

Enrolled House Bill 2159

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber for State Department of Agriculture)

CHAPTER

AN ACT

Relating to seeds; creating new provisions; amending ORS 576.710, 633.511, 633.680 and 633.700; repealing ORS 576.725 and 576.727; and declaring an emergency.

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

SECTION 1. As used in sections 1 to 10 of this 2011 Act:

- (1) **“Agricultural seed” means grass seed of a type commonly sold for use in turf lawns or as forage seed.**
- (2) **“Authenticate” has the meaning given that term in ORS 79.0102.**
- (3) **“Producer” means a person that grows agricultural seed in this state on a commercial basis for a seed dealer.**
- (4) **“Seed bailment contract” means a seed production contract under which the seed dealer retains title to all seed, seed stock and plant life grown or used by the producer under the terms of the contract.**
- (5) **“Seed dealer” means a person that in the ordinary course of business contracts to buy agricultural seed grown in this state by a producer or contracts with a producer for the growing of agricultural seed in this state.**
- (6) **“Seed delivery” means the date on which the seed grower delivers grass seed to the seed dealer pursuant to a notice from the dealer.**
- (7) **“Seed grower” means a person that grows grass seed in this state on a commercial basis without entering into a contract with a seed dealer prior to harvesting of the seed.**
- (8) **“Seed production contract” means a written agreement between a producer and a seed dealer for the growing of agricultural seed in this state.**
- (9) **“Seed purchase contract” means a written agreement for a seed dealer to purchase grass seed that has been grown by a seed grower. “Seed purchase contract” does not include a seed production contract.**
- (10) **“Variety Not Stated Seed” means agricultural seed that is sold in unmarked plastic bags or other unmarked containers without any reference to a variety name for the seed.**

SECTION 2. (1) The following terms apply to seed production contracts:

- (a) **If the contract does not settle the price of the agricultural seed, the contract is enforceable and the price shall be determined as described in ORS 72.3050 (1) to (3).**
- (b) **Except as provided in section 3 (1) or (3) of this 2011 Act, payment to the producer is due no later than the earliest of the following:**
 - (A) **The dates specified in the contract.**
 - (B) **Thirty days after delivery of the seed.**

(C) May 1 of the calendar year following the harvesting of the seed.

(c) Unless expressly provided otherwise in a seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the agricultural seed, the risk of loss and the responsibility for the payment of storage fees transfer from the producer to the seed dealer upon the earlier of:

(A) The delivery of the seed to the seed dealer pursuant to a notice from the seed dealer; or

(B) The delivery to the seed dealer of test results establishing that the seed meets quality standards set forth in the contract.

(d) Unless expressly provided otherwise in a seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the agricultural seed, the minimum period for an initial contract is two years. This paragraph does not establish a minimum period for an extension or renewal that follows an initial contract period.

(2) It is an implied condition of any price or payment requirement described in subsection (1) of this section that the producer is performing, or has completed performance, in accordance with the seed production contract and has not otherwise breached the contract.

(3) Except as provided in subsection (5) of this section, a seed production contract described in this section may contain any additional terms agreed to by the parties.

(4) If a seed production contract is extended or renewed, for the extension or renewal period the parties may:

(a) Subject to paragraph (b) of this subsection, continue the terms of the original contract or agree to new or different contract terms; and

(b) Agree to payment due date terms as provided under this section or under section 3 (3) of this 2011 Act.

(5) A seed production contract may not:

(a) Provide for exclusive venue or jurisdiction in another state;

(b) Provide for the terms of the contract to be interpreted under the laws of another state;

(c) Waive the application of sections 1 to 10 of this 2011 Act to the contract; or

(d) Authorize a unilateral material modification of the contract.

(6) Subject to ORS 72.2010, subsections (1) and (5) of this section also apply to a non-written agreement for the production of agricultural seed.

(7) A term in a seed production contract that conflicts with subsection (1) or (5) of this section is void as a matter of public policy.

SECTION 3. (1) A seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the agricultural seed may contain payment due date terms that differ from the payment due date terms described in section 2 (1)(b) of this 2011 Act if the contract:

(a) Provides for the price of the seed to be determined no later than March 15 of the calendar year following harvesting of the seed;

(b) Requires the seed dealer to make a partial payment no later than March 15 of the calendar year following harvesting of the seed that is at least 40 percent of the full payment amount; and

(c) States the date by which final payment for the seed is due.

(2) If a seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the agricultural seed does not contain each provision, requirement and statement described in subsection (1)(a) to (c) of this section, notwithstanding any contrary payment due date terms stated in the contract, the payment due date terms of the contract are subject to section 2 (1)(b) of this 2011 Act.

(3) An extension or renewal of any seed production contract, regardless of when the contract was authenticated, may contain payment due date terms that differ from the payment due date terms described in section 2 (1)(b) of this 2011 Act if the extension or renewal

contains the provision, requirement and statement described in subsection (1)(a) to (c) of this section. If an extension or renewal of a seed production contract does not contain each provision, requirement and statement described in subsection (1)(a) to (c) of this section, notwithstanding any contrary payment due date terms stated in the extension or renewal, the payment due date terms for the extension or renewal are subject to section 2 (1)(b) of this 2011 Act.

(4) It is an implied condition of any payment requirement created as provided under this section that the producer is performing, or has completed performance, in accordance with the seed production contract and has not otherwise breached the contract.

SECTION 4. (1) A seed bailment contract or seed purchase contract does not create a possessory security interest in goods under ORS chapter 79. For a seed bailment contract, filing, recording or notice of the contract is not a requirement for establishing, during the term of the contract, the validity of the contract or for establishing and confirming in the seed dealer the title to all seed, seed stock and plant life grown or used by the producer under the terms of the contract.

(2) Payments due from a seed dealer to a producer under the terms of a seed bailment contract, or due to a seed grower under the terms of a seed purchase contract, are subject to lien under ORS 87.226 and to security interests perfected as provided under ORS chapter 79.

SECTION 5. (1) The terms of a seed purchase contract must include:

- (a) The estimated date for seed delivery;
- (b) The terms and estimated date for the seed dealer to pay the seed grower;
- (c) The amount of grass seed to be purchased; and
- (d) The species, cultivars and quality standards of the grass seed to be purchased.

(2) If the seed purchase contract does not settle the price of the grass seed, the contract is enforceable and price shall be determined as described in ORS 72.3050 (1) to (3). A seed purchase contract must require the seed dealer to make payment to the seed grower within 30 days after seed delivery. However, upon written mutual agreement of the seed grower and the seed dealer, the grower may extend the period available for the dealer to make payment.

SECTION 6. (1) A party to a seed production contract or seed purchase contract may not, as a condition of performance, require the other party to agree to a material modification of the contract. A contract modification obtained in violation of this subsection is unenforceable.

(2) In any action to recover damages for breach of a seed production contract or seed purchase contract, if the court finds that a party to the contract failed to act in good faith as defined in ORS 71.2010, the court may award the prevailing party court costs and reasonable attorney fees.

SECTION 7. (1) If testing as provided under a seed production contract establishes that agricultural seed does not meet the quality standards set forth in the contract, the producer may at any time send the test results to the seed dealer and inquire whether the seed dealer intends to purchase the seed. If, within 30 days after the seed dealer receives the test results and inquiry from the producer, the seed dealer delivers a response informing the producer that the seed dealer intends to purchase the seed, the response is an accord that forms a seed purchase contract for the seed purchased under this subsection. Except as provided in this subsection regarding price, the parties may establish the terms of the seed purchase contract as provided under section 5 of this 2011 Act. The price of the seed that is subject to the seed purchase contract shall be:

- (a) Any price stated in the seed production contract for seed not meeting quality standards;
 - (b) If not determined by the seed production contract, any price agreed to by the parties;
- or

(c) If not determined by the seed production contract or by agreement, the market price for seed of the same kind and quality as the produced seed. However, a seed price established by the use of market price may not exceed any price established in the seed production contract for seed that meets quality standards.

(2) An accord that creates a seed purchase contract under subsection (1) of this section does not affect the terms of a seed production contract for any seed that was not described in the test results and inquiry sent by the producer.

(3) A producer may send test results and make an inquiry under subsection (1) of this section in any manner that documents seed dealer receipt of the test results and inquiry. A seed dealer may send a response under subsection (1) of this section to a producer in any manner that documents producer receipt of the response.

(4) If, within 30 days after the seed dealer receives the test results and inquiry from the producer, the seed dealer has not delivered a response informing the producer that the seed dealer intends to purchase the seed, the seed dealer is deemed to have refused purchase of the seed and to have authorized the producer to sell the seed in a commercially reasonable manner as "Variety Not Stated Seed." This subsection does not authorize the sale of any seed, seed stock or plant life of a protected variety grown or used by the producer other than a sale of seed as "Variety Not Stated Seed." The remedy provided under this subsection is in addition to any other remedy available to a producer by law. An authorization for sale arising under this subsection is in addition to any other conditional or unconditional authorization for sale that a seed dealer may grant to a producer.

SECTION 8. (1) If a seed dealer fails to pay a producer for agricultural seed when payment is due under a seed production contract or fails to pay a seed grower for grass seed when payment is due under a seed purchase contract, the producer or seed grower may notify the State Department of Agriculture. Upon notification by a producer or seed grower, the department shall determine whether payment has been made when due. If the department determines that the seed dealer has not made a payment that is due under a seed production contract or seed purchase contract, the department shall notify the seed dealer in writing that the dealer has 30 days to pay the producer or seed grower all delinquent amounts plus interest on each delinquent amount at the rate of one percent per month simple interest from the final payment date for that delinquent amount.

(2) A seed production contract or seed purchase contract may not vary the terms of the remedy provided by this section. A seed dealer may appeal the notice given by the department under this section as provided in ORS chapter 183. This section does not prevent a producer or seed grower from filing a notice of lien against a seed dealer.

(3) If a seed dealer fails to make payment as required by a notice given by the department under this section, the department shall suspend any seed dealer license issued to the dealer until the dealer demonstrates to the satisfaction of the department that the dealer is current on all payments due to all producers and seed growers. An order suspending a license under this subsection is subject to ORS chapter 183. However, the department may not suspend a seed dealer license under this section using the procedure described in ORS 183.430 (2).

(4) A seed dealer that fails to make payment on a seed production contract or seed purchase contract as required by a notice given by the department under this section is considered to have authorized the producer or seed grower to sell in a commercially reasonable manner any seed from the contract that is still in the possession of the producer or seed grower. This subsection does not prevent a seed dealer from giving consent to the producer or seed grower by other means and does not supersede the terms of a consent given by other means.

(5) The department may charge a producer or seed grower a fee, not to exceed \$50, for determining whether payment has been made in accordance with the terms of a seed production contract or seed purchase contract. The department may charge a producer or seed

grower a fee, not to exceed \$200, for notifying a seed dealer in writing regarding the deadline for payment of delinquent amounts plus interest.

SECTION 9. (1) As used in this section:

(a) **“Officer”** means any of the following individuals:

(A) A president, vice president, secretary, treasurer or director of a corporation.

(B) A general partner in a limited partnership.

(C) A manager in a manager-managed limited liability company.

(D) A member of a member-managed limited liability company.

(E) A trustee.

(F) An individual that is an officer as defined by the State Department of Agriculture by rule. A definition of “officer” adopted by department rule may include individuals not listed in this paragraph who may exercise substantial control over a business.

(b) **“Owner”** means:

(A) A sole proprietor of, partner in or holder of a controlling interest in an applicant;

or

(B) Any person that is an owner as defined by the department by rule.

(2) The State Department of Agriculture may adopt rules to require, as a condition of issuing a seed dealer license under ORS 633.700, that each seed dealer provide the department financial assurance for the performance by the seed dealer under any seed production contract or seed purchase contract entered into by the seed dealer.

(3) The department may refuse to issue a seed dealer license to an applicant if the applicant, any owner or officer of the applicant or any individual exercising substantial control over the seed industry activities of the applicant:

(a) Is a seed dealer for which the license has been suspended under section 8 of this 2011 Act;

(b) Is or was an owner or officer of a seed dealer at the time of an event that resulted in the license of the seed dealer being suspended under section 8 of this 2011 Act; or

(c) Was an individual who exercised substantial control over the seed industry activities of a seed dealer at the time of an event that resulted in the license of the seed dealer being suspended under section 8 of this 2011 Act.

(4) An agent that enters into a seed production contract on behalf of a seed dealer is conclusively presumed to have actual authority to establish the performance obligations of the seed dealer under the contract.

SECTION 10. (1) The Director of Agriculture may adopt rules for the administration and enforcement of sections 1 to 10 of this 2011 Act.

(2) The director may make mediation services available through the State Department of Agriculture for the resolution of seed production contract disputes and seed purchase contract disputes.

SECTION 11. ORS 576.710 is amended to read:

576.710. ORS 576.705 does not apply to any processor:

(1) [Who] **That** purchases from a producer seed that requires cleaning and germination tests; [or]

(2) **That** arranges for the production of agricultural seed under a contract that is subject to section 2 or 3 of this 2011 Act;

[(2)] (3) Of sugar beets whose contract with a producer for sale of the crop provides for profit sharing; [or]

[(3)] (4) Of fish or seafood products; or

[(4)] (5) Of meat animals.

SECTION 12. Sections 1 to 10 of this 2011 Act and the amendments to ORS 576.710 by section 11 of this 2011 Act apply to seed production contracts, seed purchase contracts and other agreements for the production of agricultural seed or grass seed formed on or after August 1, 2011.

SECTION 13. If the State Department of Agriculture adopts a rule described in section 9 (2) of this 2011 Act, the department shall report to the next regular session of the Legislative Assembly following the rule adoption regarding the contents of the rule and the matters considered by the department in developing the rule.

SECTION 14. 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 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.

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

(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.

(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.

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

(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.

(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.

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

(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.

(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.

(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.

(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.

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

(19) "Wholesaler" means any person who sells, offers or holds for sale **or contracts to obtain the production of**, agricultural, flower or vegetable seed to retailers, distributors, brokers or other wholesalers for resale.

SECTION 15. ORS 633.680 is amended to read:

633.680. (1) The Director of Agriculture shall establish standards of germination for vegetable seed, and shall make reasonable rules and regulations necessary to effectuate the purpose of ORS 633.511 to 633.750 and 633.996, covering:

(a) Licensing, suspension, reinstatement and revocation of licenses, which rules and regulations shall conform to the law governing suspension, refusal or revocation of licenses by the State Department of Agriculture.

(b) Regulatory and official sampling.

(c) Labeling of seeds, including such additional information as may be required in order to maintain uniformity with the laws and regulations of the federal government or of other states.

(d) Quarantining, which rules and regulations shall conform to the law for establishment of quarantines by the State Department of Agriculture.

(e) Seizure, treatment and disposition of seeds from outside this state.

(f) Seizure of seeds.

(g) Changes in the list of prohibited noxious weed seeds and in the list of restricted noxious weed seeds.

(h) Tolerances for differences between the contents of a container of agricultural, **flower** or vegetable seed and the label thereon.

(i) The types of records and the procedures for handling forms and records that must be kept by seed dealers and seed conditioners.

(j) The identity of varieties of agricultural seed required by ORS 633.520.

(k) The variations in time provided for in ORS 633.651.

(L) The use and labeling of hermetically sealed or other types of containers or conveyances involving seeds.

(m) The type of analysis tests that must be conducted to develop information used in preparing seed labels or tags.

(2) The director may adopt rules establishing standards for forms used in reporting analysis of seed.

(3) The director may establish fees and charges for official sampling, applied for by the owner, at an amount sufficient to cover the cost. The director may also establish reasonable charges covering issuance of permits, and the treatment and disposition of seeds seized and held under quarantine. However, in any case where the service involved is in such location or under such circumstances that the usual fees or charges are insufficient to cover the expense, the director may make additional charges to avoid loss to this state.

SECTION 16. ORS 633.700 is amended to read:

633.700. (1) A person may not sell, offer or expose for sale in this state, **or contract to have produced in this state for commercial purposes**, any agricultural, **flower** 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.]* **However, a person is not required to obtain a license if the person is selling only seeds produced by the person or if the person is selling flower or vegetable seeds at retail in packages weighing not more than one-half pound that were prepared for retail sale by a seed company licensed under this section.** 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 of **Agriculture** 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 on June 30 next following the date of issuance or on such date as may be specified by department rule.

(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.

SECTION 17. The amendments to ORS 633.511 and 633.700 by sections 14 and 16 of this 2011 Act apply to contracts entered into on or after the effective date of this 2011 Act.

SECTION 18. ORS 576.725 and 576.727 are repealed.

SECTION 19. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by House March 1, 2011

Received by Governor:

Repassed by House June 2, 2011

.....M.,....., 2011

Approved:

.....
Ramona Kenady Line, Chief Clerk of House

.....M.,....., 2011

.....
Bruce Hanna, Speaker of House

.....
John Kitzhaber, Governor

.....
Arnie Roblan, Speaker of House

Filed in Office of Secretary of State:

Passed by Senate May 19, 2011

.....M.,....., 2011

.....
Peter Courtney, President of Senate

.....
Kate Brown, Secretary of State