stated". The representation of variety shall be confined to the recognized name of the variety of seed and such seed shall not have affixed thereto names or terms that create a misleading impression as to the history or the quality of the seed. Brand names are not acceptable as variety. Hybrids shall be labeled as hybrids;**

(b) **A test date of a period of ten months, including the month tested, is allowed between the test date labeled and retest for germination except for hermetically-sealed seed;**

(c) Lot number or other lot identification;

[(c)] (d) Origin, **state or foreign country, if known.** If unknown, that fact shall be stated;

[(d)] (e) Percentage by weight of pure seed;

[(e)] (f) Percentage by weight of all weed seeds;

[(f)] (g) Percentage by weight of agricultural seeds (which may be designated as "crop seeds") other than those required to be named on the label;

[(g)] (h) Percentage by weight of inert matter;

[(h)] (i) **The name and rate of occurrence per pound or per one hundred grams of seed of each kind of restricted noxious weed seed present:**

a. Restricted noxious weed seed content must be expressed in numbers per pound if the seed is sold in units of pounds or U.S. dry measure and in numbers per one hundred grams if the seed is sold in units of the metric system. The name and number of each kind of **restricted** noxious weed seed [must] **may** be stated when present singly or collectively [in excess of] **when less than** the numbers listed in subparagraphs [a, b, c, or;] **d, e, f or g of this paragraph;**

b. The word "zero" if shown on the label or tag under restricted weeds means there were no more than two restricted noxious weed seeds per working sample;

c. The word "none", if shown on the label or tag under restricted weeds, means that no restricted noxious weed seeds are present. If restricted noxious weed seeds are not present in excess of the number prescribed in this subdivision, then there shall be shown on the label or tag under restricted weeds either the name and number of each kind of restricted noxious weed seeds present per pound, or the words "not in excess of" and in the blank to be inserted the maximum number permitted pursuant to this paragraph. Agriculture, lawn or vegetable seed containing restricted noxious weed seeds singly or collectively may not exceed the numbers of seeds indicated in subparagraph d, e, f or g of this paragraph unless specified by rule;

[a.] **d.** Eighty seeds per pound or eighteen seeds per one hundred grams of Agrostis species, Poa species, Bermuda grass, timothy, orchard grass, fescues (except meadow and tall fescues), alsike and white clover, reed canary grass, and other agricultural seeds of similar size and weight, or mixtures within this group;

[b.] **e.** Forty-eight seeds per pound or eleven seeds per one hundred grams of ryegrasses, meadow and tall fescues, millets, alfalfa, red clover, sweet clovers, lespedezas, brome grass, crimson clover, rape, Agropyron species, and other agricultural seeds of similar size and weight, or mixtures within this group, or of this group with subparagraph a, above;

[c.] **f.** Sixteen seeds per pound or four seeds per one hundred grams of vetches, sudan grass and other agricultural seeds of similar size and weight, or mixtures not specified in subparagraphs [a, b, and] **d, e or g** of this [section] **paragraph;**

[d. Eighty] **g. Five** seeds per pound or [eighteen seeds] **one seed** per one hundred grams of wheat, oats, rye, barley, buckwheat, sorghums (except sudan grass), soybeans, cowpeas, and other agricultural seeds of a size and weight similar to or greater than those within this group;

[(i) The word "none", if shown on the label or tag under "noxious weeds", shall be construed as meaning that no noxious weed seeds are present. If noxious weed seeds are not present in excess of the number prescribed in paragraph (h), subparagraphs a, b, c, and d, above, then there shall be shown on the label or tag under "noxious weeds" either the name and number of each kind of noxious weed seeds present per pound or per one hundred grams, as may be the case, or the words "not in excess of . . ." and in the blank to be inserted the maximum number permitted under paragraph (h), subparagraphs a, b, c, and d;]

(j) For each named agricultural seed:

a. Percentage of germination, exclusive of hard seeds;

b. Percentage of hard seed, if present;

c. Percentage of dormant seed, if present, in native warm-season or cool-season grasses or crown vetch;

d. Total germination [and], hard seed and dormant seed percentages;

[d.] **e. The calendar month and year the test was completed to determine such percentage;**

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

[(l) Warning as to danger if seed has been treated with a compound poisonous to man or farm animal;

(2) For vegetable seeds:

(a) Name of kind and variety of seed;

(b) For vegetable seed packets of one pound or less, the planting season for which the seed was packed;

(c) For vegetable seed in containers of more than one pound the percentage of germination, and the month and year in which the germination test was performed;

(d) For seed in packets of one pound or less, that germinates less than the standards as established by the Federal Seed Act, or as the director prescribes through regulation:

a. Percentage of germination, exclusive of hard seed;

b. Percentage of hard seed, if present;

c. Total germination and hard seed;

d. The words "below standard" in not less than eight point type;

e. The calendar month and year the test was completed;

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

2.] (2) For seed mixtures for lawn or turf purposes the:

(a) Word "mixed" or "mixture" shall be stated with the name of the mixture;

(b) Heading "pure seed" and "germination" or "germ" shall be used in proper places;

(c) Commonly accepted name of each kind or kind and variety of each agricultural seed component in excess of five percent of the whole, and the percentage of weight of pure seed in order of its predominance and in columnar form;

(d) Lot number or other lot identification;

(e) Origin, state or foreign country, if known. If the origin is unknown, that fact shall be stated;

(f) Percentage by weight of agricultural seed other than those required to be named on the label, which shall be designated as "crop seed";

(g) Percentage by weight of inert matter not to exceed ten percent by weight. Except for coating material, fertilizer and mulch, foreign material not common to grass seed shall not be added;

(h) Percentage by weight of all weed seeds. Maximum restricted noxious weed

seed content not to exceed one-half of one percent by weight; and

(i) Restricted noxious weeds that are required to be labeled will be listed under the heading "restricted weed seed" and shall comply with paragraph (i) of subdivision (1) of subsection 1 of this section;

(j) For each named agricultural seed the:

- a. Percentage of germination, exclusive of hard seed;**
- b. Percentage of hard seed, if present; and**
- c. Calendar month and year the test was completed to determine such percentages. The oldest test date shall be used;**

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

(3) For agricultural and lawn hybrid seeds which contain less than ninety-five percent hybrid seed the:

- (a) Kind and variety must be labeled hybrid;**
- (b) Percent which is hybrid shall be labeled parenthetically in direct association following named variety; i.e. - Comet (85% Hybrid);**

(c) Varieties in which the pure seed contain less than seventy-five percent hybrid seed shall not be labeled hybrids.

In addition to the provisions of this section, labeling of agricultural and lawn hybrid seeds shall comply with all other labeling requirements of paragraphs (b) to (k) of subdivision (1) of this subsection;

(4) For agricultural seeds sold on a pure live seed basis, each container must bear a label containing the information required by subdivision (1) of this subsection except:

- (a) The label need not show:**
 - a. The percentage by weight of each agricultural seed component as required by paragraph (a) of subdivision (1) of this subsection; or**
 - b. The percentage by weight of inert matter as required by paragraph (h) of subdivision (1) of this subsection; and**

(b) The label must show for each named agricultural seed, instead of the information required by paragraph (i) of subdivision (1) of this subsection:

- a. The percentage of pure live seed determined in accordance with rules and regulations; and**
- b. The calendar month and year in which the test determining the percentage of live seed was completed;**

(5) For all agricultural and lawn seeds treated as defined in this chapter, for which a separate label may be used:

- (a) A word or statement indicating that the seed has been treated;**

(b) The commonly accepted coined, chemical or abbreviated chemical or generic name of the applied substance or description of the process used;

(c) If the substance in the amount present in the seed is harmful to humans or other vertebrate animals, a caution statement such as "Do Not Use for Food, Feed, or Oil Purposes". The caution from mercurials and similarly toxic substances shall be a poison statement or symbol;

(d) If the seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective (date of expiration);

(6) For agricultural seeds that are coated:

(a) Percentage by weight of pure seeds with coating material removed;

(b) Percentage by weight of coating material; and

(c) Percentage by weight of inert material exclusive of coating material.

The percentage of germination is to be determined on four hundred pellets with or without seeds. In addition to the provisions of this subdivision, labeling of coated seed shall comply with all other labeling requirements of this section;

(7) Agricultural and lawn seeds labeled to show less than fifty percent germination shall be additionally distinguished by the words "low germination". No seed containing less than twenty-five percent germination may be sold at retail. This demarcation shall be printed diagonally across the seed quality guarantees in print size at least three times the print used to express other seed quality claims.

2. Each container of vegetable seed in any amount which is sold, offered for sale, transported, or exposed for sale, within this state for seeding 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) Name of kind and variety of seed;

(2) Lot identification, such as by lot number or other means;

(3) For all vegetable seeds treated as defined in this chapter (for which a separate label may be used):

(a) A word or statement indicating that the seed has been treated;

(b) The commonly accepted coined, chemical or abbreviated chemical (generic) name of the applied substance or description of the process used;

(c) If the substance in the amount present in the seed is harmful to humans or other vertebrate animals, a caution statement such as "Do Not Use for Food, Feed, or Oil Purposes". The caution for mercurials and similarly toxic substances shall be a poison statement or symbol;

(d) If the seed is treated with an inoculant, the date beyond which the inoculant

is not to be considered effective (date of expiration);

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

(5) For vegetable and hybrid seed which contain less than ninety-five percent hybrid seed:

(a) Kind and variety must be labeled "hybrid";

(b) The percent which is hybrid shall be labeled parenthetically in direct association following named variety; i.e. - Comet (85% Hybrid); and

(c) Varieties in which the pure seed contain less than seventy-five percent hybrid seed shall not be labeled hybrids.

Labeling of vegetable hybrid seeds shall comply with all other labeling requirements of paragraphs (b) to (d) of subdivision (2) of this subsection in addition to all other provisions of this section;

(6) For vegetable seed in containers of one pound or larger:

(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; and

(c) For each named vegetable seed:

a. Percentage of germination exclusive of hard seed;

b. Percentage of hard seed;

c. Total germination and hard seed; and

d. The calendar month and year the test was completed to determine such percentages; and

(7) For vegetable seed packets of one pound or less:

(a) The planting season for which the seed was packed for sale as "Packed for (indicate year)"; or

(b) The percentage of germination, the calendar month and year the test was completed to determine such percentage;

(8) For seed in packets of one pound or less, that germinates less than the standards as established by the Federal Seed Act, or as the director prescribes by regulation:

(a) Percentage of germination, exclusive of hard seed;

(b) Percentage of hard seed, if present;

(c) Total germination and hard seed;

(d) The words "Below Standard" in not less than eight-point type;

(e) The calendar month and year the test was completed.

3. Agriculture seeds exposed for sale stored in bulk shall be labeled by attaching to the bin, tank, box, or other container in a conspicuous place, a tag or label stating the information required

by the Missouri seed law and the rules and regulations thereunder. [Any portion of seeds consisting of more than one pound sold from bulk directly to the purchaser shall be accompanied by an exact copy of the label attached to the container of the bulk lot of seed.

3. Agricultural seed labeled to show less than fifty percent germination must be additionally distinguished by the words "low germination". No seed containing less than twenty-five percent germination can be sold at retail level. This demarkation must be printed diagonally across the seed quality guarantees in print size at least three times the print used to express other seed quality claims.

4. Labeling agricultural seed as to variety is not required; however, when a variety name is shown on the label, the name must be confined to the recognized variety name. The representation of variety shall be confined to the recognized name of the variety of seed and such seed shall not have affixed thereto names or terms that create a misleading impression as to the history or quality of the seed.

5. When using the designation "hybrid" in labeling if any one kind or kind and variety of seed present in excess of five percent is hybrid seed, it shall be designated "hybrid" on the label. The percentage that is hybrid shall be at least ninety-five percent of the percentage of pure seed shown unless the percentage of pure seed which is hybrid seed is shown separately. If two or more kinds of varieties are present in excess of five percent and are named on the label, each that is hybrid shall be designated as hybrid on the label. Any one kind or kind and variety that has pure seed which is less than ninety-five percent but more than seventy-five percent hybrid seed as a result of incompletely controlled pollination in a cross shall be labeled to show:

- (1) The percentage of pure seed that is hybrid seed;
- (2) A statement such as contains from seventy-five percent to ninety-five percent hybrid seed.

6. When using the designation "hybrid" in labeling no one kind or variety of seed shall be labeled as hybrid if the pure seed contains less than seventy-five percent hybrid seed.

7. Seed treated with a compound poisonous to man or farm animal shall show on the label or on a separate tag the words "poison treated" in boldface type, and in addition give the name of the chemical or brand name of treatment used.] **In addition to the provisions of this subsection, labeling of bulk seeds shall comply with all other labeling requirements of this section.**

266.062. The director shall publish at least annually, in such forms as the director may deem proper, information concerning the sales of seed, together with such data on their production and use as the director may consider advisable, and a report of the result of the analyses of official samples of agricultural, lawn or vegetable seed sold within the state as compared with the analyses guaranteed on the label, but the information concerning production and use of seed shall not disclose the operations of

any person. This report shall be provided free of charge on request to all distributors listed on the report and all seed dealers and others who request the report subject to necessary appropriations being available. If the director publishes the violations of any seedsman he shall publish the violations of all seedsmen over the same period of time.

266.071. 1. It is unlawful for any person to sell, distribute, offer for sale, or expose for sale any agricultural or vegetable seed within this state:

(1) Unless the test to determine the percentage of germination was performed within ten months of the time the seed is sold, exposed for sale, offered for sale or distributed. An exception shall be allowed for seed packaged in hermetically sealed containers, which may be sold, exposed for sale, offered for sale or transported up to thirty-six months after the test to determine the percentage of germination[, if the seed is packaged according to the regulation governing hermetically packaged seed]. **If seeds in hermetically sealed containers are sold, exposed for sale or offered for sale or transported 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 within a ten-month period in which the retest was completed immediately prior to sale, exposure for sale, or offered for sale or transportation;**

(2) Not labeled in accordance with the provisions of sections 266.011 to 266.111 or having a false or misleading labeling;

(3) Which has false or misleading advertisement;

(4) Containing **or consisting of** prohibited **noxious** weed seeds;

(5) Containing **or consisting of restricted** noxious weed seeds in excess of one-half percent **by weight, or the number per pound prescribed by rules and regulations promulgated pursuant to section 266.051**, or in excess of the number declared on the **original** label attached to the container of the seed;

(6) Containing more than two percent by weight of weed seeds[, except for Brome grass, orchard grass or fescue which may not exceed three percent];

(7) [Which is represented to be certified, registered, foundation, or any other term conveying a similar meaning when referring to seed unless it has been produced, processed, and labeled in accordance with procedures and in compliance with the rules and regulations of an officially recognized certifying agency.] **If any labeling, advertising, or other representation subject to sections 266.011 to 266.111 represents the seed to be certified seed or any class thereof unless:**

(a) It has been determined by a seed certifying agency that such seed conformed to standards of purity and identity as to kind, species, and subspecies, if appropriate, or variety in compliance with the rules and regulations of such agency pertaining to such seed; and

(b) That the seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind, species, and subspecies, if appropriate, or variety;

(8) Labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which a United States certificate of plant variety protection under the Plant Variety Protection Act, 7 U.S.C. 2321 et seq., specifies sale only as a class of certified seed, provided that the 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;

(9) To sell, offer for sale, distribute or expose for sale agricultural, lawn or vegetable seed at the retail producer or labeler, or wholesale level without obtaining the required seed permit.

2. It is unlawful for any person within this state **or distributing into or brokering within or into this state:**

(1) To detach, alter, deface or destroy any label provided for in sections 266.011 to 266.111, or the rules and regulations made and promulgated thereunder, or to alter or substitute seed, in a manner that may defeat the purposes of sections 266.011 to 266.111;

(2) To disseminate any false or misleading advertisements concerning seeds subject to sections 266.011 to 266.111, in any manner or by any means;

(3) To hinder or obstruct in any way any authorized person in the performance of his duties under sections 266.011 to 266.111;

~~[(3)]~~ **(4)** 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;

~~[(4)]~~ **(5)** To sell noxious or prohibitive weed seed except as provided in section 266.080;

~~[(5)]~~ **(6)** To sell seed to persons performing the seed sale functions listed in subdivision (1), (2), (3), or (4) of subsection 1 of section 266.031, unless the person buying has a retail **or wholesale** permit to sell seed;

~~[(6)]~~ **(7)** To permit seed to move into this state which does not meet the standards of the seed certifying agency of the state in which the seed originated or the provisions of Missouri seed law;

(8) To use the word trace as a substitute for any statement that is required; and

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

266.076. All wholesale places of business shall maintain records showing kind of seed, quantity, date of shipment, consignee and consignor. Records on seed sales must be made available during normal business hours, at the seed dealer's place of business for the director when

he has preceded the time of inspection by a request in writing. Seed records shall be maintained for a period of three years, **and a file sample of each lot of seed shall be kept for one year after final disposition of such lot.**

266.080. The provisions of sections 266.051, 266.061 and 266.071 shall not apply:

(1) **To a farmer not operating as a seed dealer or seed business who may sell unlabeled agricultural, lawn or vegetable seed only of such farmer's productions without a seed permit in the state of Missouri;**

(2) To seed or grain not intended for seeding purposes;

[2)] (3) To seed in storage, or being transported or consigned to an establishment for cleaning or processing; provided, that the invoice or labeling accompanying any shipment of said seed bears the statement "seed for processing"; and provided that any labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this law;

[3)] (4) To any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier; provided, that such carrier is not engaged in producing, processing, or marketing agricultural or vegetable seed subject to the provisions of this law;

[(4) To a farmer who sells unlabeled seed of his own production;]

(5) To seed for use in experimental or breeding purposes, when approved by the director of agriculture on a form established by regulation.

266.091. 1. The duty of enforcing sections 266.011 to 266.111 and carrying out its provisions and requirements shall be vested in the director of the department of agriculture. It shall be the duty of the director, individually, or through his authorized agents:

(1) To sample, inspect, make analysis of, and test agricultural and vegetable seeds transported, sold or offered or exposed for sale within this state for seeding purposes, at such time and place and to such extent as he deems necessary to determine whether the agricultural or vegetable seeds are in compliance with the provisions of sections 266.011 to 266.111, and to notify promptly the person who transported, sold, offered or exposed the seed for sale, of any violation **and, if appropriate, the person who labeled or transported such seed, of any violations, stop sale order or seizure;**

(2) To adopt, after a public hearing, such reasonable rules and regulations necessary to secure the efficient enforcement of sections 266.011 to 266.111, including the promulgation of definitions of terms relating to the enforcement of this law. **No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo, including section 536.028, RSMo;**

(3) To follow the established rules and methods on analysis as practiced by the Association of Official Seed Analysts and recognized by the seed testing laboratories of the United States Department of Agriculture;

(4) To use tolerances, on pure seed, germination, weed seed and other crop as published in the rules for seed testing by the Association of Official Seed Analysts when taking regulatory action in the administration of this law.

2. [Further, for the purpose of carrying out the provisions of sections 266.011 to 266.111,] The director of the department of agriculture, individually, or through his authorized agents, is authorized:

(1) To enter upon any public or private premises during the regular business hours in order to have access to seeds subject to the law and the rules thereunder, **any truck or other conveyer by land, water or air at any time when the conveyer is accessible, for the same purpose;**

(2) 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 the department of agriculture finds is in violation of any of the provisions of sections 266.011 to 266.111, which order shall prohibit further sale, **processing or movement** of [the] **such** seed until the officer has evidence that the law has been complied with and the owner or custodian shall have the right to take such steps as may be possible to bring the seed into compliance, such as recleaning, retesting, or relabeling. In respect to seeds which have been denied sale as provided in this subdivision, the owner or custodian of such seeds shall have the right of appeal from the order to the circuit court of the county [or city] in which the seed is found, praying for a judgment as to the justification of the order and for the discharge of the seed from the order prohibiting the sale, **processing or movement** in accordance with the findings of the court, **and provided further, that the provisions of this subdivision shall not be construed as limiting the right of the enforcement officer to proceed as authorized by sections 266.011 to 266.111;**

(3) To maintain a laboratory with necessary equipment within appropriations, and is authorized to assign any of his employees without additional salary to aid in the administration of sections 266.011 to 266.111, and shall further be required to secure an analyst or analysts and other necessary employees and designate reasonable remuneration therefor, for the proper enforcement and carrying out of the provisions of sections 266.011 to 266.111[. It shall be the duty of the director, within his discretion and appropriations, to publish or cause to be published the results of the examinations, analyses and tests of these samples of agricultural seed or mixture of such seed, drawn as provided for in sections 266.011 to 266.111, together with any other information the director may find advisable. If the director publishes the violations of any seedsman he shall publish the violations of all seedsmen over the same period of time];

(4) To consider for regulatory purposes vegetable seed packets containing one pound or less

deficient in germination, when by [composite] testing, a variety of vegetable seed of a single labeler is found deficient in germination. [The method used to determine germination deficiency in vegetable seed packets will consist of germination analysis on at least one packet collected from each of ten different distribution points within the state. If five or more packets are found deficient in germination, that variety, or lot if distinguished by lot numbers, for that labeler will be considered deficient.] A "stop-sale" will be issued on that variety or lot in all distribution points known by the director to be offering the vegetable seed packets for sale, and those places of business and the labeler of the seed will be notified;

(5) [To gather information necessary to restrict the sale of uncertified seed sold by variety name when that variety has been granted a certificate of protection under the Plant Variety Protection Act which specifies sale only as a class of certified seed;

(6)] To cooperate with, and enter into agreements with, any other agency of this state, the United States Department of Agriculture, and any other state or agency thereof, for the purpose of carrying out the provisions of sections 266.011 to 266.111, and securing uniformity of regulations[.];

(6) To obtain the technology and procedures from the labeler necessary to test transgenic seed or seed with traits of special nature as to characteristics, production or performance as to its label claims should those claims be in question. Trade secrets and advanced technology submitted pursuant to this section shall be a closed record and protected from disclosure pursuant to section 610.021, RSMo;

(7) The director may suspend or revoke any seed permit issued to any person found not to be in compliance with any provision of sections 266.011 to 266.111. No seed permit shall be suspended or revoked unless the applicant or permit holder shall first be given an opportunity to be heard before the director or a hearing officer designated by the director in order to comply with the requirements of sections 266.011 to 266.111.

3. No rule or portion of a rule promulgated [under] **pursuant to** the authority of sections 266.011 to 266.111 shall become effective unless it has been promulgated pursuant to the provisions of [section 536.024] **chapter 536**, RSMo.

266.101. Any lot of agricultural or vegetable seed found in the possession of a single owner or custodian and not in compliance with the provisions of this law shall be subject to seizure upon complaint of the director of the department of agriculture to the circuit court of the county [or city] in which such seed is located; **except that any lot of agricultural or vegetable seed found to have any prohibited noxious weed seeds present, as defined in section 266.051, shall be subject to seizure upon complaint of the director to the circuit court of the county in which such seed is located.** Such seizure shall not be made until the owner or custodian of the seed has been given sixty days from the date of a "stop-sale" order to bring the seed in compliance with the provisions of this law. In the event the court finds that the seed does

not comply with this law, it shall order the condemnation thereof, and the seed shall be denatured, processed, destroyed, relabeled, or otherwise disposed of by **order of** the court; provided, that either party may demand a trial by jury on any issue of fact joined in any such case; and provided further, that in no instance shall the court order such disposition of said seed without first having given the claimant an opportunity to apply to the court for the release of said seed or permission to process or relabel said seed to bring it into compliance with this law.

266.102. 1. In addition to any other remedy provided by law, upon a determination by the director that a provision of sections 266.011 to 266.111, or a standard, limitation, order, rule or regulation promulgated pursuant thereto has been violated, the director may issue an order assessing an administrative penalty upon the violator pursuant to this section. An administrative penalty shall not be imposed until the director has sought to resolve the violations through an offer to hold an informal hearing to discuss the violations. An administrative penalty may only be imposed for serious violations of sections 266.011 to 266.111. Any order assessing an administrative penalty shall state that an administrative penalty is being assessed pursuant to this section and that the person subject to the penalty may appeal as provided by this section. Any such order that fails to state the statute under which the penalty is being sought, the manner of collection, or rights of appeal shall result in the state's waiving any right to collection of the penalty.

2. The director may promulgate rules and regulations for the assessment of administrative penalties including definition of serious violations. The amount of the administrative penalty assessed pursuant to this section shall not exceed one thousand dollars for each violation. An administrative penalty shall be paid within sixty days from the date of issuance of the order assessing the penalty. However, any person subject to an administrative penalty may file an appeal to the director pursuant to section 536.063, RSMo, within thirty days after receipt of an order assessing an administrative penalty. Any appeal will stay the due date of such administrative penalty until the appeal is resolved. An action may be sought in the appropriate circuit court to collect any unpaid administrative penalty.

3. Any person subject to a final administrative order assessing an administrative penalty may file an appeal to circuit court within thirty days after receipt of the final administrative order pursuant to sections 536.100 to 536.140, RSMo. The venue of such case shall be, at the option of the party subject to an order assessing an administrative penalty, in the circuit court of Cole County or in the county of the party subject to an order or if the party subject to an order assessing an administrative penalty is a corporation, domestic or foreign, having a registered office or business office in the state, in the county of such registered office or business office. The circuit court may assess a civil penalty of up to two thousand dollars per violation.

4. Any administrative or civil penalty paid pursuant to this section shall be handled in accordance with section 7 of article IX of the Constitution of the state of Missouri.

5. Any administrative penalty must be assessed within two years following the department's initial discovery of such alleged violation, or from the date the department in the exercise of ordinary diligence should have discovered such alleged violation.

Section B. The repeal and reenactment of the sections contained in this act shall become effective January 1, 2000.

Unofficial

Bill

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