

House Bill 2287

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

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Regulates labeling, purity and marketing of commercial flower seed. Prohibits sale, offering or exposure for sale or transportation of improperly labeled flower seeds on or after January 1, 2009.

A BILL FOR AN ACT

1
2 Relating to flower seeds; creating new provisions; and amending ORS 633.511, 633.520, 633.531,
3 633.545, 633.550, 633.561, 633.571, 633.620, 633.630, 633.651, 633.655, 633.660, 633.670, 633.690 and
4 633.700.

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

6 **SECTION 1.** ORS 633.511 is amended to read:

7 633.511. As used in ORS 633.511 to 633.750:

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

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

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

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

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

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

23 [(6)] (7) "Inert matter" includes stones, dirt, leafage, stems, badly broken seed and masses of
24 spores.

25 [(7)] (8) "Labeling" includes all labels and other printed, written or graphic representations in
26 any form on the container of any seeds or accompanying or pertaining to any seeds, whether in bulk
27 or in containers, and includes representations on invoices.

28 [(8)] (9) "Mixed seed" and "mixture" mean any lot of seed that contains in excess of five percent
29 by weight of each of two or more kinds or varieties of agricultural, **flower** or vegetable seed.

30 [(9)] (10) "Other crop seed" means that part of any lot or sample of seed that consists of [*the*
31 *seed of cereal grain and agricultural and*] **agricultural, cereal grain, flower or** vegetable seeds

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 other than those named on the label.

2 [(10)] (11) "Percentage of germination" means the percentage of pure seed of a lot or sample
3 that produces satisfactory sprouts before the close of a standard germination test as prescribed
4 pursuant to ORS 633.580.

5 [(11)] (12) "Percentage of hard seed" means the percentage of pure seed of any lot or sample
6 that remains in its normal hard condition at the close of a standard germination test as prescribed
7 pursuant to ORS 633.580.

8 [(12)] (13) "Prohibited noxious weed seed" means the seed of weeds [which] **that** when estab-
9 lished are highly destructive, competitive and difficult to control by ordinary good cultural practice.

10 [(13)] (14) "Pure seed" means the agricultural, **flower** or vegetable seed of which there is the
11 largest percentage by weight in any unmixed lot or sample and, in the case of mixtures, includes
12 any agricultural, **flower** or vegetable seed consisting of not less than five percent by weight of the
13 kind or kinds of seed under consideration, as distinguished from other crop seed, weed seed and
14 inert matter.

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

17 [(15)] (16) "Retailer" means any person who sells, offers or holds for sale, agricultural, **flower**
18 or vegetable seed to ultimate consumers or users for planting purposes.

19 [(16)] (17) "Vegetable seed" means the seed of those crops usually grown in Oregon in gardens
20 or on truck farms or for canning and freezing purposes and generally known and sold under the
21 name of vegetable seed.

22 [(17)] (18) "Weed seed" means any seed or bulblets other than agricultural, **cereal grain, flower**
23 **or** vegetable [or *cereal grain seed*].

24 [(18)] (19) "Wholesaler" means any person who sells, offers or holds for sale, agricultural, **flower**
25 or vegetable seed to retailers, distributors, brokers or other wholesalers for resale.

26 **SECTION 2.** ORS 633.520 is amended to read:

27 633.520. Each container of agricultural seed, **or of more than one pound of flower seed**, sold,
28 offered or exposed for sale, or transported within this state shall bear [thereon] or have attached
29 [thereto] in a conspicuous place a legibly written or printed label or tag prepared from information
30 developed from a seed test as prescribed by rule by the Director of Agriculture and [which] **that**
31 states in the English language:

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

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

41 (3) The lot number or other lot identification.

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

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

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

45 (7) The name and number per pound of each kind of noxious weed seed restricted in Oregon,

1 or the statement “No Noxious Found,” or a similar statement, if the sample is free of all noxious
 2 weed seeds listed in the administrative rules.

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

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

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

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

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

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

12 (12) If such seed or mixture is intended for seeding purposes and has been treated, the following:

13 (a) A statement that the seeds have been treated.

14 (b) The commonly accepted chemical or abbreviated chemical name of any substance used in
 15 such treatment.

16 (c) A descriptive statement, approved by the director as adequate for the protection of the
 17 public, of any process used in such treatment.

18 (d) If the substances used in such treatment in the amount remaining with the seeds is harmful
 19 to humans or other vertebrate animals, an appropriate warning statement, approved by the director
 20 as adequate for the protection of the public.

21 (13) A statement of the net quantity of the contents of each container in terms of the net weight
 22 of such container.

23 **SECTION 3.** ORS 633.531 is amended to read:

24 633.531. Each container of vegetable seed **or flower seed** that is sold, offered for sale, exposed
 25 for sale or transported within this state and that has a net weight of one pound or less shall be
 26 legibly labeled:

27 (1) With the commonly accepted name of the kind or the kind and variety of the seed.

28 (2) With the name and address of the person who labeled the seed or who sells, offers or exposes
 29 such seed for sale within this state.

30 (3) With the year for which the seed was packed for sale, or the percentage of germination and
 31 the date the test was completed.

32 (4) In the case of seed [which] **that** has a percentage of germination less than the standard
 33 prescribed by the Director of Agriculture under authority of ORS 633.680, with:

34 (a) The percentage of germination.

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

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

37 (d) The words “substandard germination” in not less than eight-point boldfaced type.

38 (5) With the labeling data required by ORS 633.520 (12) and (13).

39 **SECTION 4.** ORS 633.545 is amended to read:

40 633.545. All bins and other bulk displays of agricultural, **flower** or vegetable seed, and mixtures
 41 of agricultural, **flower** or vegetable seed, or both, shall be labeled with the data required to be
 42 present on containers of agricultural, **flower** or vegetable seed prescribed in ORS 633.520, 633.531
 43 and 633.541.

44 **SECTION 5.** ORS 633.550 is amended to read:

45 633.550. (1) In the following cases agricultural, **flower** or vegetable seeds, or mixtures of agri-

1 cultural, **flower** or vegetable seeds, or both, are exempt from the labeling provisions of ORS 633.520,
 2 633.531 and 633.541, except that any labeling or other representation that is made with respect to
 3 such seed shall conform to those sections:

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

8 labeled, the seed must be labeled accurately.

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

14 **SECTION 6.** ORS 633.561 is amended to read:

15 633.561. The director shall prepare a list of prohibited noxious weed seeds[,] and a list of re-
 16 stricted noxious weed seeds[, *on which latter list*]. **On the list of restricted noxious weed seeds**
 17 the director, with the concurrence of the dean, shall specify the number of such seeds per pound
 18 that may be present in agricultural, **flower** or vegetable seed.

19 **SECTION 7.** ORS 633.571 is amended to read:

20 633.571. (1) The director, with the concurrence of the dean, may make the following changes in
 21 the list of prohibited noxious weed seeds or in the list of restricted noxious weed seeds:

- 22 (a) The addition to either list of the name of the seed of any weed.
 - 23 (b) The removal from either list of the name of the seed of any weed.
 - 24 (c) A change in the list of restricted noxious weed seeds of the number of such seeds per pound
- 25 that may be present in agricultural, **flower** or vegetable seed.

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

- 30 (a) The prevalence of such weed in the state.
 - 31 (b) The potential effect upon the seed industry and agriculture generally.
 - 32 (c) Means of effective control or eradication.
 - 33 (d) Toxicity to animals, including humans.
 - 34 (e) Methods of separation from other seeds.
 - 35 (f) Any other factor that may in the judgment of the director and the dean be a reasonable
- 36 ground for making such change.

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

39 **SECTION 8.** ORS 633.620 is amended to read:

40 633.620. (1) The certification of varieties of agricultural, cereal grain, **flower** or vegetable seeds,
 41 or of tubers or horticultural plants, for planting purposes as certified seeds, tubers or plants shall
 42 be conducted in this state by the dean.

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

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

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

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

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

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

20 **SECTION 9.** ORS 633.630 is amended to read:

21 633.630. (1) All moneys collected as fees or charges for inspection and certification of agricul-
 22 tural, cereal grain, **flower** and vegetable seeds, and of tubers and horticultural plants, shall be re-
 23 ceipted for and deposited in a special fund to be known as the certification fund. The fund shall be
 24 maintained by the dean, who may expend such funds for no other purposes than the following:

- 25 (a) Salaries, wages and necessary travel and other expenses of employees while on official duty.
- 26 (b) The purchase of necessary equipment, materials and supplies.
- 27 (c) Other expenses necessary to the carrying out of such inspection and certification.

28 (2) The expenditures shall be made in accordance with the usual disbursement of receipts of the
 29 cooperative agricultural extension service.

30 **SECTION 10.** ORS 633.651 is amended to read:

31 633.651. (1) *[No person shall]* **A person may not** sell, offer for sale, expose for sale or transport
 32 for use in planting in the State of Oregon any agricultural, **flower** or vegetable seed:

33 (a) That except as provided in ORS 633.550, has not been labeled as required by ORS 633.520,
 34 633.531 and 633.541;

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

36 (c) That contains any prohibited noxious weed seeds;

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

39 (e) That has not been tested within the 18 months next preceding such sale, offering for sale,
 40 exposure for sale or transportation, not including the calendar month in which the test was com-
 41 pleted, to determine the percentage of germination for the labeling requirements of ORS 633.520,
 42 633.531 and 633.541. The Director of Agriculture may, pursuant to the authority of ORS 633.680,
 43 establish by order a shorter period for kinds of seed *[which]* **that** the director finds under ordinary
 44 conditions of handling will not maintain a germination within the established limits of tolerance
 45 during an 18-month period, or longer period for kinds of such seed *[which]* **that** are packaged in such

1 container materials and under such conditions as the director may determine will, during such
 2 longer period, maintain the viability of the seed under ordinary conditions of handling. Any person
 3 in possession of seeds shall keep on file available for State Department of Agriculture inspection the
 4 original or duplicate copy of the latest test made of such seeds [*which shall show*] **that shows**, in
 5 addition to the information required by the provisions of this section, the date and the name of the
 6 person making such test; or

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

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

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

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

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

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

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

25 **SECTION 11.** ORS 633.655 is amended to read:

26 633.655. [*No person shall be*] **A person is not** subject to the penalties of ORS 633.992 for having
 27 sold, offered for sale, exposed for sale or transported in this state any agricultural, **flower** or veg-
 28 etable seed, that:

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

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

33 (b) Takes such invoice or grower's declaration in good faith; and

34 (c) Takes such other precautions as are reasonable to [*insure*] **ensure** the identity of the seeds
 35 to be as stated.

36 (2) Does not conform to the label on the container [*thereof*], but is within the tolerances au-
 37 thorized by the director under ORS 633.680 (1).

38 **SECTION 12.** ORS 633.660 is amended to read:

39 633.660. The director shall enforce ORS 633.511 to 633.750 and 633.996. However, the enforce-
 40 ment of certification regulations and the work of testing seeds and sampling, inspecting, sealing and
 41 certification labeling of tubers and horticultural plants and of agricultural, cereal grain, **flower** and
 42 vegetable seeds for certification, as provided by ORS 633.600 to 633.640, shall be done by the dean.

43 **SECTION 13.** ORS 633.670 is amended to read:

44 633.670. (1) In the enforcement of ORS 633.511 to 633.750 and 633.996, the Director of Agricul-
 45 ture, deputies of the director, inspectors or samplers may:

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

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

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

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

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

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

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

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

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

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

33 (b) The total number of such inspections.

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

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

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

39 **SECTION 14.** ORS 633.690 is amended to read:

40 633.690. (1) The director may place a quarantine on all agricultural, **flower** or vegetable seed
 41 entering this state from any outside source. However, seed labeled in accordance with ORS 633.520,
 42 633.531 and 633.541 shipped into the state by any person holding an Oregon license in full force shall
 43 not necessarily be quarantined; and any such seeds in tight containers in transit directly through
 44 this state, to points outside this state, [*shall not be*] **are not** subject to quarantine. Any such seeds
 45 from outside this state, that are destined to points in this state for conditioning purposes, for later

1 use in this state, or for shipment from this state, shall be held under quarantine until such seeds
 2 comply with ORS 633.511 to 633.750.

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

10 **SECTION 15.** ORS 633.700 is amended to read:

11 633.700. (1) [*No person may*] **A person may not** sell, offer or expose for sale in this state any
 12 agricultural or vegetable seeds unless the person holds an unsuspended license issued by the State
 13 Department of Agriculture. **A person selling, offering or exposing for sale only flower seeds at**
 14 **retail must hold an unsuspended license issued by the department.** However, any person selling
 15 seeds of the person's own production exclusively, and persons selling only **flower or** vegetable seeds
 16 at retail, in packages weighing not in excess of one-half pound, as prepared for such trade by other
 17 seed companies, if the seed company preparing such packaged seed for sale, has a license in force
 18 for the sale of such seed in this state, is not required to secure such license. For the purposes of
 19 this section, persons operating more than one branch, plant or warehouse where seeds are sold, of-
 20 fered or exposed for sale shall secure a separate license for each such branch, plant or warehouse.

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

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

31 **SECTION 16.** **The amendments to ORS 633.520, 633.531, 633.545, 633.651 and 633.700 by**
 32 **sections 2 to 4, 10 and 15 of this 2007 Act apply to flower seeds sold, offered or exposed for**
 33 **sale or transported within this state on or after January 1, 2009.**