

Enrolled
House Bill 2287

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for State Department of Agriculture)

CHAPTER

AN ACT

Relating to flower seeds; amending ORS 633.511, 633.520, 633.531, 633.545, 633.550, 633.561, 633.571, 633.620, 633.630, 633.651, 633.655, 633.660, 633.670, 633.690 and 633.700.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 633.511 is amended to read:
633.511. As used in ORS 633.511 to 633.750:

(1) "Agricultural seed" means fiber, forage and grass crop seed and any other kind of seed or bulblet commonly recognized in this state as agricultural seed or as lawn or turf seed, and mixtures of any of such seeds, as may be determined by the Director of Agriculture.

(2) "Certified," as applied to bulblets, tubers or horticultural plants or to agricultural, **cereal grain, flower or vegetable** [*or cereal grain*] seed, means inspected and labeled by and in accordance with the standards and rules and regulations adopted by the dean under ORS 633.620 or in accordance with similar standards established by some similar regularly constituted authority in another state or country.

(3) "Conditioner" means any person who cleans, blends, bags or stores seed.

(4) "Dean" means the dean of the College of Agricultural Sciences of Oregon State University, or agent.

(5) "Director" means the Director of Agriculture, or agent.

(6) "**Flower seed**" means **seeds of herbaceous plants grown for their blooms, ornamental foliage or other ornamental parts, and commonly known and sold in this state under the name of flower or wildflower seeds.**

[(6)] (7) "Inert matter" includes stones, dirt, leafage, stems, badly broken seed and masses of spores.

[(7)] (8) "Labeling" includes all labels and other printed, written or graphic representations in any form on the container of any seeds or accompanying or pertaining to any seeds, whether in bulk or in containers, and includes representations on invoices.

[(8)] (9) "Mixed seed" and "mixture" mean any lot of seed that contains in excess of five percent by weight of each of two or more kinds or varieties of agricultural, **flower** or vegetable seed.

[(9)] (10) "Other crop seed" means that part of any lot or sample of seed that consists of [*the seed of cereal grain and agricultural and*] **agricultural, cereal grain, flower or vegetable** seeds other than those named on the label.

[(10)] (11) "Percentage of germination" means the percentage of pure seed of a lot or sample that produces satisfactory sprouts before the close of a standard germination test as prescribed pursuant to ORS 633.580.

[(11)] (12) "Percentage of hard seed" means the percentage of pure seed of any lot or sample that remains in its normal hard condition at the close of a standard germination test as prescribed pursuant to ORS 633.580.

[(12)] (13) "Prohibited noxious weed seed" means the seed of weeds [which] **that** when established are highly destructive, competitive and difficult to control by ordinary good cultural practice.

[(13)] (14) "Pure seed" means the agricultural, **flower** or vegetable seed of which there is the largest percentage by weight in any unmixed lot or sample and, in the case of mixtures, includes any agricultural, **flower** or vegetable seed consisting of not less than five percent by weight of the kind or kinds of seed under consideration, as distinguished from other crop seed, weed seed and inert matter.

[(14)] (15) "Restricted noxious weed seed" means the seed of such weeds as are very objectionable in fields, lawns and gardens but can be controlled by good cultural practice.

[(15)] (16) "Retailer" means any person who sells, offers or holds for sale, agricultural, **flower** or vegetable seed to ultimate consumers or users for planting purposes.

[(16)] (17) "Vegetable seed" means the seed of those crops usually grown in Oregon in gardens or on truck farms or for canning and freezing purposes and generally known and sold under the name of vegetable seed.

[(17)] (18) "Weed seed" means any seed or bulblets other than agricultural, **cereal grain, flower** or vegetable [or *cereal grain seed*].

[(18)] (19) "Wholesaler" means any person who sells, offers or holds for sale, agricultural, **flower** or vegetable seed to retailers, distributors, brokers or other wholesalers for resale.

SECTION 2. ORS 633.520 is amended to read:

633.520. Each container of agricultural seed, **or of more than one pound of flower seed**, sold, offered or exposed for sale, or transported within this state shall bear [thereon] or have attached [thereto] in a conspicuous place a legibly written or printed label or tag prepared from information developed from a seed test as prescribed by rule by the Director of Agriculture and [which] **that** states in the English language:

(1) The commonly accepted name of the kind or the kind and variety of each agricultural **or flower** seed component constituting in excess of five percent of the whole and the percentage by weight of each. If any such component is one [which] **that** the director, pursuant to ORS 633.680, has determined is generally labeled as to variety, the label or tag shall bear, in addition to the name of the kind, either the name of such variety or the statement "Variety Not Stated." If more than one agricultural **or flower** seed is named, the word "mixture" or the words "mixed seed" shall appear conspicuously on the label or tag.

(2) The country or state where grown. If unknown, the fact that the country or state where grown is unknown shall be stated.

(3) The lot number or other lot identification.

(4) The total percentage, by weight, of other crop seed.

(5) The total percentage, by weight, of weed seed.

(6) The total percentage, by weight, of inert matter.

(7) The name and number per pound of each kind of noxious weed seed restricted in Oregon, or the statement "No Noxious Found," or a similar statement, if the sample is free of all noxious weed seeds listed in the administrative rules.

(8) For each named agricultural **or flower** seed:

(a) The percentage of germination. If germination data is based on tests other than sprouting, that shall be so stated on the label.

(b) The percentage of hard seed, if more than one percent.

(9) The month and year the test to determine the data required by this section was completed.

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

(11) The year and month beyond which an inoculant, if shown in the labeling, is no longer claimed to be effective.

- (12) If such seed or mixture is intended for seeding purposes and has been treated, the following:
- (a) A statement that the seeds have been treated.
 - (b) The commonly accepted chemical or abbreviated chemical name of any substance used in such treatment.
 - (c) A descriptive statement, approved by the director as adequate for the protection of the public, of any process used in such treatment.
 - (d) If the substances used in such treatment in the amount remaining with the seeds is harmful to humans or other vertebrate animals, an appropriate warning statement, approved by the director as adequate for the protection of the public.
- (13) A statement of the net quantity of the contents of each container in terms of the net weight of such container.

SECTION 3. ORS 633.531 is amended to read:

633.531. Each container of vegetable seed **or flower seed** that is sold, offered for sale, exposed for sale or transported within this state and that has a net weight of one pound or less shall be legibly labeled:

- (1) With the commonly accepted name of the kind or the kind and variety of the seed.
- (2) With the name and address of the person who labeled the seed or who sells, offers or exposes such seed for sale within this state.
- (3) With the year for which the seed was packed for sale, or the percentage of germination and the date the test was completed.
- (4) In the case of seed [*which*] **that** has a percentage of germination less than the standard prescribed by the Director of Agriculture under authority of ORS 633.680, with:
 - (a) The percentage of germination.
 - (b) The percentage of hard seed, if more than one percent.
 - (c) The month and year the test to determine the data required by this section was completed.
 - (d) The words "substandard germination" in not less than eight-point boldfaced type.
 - (5) With the labeling data required by ORS 633.520 (12) and (13).

SECTION 4. ORS 633.545 is amended to read:

633.545. All bins and other bulk displays of agricultural, **flower** or vegetable seed, and mixtures of agricultural, **flower** or vegetable seed, or both, shall be labeled with the data required to be present on containers of agricultural, **flower** or vegetable seed prescribed in ORS 633.520, 633.531 and 633.541.

SECTION 5. ORS 633.550 is amended to read:

633.550. (1) In the following cases agricultural, **flower** or vegetable seeds, or mixtures of agricultural, **flower** or vegetable seeds, or both, are exempt from the labeling provisions of ORS 633.520, 633.531 and 633.541, except that any labeling or other representation that is made with respect to such seed shall conform to those sections:

- (a) When sold to be recleaned before being sold, offered or exposed for sale for seeding purposes.
- (b) When held in storage or consigned to a seed handling establishment for conditioning.
- (c) When held, sold or exposed for sale for milling, food or feeding purposes only.
- (d) When transported from field to conditioner and between conditioner and dealer. However, if labeled, the seed must be labeled accurately.

(2) Containers of agricultural, **flower** or vegetable seeds, or mixtures of agricultural, **flower** or vegetable seeds, or both, are exempt from the labeling provisions of ORS 633.520, 633.531 and 633.541 when such containers are filled in the presence of the purchaser from bins or other bulk display containers if such bins or bulk display containers are labeled with the information otherwise required to be present on individual packages of such seed.

SECTION 6. ORS 633.561 is amended to read:

633.561. The director shall prepare a list of prohibited noxious weed seeds[,] and a list of restricted noxious weed seeds[, *on which latter list*]. **On the list of restricted noxious weed seeds** the director, with the concurrence of the dean, shall specify the number of such seeds per pound that may be present in agricultural, **flower** or vegetable seed.

SECTION 7. ORS 633.571 is amended to read:

633.571. (1) The director, with the concurrence of the dean, may make the following changes in the list of prohibited noxious weed seeds or in the list of restricted noxious weed seeds:

(a) The addition to either list of the name of the seed of any weed.

(b) The removal from either list of the name of the seed of any weed.

(c) A change in the list of restricted noxious weed seeds of the number of such seeds per pound that may be present in agricultural, **flower** or vegetable seed.

(2) In determining whether the name of the seed of any weed should be added to or removed from either list, or whether a change should be made in the number of any restricted noxious weed seed that may be present in agricultural, **flower** or vegetable seed, the director and the dean shall consider the following factors:

(a) The prevalence of such weed in the state.

(b) The potential effect upon the seed industry and agriculture generally.

(c) Means of effective control or eradication.

(d) Toxicity to animals, including humans.

(e) Methods of separation from other seeds.

(f) Any other factor that may in the judgment of the director and the dean be a reasonable ground for making such change.

(3) The director shall cause all changes made pursuant to this section to be given to the press and printed in pamphlet form available for distribution.

SECTION 8. ORS 633.620 is amended to read:

633.620. (1) The certification of varieties of agricultural, cereal grain, **flower** or vegetable seeds, or of tubers or horticultural plants, for planting purposes as certified seeds, tubers or plants shall be conducted in this state by the dean.

(2) The varieties eligible for certification, the rules and regulations and standards for such certification that will provide for seed of high quality and the official seals and tags shall be determined upon and adopted by the dean.

(3) The dean may establish field inspection fees and charges for inspection and certification in an amount sufficient to cover the cost of such work. The dean may also charge the approximate cost price for tags, ties and seals and make charges covering the cost of field, threshed-seed or bin inspections when such inspections are called for at such times and places as to involve a total expense in excess of the income from the established fees or charges. In all cases the fees and charges shall be fixed at a rate that will cover the approximate cost of the work.

(4) The dean may authorize the inspection and certification of tubers and agricultural, cereal grain, **flower** and vegetable seeds without the collection of fees when grown in areas not in excess of one acre by members of 4-H Clubs and of the Future Farmers of America.

(5)(a) Notwithstanding any other provision of this section, the dean may enter into agreements with appropriate agricultural or educational agencies of the State of Idaho for the performance of seed certification, testing and analysis services for producers of hard seed in Malheur County.

(b) As used in this subsection "hard seed" means alfalfa, beans, clover, peas, soybean, trefoil, vetch, barley, oats, rye, triticale, wheat, buckwheat, lupine, rape, sunflower, sugar beets, vegetable seed, flower seed and corn.

(6) Notwithstanding any other provision of this section, and in addition to the authority granted by subsection (5) of this section, the dean may enter into agreements with appropriate public or private agencies to assist the Oregon State University seed testing laboratory in the testing and analysis of seed samples.

SECTION 9. ORS 633.630 is amended to read:

633.630. (1) All moneys collected as fees or charges for inspection and certification of agricultural, cereal grain, **flower** and vegetable seeds, and of tubers and horticultural plants, shall be receipted for and deposited in a special fund to be known as the certification fund. The fund shall be maintained by the dean, who may expend such funds for no other purposes than the following:

(a) Salaries, wages and necessary travel and other expenses of employees while on official duty.

- (b) The purchase of necessary equipment, materials and supplies.
- (c) Other expenses necessary to the carrying out of such inspection and certification.
- (2) The expenditures shall be made in accordance with the usual disbursement of receipts of the cooperative agricultural extension service.

SECTION 10. ORS 633.651 is amended to read:

633.651. (1) *[No person shall]* **A person may not** sell, offer for sale, expose for sale or transport for use in planting in the State of Oregon any agricultural, **flower** or vegetable seed:

(a) That except as provided in ORS 633.550, has not been labeled as required by ORS 633.520, 633.531 and 633.541;

(b) That bears a label that is false or misleading;

(c) That contains any prohibited noxious weed seeds;

(d) That contains restricted noxious weed seeds in excess of the permissible numbers per pound established under ORS 633.561 or 633.571 (2);

(e) That has not been tested within the 18 months next preceding such sale, offering for sale, exposure for sale or transportation, not including the calendar month in which the test was completed, to determine the percentage of germination for the labeling requirements of ORS 633.520, 633.531 and 633.541. The Director of Agriculture may, pursuant to the authority of ORS 633.680, establish by order a shorter period for kinds of seed *[which]* **that** the director finds under ordinary conditions of handling will not maintain a germination within the established limits of tolerance during an 18-month period, or longer period for kinds of such seed *[which]* **that** are packaged in such container materials and under such conditions as the director may determine will, during such longer period, maintain the viability of the seed under ordinary conditions of handling. Any person in possession of seeds shall keep on file available for State Department of Agriculture inspection the original or duplicate copy of the latest test made of such seeds *[which shall show]* **that shows**, in addition to the information required by the provisions of this section, the date and the name of the person making such test; or

(f) That, if it is a variety for which a certificate of plant variety protection under the federal Plant Variety Protection Act specifies sale only as a class of certified seed, is sold or exposed for sale by variety name but has not been so certified by any official seed certifying agency. However, seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the written approval of, the owner of the variety.

(2) *[No person shall]* **A person may not** substitute uncertified for certified seed.

(3) *[No person shall]* **A person may not** use tags or seals indicating certification other than as prescribed by a certification agency, as authorized by ORS 633.620 or 633.511 (2).

(4) Unless the tuber, horticultural plant or agricultural, **cereal grain, flower or** vegetable *[or cereal grain]* seed has been produced, tested, examined and labeled in accordance with ORS 633.511 to 633.750 and the rules and regulations of this state or the official certification agency of another state, territory or country, *[no person shall]* **a person may not**:

(a) Sell, offer for sale, expose for sale, advertise or transport any such tuber, plant or seed representing it to be certified; or

(b) Use in connection with such tuber, plant or seed any tags or seals similar to those used in official certification, as established pursuant to ORS 633.620 or 633.511 (2).

(5) *[No person shall]* **A person may not** alter or falsify any seed labels, seed tests, records or other documents pertaining to seed dealings.

SECTION 11. ORS 633.655 is amended to read:

633.655. *[No person shall be]* **A person is not** subject to the penalties of ORS 633.992 for having sold, offered for sale, exposed for sale or transported in this state any agricultural, **flower** or vegetable seed, that:

(1) Is incorrectly labeled or represented as to kind and variety or origin, *[which]* **if the** seeds cannot be identified except by a field test *[thereof]*, when such person:

(a) Obtains an invoice or grower's declaration stating the kind, or kind and variety, and origin, if required;

(b) Takes such invoice or grower's declaration in good faith; and
(c) Takes such other precautions as are reasonable to [insure] **ensure** the identity of the seeds to be as stated.

(2) Does not conform to the label on the container [thereof], but is within the tolerances authorized by the director under ORS 633.680 (1).

SECTION 12. ORS 633.660 is amended to read:

633.660. The director shall enforce ORS 633.511 to 633.750 and 633.996. However, the enforcement of certification regulations and the work of testing seeds and sampling, inspecting, sealing and certification labeling of tubers and horticultural plants and of agricultural, cereal grain, **flower** and vegetable seeds for certification, as provided by ORS 633.600 to 633.640, shall be done by the dean.

SECTION 13. ORS 633.670 is amended to read:

633.670. (1) In the enforcement of ORS 633.511 to 633.750 and 633.996, the Director of Agriculture, deputies of the director, inspectors or samplers may:

(a) Enter during regular business hours any store, warehouse, mill, cleaning or storage place, depot or other structure, freight car or other vehicle, in which agricultural, **flower** or vegetable seeds are being sold or offered for sale, stored, handled or transported.

(b) Either alone or in the presence of a representative or employee of the person whose premises are so entered, examine and inspect any agricultural, **flower** or vegetable seeds being possessed, sold, offered or exposed for sale for planting purposes, in this state, for their compliance with those sections.

(c) Draw or cause to be drawn a representative sample of any lot of such seed for official testing and analysis or, in the case of individually packaged seeds, select a number of such packages as a representative sample.

(d) Examine any records or documents pertaining to any seed being sold or offered for sale, or records pertaining to any seed that has previously been sold or any other records involved in seed dealings.

(2) Any sample so drawn may represent any lot, or portion of such lot, of such seed [which] **that** shall be divided, at the request of the owner or person in charge, into two approximately duplicate samples, each of which shall be properly identified, labeled and sealed in accordance with the rules and regulations adopted under ORS 633.680. One of the samples shall be transmitted to the agricultural experiment station seed laboratory at Oregon State University for official testing for regulatory purposes. The other sample shall be tendered to the representative of the organization from whose structure or vehicle the sample was taken.

(3) The director may seize any container of agricultural, **flower** or vegetable seed possessed, sold, offered or exposed for sale for planting purposes in this state that appears to be in violation of any of the provisions of ORS 633.511 to 633.750, and proceed in the manner directed by law for the disposal of products seized by the State Department of Agriculture.

(4) Any sample taken under those sections, and the report showing the results of the official test made on any such sample, shall be prima facie evidence in any court in this state of the true condition of the entire lot, in the examination of which the sample was taken.

(5) A copy of the result of any such test shall be mailed to the person or authorized representative, if known, owning, possessing or holding the seed from which the sample was drawn.

(6) The director may cause to be published in the official paper or bulletin of the department a report of all seed inspection work done for regulatory purposes and shall indicate in the report:

(a) The name and address of each person whose seed was inspected.

(b) The total number of such inspections.

(c) The number and kind of seeds of which samples were inspected and tested.

(d) The number or a list of samples complying with ORS 633.511 to 633.750.

(e) A detailed list showing kinds of seed and the nature of violations of any of the provisions of those sections as found in the inspection and testing of any such seeds belonging to any such person.

SECTION 14. ORS 633.690 is amended to read:

633.690. (1) The director may place a quarantine on all agricultural, **flower** or vegetable seed entering this state from any outside source. However, seed labeled in accordance with ORS 633.520, 633.531 and 633.541 shipped into the state by any person holding an Oregon license in full force shall not necessarily be quarantined; and any such seeds in tight containers in transit directly through this state, to points outside this state, *[shall not be]* **are not** subject to quarantine. Any such seeds from outside this state, that are destined to points in this state for conditioning purposes, for later use in this state, or for shipment from this state, shall be held under quarantine until such seeds comply with ORS 633.511 to 633.750.

(2) The director may draw necessary samples of such seed and hold such seed until the necessary tests are completed and arrangements for the disposition of the seed are consummated. If the seed is found to be in compliance with those sections it shall be immediately released. If the seed is found to be in violation of any part of those sections, the director shall so notify the shipper and, unless the director is instructed to return such seed within 30 days or unless such seed is put in condition to comply with the provisions of those sections and all costs covering such inspection and seizure are paid, the director shall cause the seed to be destroyed.

SECTION 15. ORS 633.700 is amended to read:

633.700. (1) *[No person may]* **A person may not** sell, offer or expose for sale in this state any agricultural or vegetable seeds unless the person holds an unsuspended license issued by the State Department of Agriculture. **A person selling, offering or exposing for sale only flower seeds at retail must hold an unsuspended license issued by the department.** However, any person selling seeds of the person's own production exclusively, and persons selling only **flower or** vegetable seeds at retail, in packages weighing not in excess of one-half pound, as prepared for such trade by other seed companies, if the seed company preparing such packaged seed for sale, has a license in force for the sale of such seed in this state, is not required to secure such license. For the purposes of this section, persons operating more than one branch, plant or warehouse where seeds are sold, offered or exposed for sale shall secure a separate license for each such branch, plant or warehouse.

(2) Any person desiring to sell, offer or expose for sale in this state any agricultural, **flower** or vegetable seeds, for planting purposes, except as provided in this section, shall make application to the director for a license for this purpose. The application shall be signed by the applicant or the authorized agent of the applicant and shall be in a form approved by the director. Upon presentation of such signed application for a license and the tendering of the license fee established by the department pursuant to subsection (3) of this section, the department shall issue the license to the applicant. The license shall expire June 30 next following the date of issuance.

(3) The department shall establish annual license fees, not to exceed \$40 for a retailer's license and not to exceed \$400 for a wholesaler's license. Only one license shall be required for one person's operation at one location.

Passed by House February 13, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate May 15, 2007

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President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State