



Jeff Grim

Bill Analysis
Legislative Service Commission

Sub. H.B. 143*

125th General Assembly
(As Reported by S. Agriculture)

Reps. Aslanides, McGregor, Hagan, Collier, Husted, Widener, Hollister, C. Evans, Widowfield, Carmichael, Barrett, Setzer, Seaver, Domenick, Niehaus, Faber, Walcher, Cates, Chandler, Cirelli, Daniels, DeWine, Distel, Flowers, Gibbs, Harwood, Kearns, Otterman, T. Patton, Peterson, Redfern, Schmidt, Seitz, J. Stewart, Wolpert

BILL SUMMARY

Label requirements for agricultural, vegetable, and flower seeds

- Modifies the label requirements for agricultural and vegetable seed, and adds label requirements for flower seed.
- Prohibits specified information from being included on a label for agricultural, vegetable, or flower seed unless a test has been conducted on that lot of seed prior to its labeling to determine the accuracy of the information.
- Eliminates the current exemption from criminal penalties for persons who sell agricultural or vegetable seed that is incorrectly labeled if they have taken specified steps to correctly identify the seed.
- States that in the case of agricultural, vegetable, or flower seed that is being exported and that is in specified quantities, the labeling requirements do not apply, provided that other specified requirements are satisfied.
- Adds to the information that is required to appear on the certification label attached to each container of each lot of seed, tubers for seeding purposes, or plants the class, kind, variety, or germ plasm of the seed.

* *This analysis was prepared before the report of the Senate Agriculture Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Requires the Ohio Seed Improvement Association to establish standards and procedures for seed certification, requires a review of those standards and procedures at designated intervals, and prohibits any change to the standards and procedures from taking effect unless it is approved by at least two-thirds of the members of the Association's governing board.

Requirements governing the sale of seeds

- Modifies requirements governing the sale of agricultural and vegetable seed, and applies those requirements to the sale of flower seed.
- Revises the requirements for tests that determine the percentage of germination of certain seed.
- Adds a requirement that seed cannot be out of compliance with the tolerance established for it by the Director.

Record-keeping requirements for advertisement and sale of seed

- Extends the record-keeping requirements governing the advertising of agricultural and vegetable seed to flower seed.
- Replaces the requirement that any person who sells agricultural or vegetable seed keep sales records for 18 months with a requirement that any person who holds a valid seed labeler permit and who sells agricultural, vegetable, or flower seed keep sales records for 18 months at a location in Ohio.
- Authorizes the Director of Agriculture rather than the Auditor of State to perform audits of any persons who hold valid seed labeler permits rather than of out-of-state distributors who distribute seed in Ohio.

Issuance of seed labeler permits

- Eliminates the issuance of Ohio seed inspection fee tags or labels in lieu of permits by the Director, thus requiring any person who labels agricultural or vegetable seed in Ohio to obtain a seed labeler permit, and also requires any person who labels flower seed to obtain a seed labeler permit.
- Modifies and establishes additional permit requirements and procedures for obtaining a seed labeler permit.

- Revises somewhat the fee that must be submitted by a permit holder with a semiannual seed sales report, establishes a minimum seed fee of \$5, and specifies that the seed sales reporting requirement and the payment of seed fees do not apply to governmental entities that donate seed for conservation purposes.

Duties of the Director of Agriculture

- Requires the Director to perform specified functions in regards to the analysis of flower seed.
- Authorizes the Director, instead of maintaining seed testing facilities, to enter into agreements under which other persons are responsible for performing seed testing.
- Requires the Director to adopt rules regarding native grass, tolerance for agricultural, vegetable, and flower seed, application information for seed labeler permits, and any other provisions that are necessary to clarify or administer the seed labeling requirements.

Enforcement

- Revises and expands the prohibitions against specified actions under the Agricultural Seed Law.
- Provides that any lot of flower seed that is not in compliance with that Law is subject to seizure on complaint of the Director.

Seed Fund

- Establishes the Seed Fund, and requires that all money collected under the Agricultural Seed Law be deposited into that Fund rather than the General Revenue Fund and be used to administer and enforce that Law.

Legume inoculant registration

- Revises the date by which a person who submits an application for the registration of a brand of legume inoculant must pay the registration and inspection fee from August 1 to January 1, eliminates the existing fee that is based on sales volume, and establishes a fee of \$50 per brand regardless of the sales volume of the brand.

TABLE OF CONTENTS

Introduction; application of Agricultural Seed Law under the bill	4
Label requirements for agricultural, vegetable, and flower seeds	5
Definitions modified by the bill	5
Definitions added by the bill.....	7
Label requirements.....	7
Other label provisions	10
Prohibitions	11
Exceptions	12
Seed certifying agency.....	12
Requirements governing the sale of seeds.....	13
Record-keeping requirements for advertisement and sale of seed.....	15
Advertisement records	15
Sale of seed records.....	16
Issuance of seed labeler permits	17
Overview.....	17
Permit requirements and procedures under the bill	17
Duties of the Director of Agriculture	19
Enforcement	20
Additional prohibitions	20
Seizure of seed.....	21
Exceptions from labeling and sale of seed requirements and prohibitions	21
Seed Fund.....	22
Legume inoculant registration	22

CONTENT AND OPERATION

Introduction; application of Agricultural Seed Law under the bill

The Agricultural Seed Law establishes label requirements for agricultural and vegetable seed and requires persons who sell agricultural or vegetable seeds either to: (1) purchase from the Director of Agriculture seed inspection fee tags or labels and attach them to seed containers, or (2) obtain a permit from the Director, attach his own tags or labels to seeds, and pay semiannual seed inspection fees. The Law establishes other requirements, restrictions, and prohibitions regarding the advertisement and sale of seeds.

The bill modifies the label requirements for agricultural and vegetable seed and adds requirements for flower seed. It also eliminates the tags and labels that are provided by the Director and instead requires all seed labelers to obtain a seed

labeler permit. In addition, it revises several existing, and adds several new, requirements, restrictions, and prohibitions.

Finally, the Agricultural Seed Law currently defines "person" as any individual, partnership, corporation, company, society, association, receiver, trustee, or agent. The bill adds "public agency" to the definition, thus extending the application of that Law to public agencies. (Sec. 907.01(P).)

Label requirements for agricultural, vegetable, and flower seeds

Definitions modified by the bill

Under current law, "agricultural seed" means the seed of grass, forage, cereal, field and fiber crops, any other kinds of seed commonly recognized in this state as agricultural or field seed, lawn seed, and mixtures of such seed.¹ The bill adds the seed of native grass (see below) and blends (see below) of the specified types of seed. (Sec. 907.01(B).) Current law defines "mixture" as a lot of agricultural seed consisting of more than one kind or variety, each of which is present in excess of 5% of the whole. Under the bill, "mixture" instead means seed consisting of more than one kind, each of which is present in excess of 5% of the whole. (Sec. 907.01(M).)²

Under current law, "lot of seed" means a definite quantity of seed identified by a lot number or other identification, every portion or bag of which is uniform, within permitted tolerances, as to the factors that appear on the label.³ The bill removes from the definition the phrase "or other identification." (Sec. 907.01(L).) Under existing law, "label," except as used in "inspection fee label," means any

¹ Under law unchanged by the bill, "kind," in reference to seed, means one or more related species or subspecies that, singly or collectively, are known by one common name, for example, soybeans, oats, alfalfa, or timothy (sec. 907.01(J)).

² Current law defines "type" as either a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions or, when used with a variety name, seed of that variety that may be mixed with seed of other varieties of the same kind and of similar character. In either case, 90% of the pure seed must be of the variety or group of varieties named or, upon growth, must produce plants having characteristics similar to the variety or group of varieties named (sec. 907.01(AA)). "Variety" means a subdivision of a kind that is characterized by growth, plant, fruit, seed, or other characteristics by which it can be differentiated from other sorts of the same kind (sec. 907.01(BB)).

³ Current law defines "tolerance" as the allowable deviation from any percentage, fraction, or rate of occurrence stated on the label of a lot of seed. Tolerance is based on the law of normal variation from a mean. (Sec. 907.01(Z).)

written, printed, or graphic matter upon or attached to a container of seed or the invoice pertaining thereto. The bill instead defines "label" as a tag or other device that is attached to or written, stamped, or printed on any container of seed or that accompanies any lot of bulk seed and that describes the kind of seed together with any other information required by law. "Label" includes an invoice under which any seed is imported into Ohio. (Sec. 907.01(K).)

Existing law defines "vegetable seed" as the seed of any crop that is grown in gardens or on truck farms and is generally known and sold in this state under the name of vegetable seed. The bill expands the definition to include herb seed. (Sec. 907.01(CC).)

Under current law, "standard," as applied to vegetable seed, means the minimum percentage of germination established by the Director of Agriculture for any kind or variety of seed. The bill generally retains the definition, but changes the defined term from "standard" to "germination standard" and includes flower seed in the application of the definition. (Sec. 907.01(Y).) It replaces the term "standard" with "germination standard" throughout the bill when the term is applied to vegetable or flower seed.

Under existing law, "in bulk" means loose in vehicles, bins, or other containers, but not in bags, boxes, or packages. The bill instead defines "in bulk" or "bulk" as loose in vehicles or bins. (Sec. 907.01(H).)

Under existing law, "secondary noxious weeds" or "restricted noxious weeds" means weeds that are objectionable in fields, lawns, or gardens, but that can be controlled by good cultural practices. The bill modifies the term by eliminating "secondary noxious weeds," thus defining only "restricted noxious weeds," and replaces the term "secondary noxious weeds" with "restricted noxious weeds" throughout the bill. (Sec. 907.01(W).)

Existing law defines "pure seed" as agricultural or vegetable seed free of inert matter and free of other seed distinguishable by appearance.⁴ The bill instead defines "pure seed" as agricultural, vegetable, or flower seed free of inert matter and free of other seed distinguishable by appearance or test. (Sec. 907.01(T).)

Under current law, "sell" means: (1) transferring ownership, offering or exposing for sale, exchanging, distributing, giving away, or transporting in Ohio, (2) storing, carrying, or handling in aid of traffic in Ohio whether in person or through an agent, employee, or others, and (3) receiving, accepting, or holding on

⁴ Current law defines "inert matter" as all matter not seeds, including broken seeds, sterile florets, chaff, fungus bodies, and stones (sec. 907.01(I)).

consignment for sale. The bill specifies that the term "sell" or "sold" includes these activities rather than is limited to these activities as under current law. (Sec. 907.01(X).)

Definitions added by the bill

The bill adds definitions of "native grass," "blend," "flower seed," "class of seed," "container," and "pure live seed." "Native grass" has the meaning established in rules adopted by the Director of Agriculture under the bill (sec. 907.01(KK)). "Blend" means seed that consists of more than one variety of a kind, with each variety representing more than 5% by weight of the whole (sec. 907.01(GG)). "Flower seed" means the seed of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and commonly known as and sold under the name of flower seed (sec. 907.01(HH)).

Under the bill, "class of seed" means a classification of seed that is established using the standards and procedures established by the Association of Official Seed Certifying Agencies and that designates seed as breeder, foundation, registered, or certified seed (sec. 907.01(LL)). "Container" means a packet, bag, box, tape, tube, envelope, pre-planted device, mat, or other device used to contain seed, but does not include a vehicle or bin used to contain bulk seed (sec. 907.01(MM)).

The bill defines "pure live seed" as the sum of seed's percentage of germination plus the percentage of hard seed or dormant seed, multiplied by the percentage of pure seed, the product of which is divided by 100. The result is expressed as a whole number. The bill states that expressed as an equation, the definition is as follows: (percentage of germination plus percentage of hard seed or dormant seed) multiplied by the percentage of pure seed equals (product) divided by 100 equals pure live seed.⁵ (Sec. 907.01(II).)

Label requirements

Overview. Under current law, each container of agricultural or vegetable seed that is sold for sowing purposes must bear on it or have attached to it in a conspicuous place a label plainly written or printed in the English language providing specified information for agricultural, coated agricultural, and vegetable seeds and combination seed-mulch products.⁶ The bill modifies the label

⁵ Under law unchanged by the bill, "hard seed" means seed that, because of impermeability, does not absorb moisture or germinate, but remains hard during the period of germination prescribed for that particular kind of seed (sec. 907.01(E)).

⁶ Current law defines "combination seed-mulch product" as any product containing both seeds and a natural or artificial substance that is applied to the soil surface for the

requirements for agricultural seed and relocates without change the coated agricultural seed label requirements. It also modifies the label requirements for vegetable seed by differentiating between seed sold in containers weighing eight ounces or less and seed sold in containers weighing more than eight ounces. The bill adds label requirements for flower seed that is sold in containers weighing eight ounces or less and for flower seed that is sold in containers weighing more than eight ounces. It retains without change the label requirements for combination seed-mulch products. Finally, the bill modifies several other labeling requirements.

Label requirements for agricultural seed that is sold on a pure live seed basis or any other basis. The bill clarifies that the existing requirements governing labels for agricultural seed apply to agricultural seed that is sold on a pure live seed basis or any other basis. It then modifies two of those requirements. Under existing law, if more than one agricultural seed component is required to be named on the label, "mixture" or "mixed" must be stated conspicuously on the label. The bill instead requires that if more than one seed kind is listed on the label, the word "mixture," "mixed," or "mix" must appear conspicuously on the label. If more than one variety is listed on the label of seed consisting of a single kind, the word "blend" must appear on the label. (Sec. 907.03(A)(1)(a).) In addition, current law requires that the label must also contain the lot number or other lot identification. The bill only requires the lot number. (Sec. 907.03(A)(1)(b).)

Label requirements for vegetable seed that is sold in containers weighing eight ounces or less. The bill applies the current label requirements for vegetable seed to vegetable seed that is sold in containers weighing eight ounces or less and makes several changes to those requirements. First, it eliminates a requirement that the percentage of germination of any vegetable seed sold in packets weighing less than four ounces must be equal to or above the germination standard (existing sec. 907.03(A)(3)(d)).

Next, current law specifies that the percentage of germination of any vegetable seed determined to be above the standard may be stated on the label or

purpose of promoting seed germination through moisture retention, maintaining soil temperature, or preventing erosion, and may contain fertilizer (sec. 907.01(FF)). "Coated agricultural seed" means an agricultural seed with a film or layer applied to the seed that is greater than 1% of the net weight, for purposes of, including, but not limited to, accurate seeding, nitrogen fixation, nutrient improvement, or protection from insects and pathogens. "Coated agricultural seed" does not include seeds treated with dusts or liquids that are virtually unmeasurable using Association of Official Seed Analysts rules. (Sec. 907.01(EE).)

container. The bill adds that the percentage of germination of seed determined to be equal to the standard also may be stated on the label or container. It also clarifies that the percentage of germination determined to be equal to or above the standard is merely authorized, and not required, to be stated on the label or container. (Sec. 907.03(A)(3)(b).)

The bill retains a requirement that the label must include the name and address of the person who labels the seed, but removes a requirement that the label must contain that information for the person who sells the seed (new sec. 907.03(A)(3)(c)). Finally, it adds requirements that the label must contain the year in which the packed seed is intended for sale and the lot number (sec. 907.03(A)(3)(d) and (e)).

Label requirements for vegetable seed that is sold in containers weighing more than eight ounces. The bill establishes separate label requirements for vegetable seed that is sold in containers weighing more than eight ounces. The label must include all of the following:

(1) The name of each kind and variety of vegetable seed present in excess of 5% and the percentage by weight of each in order of its predominance;

(2) The lot number;

(3) For each vegetable seed named on the label, the percentage of germination exclusive of hard seed, the percentage of hard seed, if present (germination and hard seed may be stated as a total percentage if desired), and the calendar month and year that the test used to determine each percentage was completed; and

(4) The name and address of the person who labels the seed. (Sec. 907.03(A)(4).)

Label requirements for flower seed that is sold in containers weighing eight ounces or less. The bill adds label requirements for flower seed that is sold in containers weighing eight ounces or less. The label must include all of the following:

(1) The common name of the kind and variety of flower seed or, if commonly used, the scientific name of the kind and variety of flower seed;

(2) For flower seed that germinates less than the germination standard established by the Director, the percentage of germination, exclusive of hard seed, the percentage of hard seed, if present, the calendar month and year that the test used to determine the percentages was completed, and the words "below standard" in not less than eight-point type in a conspicuous place on the same side of the

label as that which states the percentage of germination or on the face of the container;

- (3) The name and address of the person who labels the seed;
- (4) The year in which the packed seed is intended for sale; and
- (5) The lot number.

The bill states that the percentage of germination of any flower seed determined to be equal to or above the standard may be, but is not required to be, stated on the label or container. (Sec. 907.03(A)(5).)

Label requirements for flower seed that is sold in containers weighing more than eight ounces. The bill also adds label requirements for flower seed that is sold in containers weighing more than eight ounces. The label must include all of the following:

- (1) The name of each kind and variety of flower seed present in excess of 5% and the percentage by weight of each in order of its predominance;

- (2) The lot number;

- (3) For each flower seed named on the label, the percentage of germination exclusive of hard seed, the percentage of hard seed, if present (germination and hard seed may be stated as a total percentage if desired), and the calendar month and year that the test used to determine each percentage was completed; and

- (4) The name and address of the person who labels the seed. (Sec. 907.03(A)(6).)

Other label provisions

Under existing law, in the case of agricultural or vegetable seed sold from vehicles, bins, or other bulk containers to which the purchaser has access before buying, the seller must attach a complete label to the bulk container or display adjacent to it a placard bearing a complete label stating the information required by the Agricultural Seed Law. The label must be conspicuous to the buyer. If the buyer purchases more than ten pounds of the bulk seed, the seller must attach a label to the container of seed being purchased stating the information required by that Law. The bill eliminates those requirements and instead requires bulk agricultural, vegetable, or flower seed that is offered for sale or sold to comply with the labeling requirements retained or established under the bill, as applicable, except that the label must be provided in the following manner rather than being attached to a container:

(1) The label must be posted next to the bulk seed so that it is easily read by the purchaser; and

(2) In the case of bulk seed purchased in excess of 20 pounds, the seller must provide a copy of the label to the consumer in conjunction with the bill of sale. (Sec. 907.03(C).)

Under law unchanged by the bill, the label requirements for agricultural or vegetable seed must include, for each named seed, the percentage of germination, exclusive of hard seed, the percentage of hard seed, if present, and the calendar month and year the test was completed to determine these percentages (sec. 907.03(A)(1)(i) and (2)(b)(i)). Existing law authorizes the total of these percentages to be stated on the label. The total must be used when applying the rules of tolerance.⁷ The bill eliminates these provisions. (Existing sec. 907.03(B).)

Under the bill, when dormant seed is encountered with respect to any of the following grasses, the result of a tetrazolium test also may be shown on the label of the grass seed to indicate the potential germination and viability of the seed: (1) bluestem, big, (2) bluestem, little, (3) dropseed, sand, (4) grama, sideoats, (5) indiagrass, (6) needlegrass, or (7) switchgrass (sec. 907.03(B)). The bill defines "dormant seed" as viable seed, excluding hard seed, that fails to germinate when provided with the specified germination conditions for that kind of seed (sec. 903.01(NN)).

Prohibitions

Under current law, no person can sell vegetable seed in packets of four ounces or less, the percentage of germination of which is below standard. The bill instead prohibits a person from selling vegetable or flower seed in containers of eight ounces or less, the percentage of germination of which is below the germination standard established by the Director unless the label of the seed clearly indicates that the germination is below standard. (Sec. 907.08(F).)

Existing law prohibits a person from selling agricultural or vegetable seed unless it is labeled in accordance with the Agricultural Seed Law. The bill adds to the prohibition that a person cannot sell flower seed unless it is labeled properly. (Sec. 907.08(H).)

⁷ Under current law, "tolerance" means the allowable deviation from any percentage, fraction, or rate of occurrence stated on the label of a lot of seed. Tolerance is based on the law of normal variation from a mean. (Sec. 907.01(Z).)

The bill prohibits any information concerning a test date, pure seed, inert matter, crop seed, weed seed, germination, hard seed, or noxious-weed seed from being included on a label for agricultural, vegetable, or flower seed unless a test has been conducted on that lot of seed prior to its being sold to determine the accuracy of the information (sec. 907.03(D)).

Exceptions

Under current law, a person is not subject to the criminal penalties established under the Agricultural Seed Law for selling any agricultural or vegetable seed that is incorrectly labeled or represented as to kind, variety, type, or origin if the seed cannot be identified by examination unless the person has failed to obtain an invoice or grower's declaration stating, if required, the kind, or kind and variety, or kind and type, and origin and to take other reasonable precautions to ensure that the seed is correctly identified. The bill eliminates this exception.

Under the bill, in the case of agricultural, vegetable, or flower seed that is being exported in bulk or containers directly to a foreign country and that is in quantities of 20,000 pounds or more regardless of the number of lots included, the labeling requirements do not apply, provided that all of the following requirements are satisfied:

(1) The omission, from each container or bulk unit, of a label with the required information is done with the knowledge and consent of the buyer of the seed prior to the transportation or delivery for transportation of the seed in international commerce;

(2) Each container has stenciled on it or bears a label containing a lot designation, variety identification, and kind identification;

(3) The invoice or other records accompanying and pertaining to the seed bear the information concerning the respective seeds that is required under the labeling requirements; and

(4) Records are kept available to be provided to the Department of Agriculture upon request in order to show proof that the seed is being exported to a foreign country for distribution. (Sec. 907.09(B).)

Seed certifying agency

Under current law, the Ohio Seed Improvement Association must certify for Ohio agricultural or vegetable seed, tubers for seeding purposes, or plants for varietal identification or for other factors. The bill adds that the Association must certify flower seed. (Sec. 907.02(A).)

Existing law requires certain information to appear on the certification label that must be attached to each container of each lot of seed, tubers for seeding purposes, or plants sold as "certified," "registered," or "foundation." The bill adds to the information required on the certification label of each container the class, kind, variety, or germ plasm of the seed. (Sec. 907.02(C).)

The bill requires the Ohio Seed Improvement Association to establish standards and procedures for seed certification that are no less stringent than those prescribed by the Association of Official Seed Certifying Agencies and that do not conflict with the Agricultural Seed Law and rules adopted under it. The Association must designate intervals at which it must conduct a review of the certification standards and procedures. No proposed change to the standards and procedures may take effect unless the change first is approved by an affirmative vote of at least two-thirds of the members of the Association's governing body. (Sec. 907.02(D).)

Existing law prohibits any person from using, orally or in writing, alone or with other words, "certified," "registered," "foundation," or any other term that suggests that the seed, tubers for seeding purposes, or plants have been certified unless the seed, tubers for seeding purposes, or plants have been certified by the Ohio Seed Improvement Association. Existing law also prohibits a person from selling any seed labeled "certified," "registered," or "foundation" unless it has been produced and labeled in compliance with the rules of a seed certifying agency. The bill clarifies that these prohibitions do not apply to use of the word "certified" for the purpose of describing seed, tubers for seeding purposes, or plants that have been certified as organic in accordance with federal law. (Secs. 907.02(B) and 907.08(E).)

Requirements governing the sale of seeds

Existing law prohibits a person from selling agricultural or vegetable seed unless the person complies with a number of requirements. The bill extends the prohibition to apply to the sale of flower seed, modifies certain requirements, eliminates a requirement, and adds a new requirement. (Sec. 907.07.)

Under current law, the test to determine the percentage of germination for labeling purposes must be completed within:

- (1) Nine months immediately prior to sale, exclusive of the calendar month in which the test was completed, if the seed is not in hermetically sealed packages or containers; or
- (2) Thirty-six months immediately prior to sale, exclusive of the calendar month in which the test was completed, if the seed is in hermetically sealed

packages or containers, provided that any such seed may be sold more than 36 months after the month in which it has been tested if it is retested within nine months immediately prior to sale.⁸ (Sec. 907.07(A).)

The bill instead requires the test used to determine the information concerning the seed's percentage of germination that is required to appear on the label of the seed to be completed within:

(1) Twelve months prior to sale, exclusive of the calendar month in which the test was completed, if the seed is not in hermetically sealed containers or if the seed is agricultural seed other than cool season grass seed (sec. 907.07(A)). "Cool season grass seed" means the agricultural seed of Kentucky bluegrass, red fescue, chewings fescue, hard fescue, tall fescue, perennial ryegrass, intermediate ryegrass, annual ryegrass, colonial bentgrass, creeping bentgrass, and mixtures or blends containing only those grass seeds (sec. 907.01(JJ));

(2) Fifteen months prior to sale, exclusive of the calendar month in which the test was completed, if the seed is a cool season grass seed or a mixture or blend of only cool season grass seeds and if the seed is not in hermetically sealed containers; or

(3) Thirty-six months prior to sale, exclusive of the calendar month in which the test was completed, if the seed is in hermetically sealed containers. Any such seed may be sold at any time after the 36 months have expired if it is retested prior to sale. Seed that has been retested may be sold for an additional time period if it is accompanied by a new label that complies with the applicable labeling requirements. The time period must consist of 12 consecutive months, not including the month in which the retest was performed. After the 12 months have expired, the cycle of retesting and relabeling followed by a 12-month saleable period may be repeated one or more times. (Sec. 907.07(A).)

Under existing law, seed cannot contain, singly or collectively, primary noxious-weed seeds, subject to a tolerance of not to exceed nine primary noxious-weed seeds per pound in seed of redtop, timothy, orchardgrass, bluegrass, fescue, brome grass, red clover, white clover, alsike clover, sweet clover, or any other seed of similar size. The bill instead prohibits seed from containing prohibited noxious-weed seed. It also prohibits a person from selling any tree or shrub seed

⁸ Under existing law, "hermetically sealed" means that the container used does not allow water vapor penetration through any wall, including the seals, greater than five one-hundredths grams of water per 24 hours per 100 square inches of surface at 100 degrees Fahrenheit with a relative humidity on one side of 90% and on the other side of 0% (sec. 907.01(F)).

that contains prohibited noxious-weed seed. (Sec. 907.07(D).) Under existing law, "primary noxious weeds" or "prohibited noxious weeds" means perennial weeds that reproduce by seed, spread by roots, underground stems, or other reproductive parts, and, when established, are highly destructive and difficult to control. The bill modifies the term by eliminating "primary noxious weeds," thus defining only "prohibited noxious weeds," and replaces the term "primary noxious weeds" with "prohibited noxious weeds" throughout the Agricultural Seed Law. (Sec. 907.01(R).)

Under existing law, seed cannot contain, singly or collectively, primary noxious-weed seeds, subject to a tolerance of not to exceed five primary noxious-weed seeds per pound in seed of millet, rape, flax, sudangrass, wheat, oats, rye, barley, buckwheat, vetches, or any other seed as large as or larger than wheat. The bill eliminates this provision. (Sec. 907.07(E).)

Also under current law, seed cannot contain more than 15% by weight of inert matter unless the product is a coated agricultural seed or a combination seed-mulch product containing less than 5% by weight of pure seed. The bill adds a third exception of native grass seed that is designated by rules adopted by the Director as characteristically exhibiting high inert matter. (Sec. 907.07(H).)

Current law prohibits seed from being sold at public auction unless it is labeled in accordance with the statutory labeling requirements and bears seed inspection fee tags. The bill instead prohibits sale at public auction unless it is labeled in accordance with the statutory labeling requirements and the person who labeled the seed obtained a permit to do so (see "*Permit requirements and procedures under the bill*," below). (Sec. 907.07(I).)

Finally, the bill adds a requirement that seed cannot be out of compliance with the tolerance established for it under rules adopted by the Director (sec. 907.07(K)).

Record-keeping requirements for advertisement and sale of seed

Advertisement records

Under current law, any person who disseminates, with the intention of inducing a sale, any advertisement or makes any claim concerning the quality or performance characteristic of any agricultural or vegetable seed must maintain specified records of the tests that were used to determine the quality or characteristic and must submit those records to the Director upon request. Current law prohibits any person from violating these requirements. The bill applies these provisions to advertisements of flower seed. (Secs. 907.08(B) and 907.081.)

Current law defines "records" as the complete data, including representative samples, concerning the source of purchase, origin, germination, purity, processing, and disposition of each lot of agricultural seed sold. The bill instead defines "records" as the complete data, including representative samples, concerning each lot of agricultural, vegetable, or flower seed that is sold. "Records" includes information about the seed's source of purchase and origin; the results of germination tests; the results of purity tests regarding the amount of pure seed, inert matter, crop seed, weed seed, and noxious-weed seed contained in the lot of seed; and information concerning the processing and disposition of the seed. (Sec. 907.01(U).)

Under existing law, "processing" means cleaning to remove chaff, sterile florets, immature seeds, weed seeds, inert matter, and other crop seeds, scarifying, blending to obtain uniform quality, or any other operation that would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed. "Processing" does not include such operations as packaging, labeling, blending uniform lots of the same kind or variety without cleaning, or preparing a mixture without cleaning, any of which would not require retesting to determine the quality of the seed. Under the bill, the term "conditioning" has the same meaning as "processing." (Sec. 907.01(S).)

Current law defines "weed seed" as the seed or bulblets of all plants generally recognized in this state as weeds, including noxious weeds. The bill replaces "noxious weeds" with "prohibited noxious weeds and restricted noxious weeds." (Sec. 907.01(DD).)

Sale of seed records

Existing law generally requires any person selling agricultural or vegetable seed to keep complete records of each lot of such seed that is sold for 18 months from the date of the final sale or other final disposition. The bill instead requires that any person who holds a valid seed labeler permit (see "**Permit requirements and procedures under the bill**," below) and who sells agricultural, vegetable, or flower seed to keep such records. The invoices and records must be maintained at a location in Ohio. (Sec. 907.04(A).)

Under current law, any person located outside Ohio who distributes agricultural or vegetable seed within or into Ohio must maintain the records at a location in the state. Current law further specifies that if the Director or his designated representative determines that an audit of a person who is located outside Ohio and who distributes seed within or into Ohio is necessary in order to determine the sales of seed made within or into Ohio by that person and the amount of the Ohio seed inspection fee that the person owes (see "**Issuance of seed labeler permits**," below), the Director may request the Auditor of State to

audit the person. Upon receiving a request from the Director, the Auditor must conduct such an audit. If the audit occurs at a location outside Ohio, the person being audited must pay the Director all the costs incurred by the Auditor in conducting the audit. The costs of any audit must be charged to the Department of Agriculture in the same manner as costs of an audit of the Department. (Sec. 907.04(B).)

The bill eliminates the specific reference to persons located outside of Ohio who distribute agricultural or vegetable seed into Ohio and instead states that the holder of a valid seed labeler permit who is required to maintain records may be audited. The bill also eliminates the provisions under which the Auditor of State conducts audits and instead authorizes the Director of Agriculture or his designated representative to perform such audits. (Sec. 907.04(B).)

Issuance of seed labeler permits

Overview

Current law generally prohibits a person from selling agricultural or vegetable seed within or into Ohio unless he has paid for and attached to the seed container Ohio seed inspection fee tags or labels obtained from the Director or, in lieu of the tags or labels, has obtained from the Director a permit to use his own tags or labels. A person must pay a \$10 annual fee to obtain a permit. A permit holder must report all sales of his seeds semiannually and pay the seed inspection fees for seed sales when the sales are reported. Current law establishes penalties for failure to report the full amount of seed sold and for failure to submit the required seed inspection fees in full by the due date.

The bill eliminates the option for a person who sells seed within or into Ohio to obtain Ohio seed inspection fee tags or labels for the seed container and eliminates any references to those tags and labels provided by the Director. It requires persons who label, rather than sell, seeds to obtain a seed labeler permit, applies the requirement to persons who label flower seed, and modifies the requirements and procedures for obtaining a permit. Finally, it renames the Ohio seed inspection fee simply the seed fee, slightly revises the application of the fee, and relocates the statutory language establishing it.

Permit requirements and procedures under the bill

Under the bill, a person who wishes to obtain a seed labeler permit must file an application with the Director on a form that the Director provides and must submit a \$10 permit fee. Such a person who labels seed under more than one name or at more than one address must obtain a separate seed labeler permit and pay a separate permit fee for each name and address.

The applicant must include the applicant's full name and address on the application together with any additional information that the Director requires by rule. If the applicant's address is not within Ohio or it does not represent a location in Ohio where the Director can collect samples of the applicant's seed for analysis, the applicant must include on the application an address within Ohio where samples of the applicant's seed may be collected for those purposes or must agree to provide the Director or his authorized representative with seeds for sampling upon request.

Upon receipt of a complete application accompanied by the permit fee, the Director must issue a seed labeler's permit to the applicant. Permits expire annually on December 31 regardless of the date on which a permit was issued during that year.

Each person who obtains a seed labeler permit must label the seed that the person intends for sale in Ohio in accordance with the Agricultural Seed Law. Each person who holds a valid permit must keep it posted in a conspicuous place in the principal seed room from which the person sells seed and must comply with the reporting and fee requirements that are established in the bill (see below). (Sec. 907.13.)

As under current law, the bill requires a person who holds a valid seed labeler permit to report to the Director concerning the amount of seed that the person sells in Ohio. The report must be made semiannually on a form that the Director prescribes and provides. One semiannual report must be filed with the Director prior to February 1 of each year with respect to all sales that the person made from July 1 to December 31 of the preceding year. The second semiannual report must be filed prior to August 1 of each year with respect to all sales that the person made from January 1 to June 30 of that year. (Sec. 907.14(A).)

Under law modified by the bill, a person who holds a valid seed labeler permit must include with each semiannual report a seed fee based on the amount of the seed that the person sold during that reporting period as follows:

- (1) For soybeans and small grains, including, under the bill, barley, oats, rye, wheat, triticale, and spelt, 4¢ per 100 pounds;
- (2) For corn and grain sorghum, 5¢ per 100 pounds;
- (3) For vegetable and, under the bill, flower seed sold at wholesale or, under the bill, retail or on consignment or commission in containers rather than packets of eight ounces or less, 2% of the wholesale value of the containers of seed or, under the bill, if the seed is not sold wholesale, 2% of the retail value of the containers of seed;

(4) For alfalfa, clover, grass, native grass, under the bill, mixtures containing any of these, and all agricultural, vegetable, and, under the bill, flower seeds not specified above, 10¢ rather than 8¢ per 100 pounds.

The bill states that if the total amount of the seed fee that is due is less than \$5, the person must pay the minimum seed fee, which is \$5. (Sec. 907.14(B).)

Under law retained in part by the bill, for each failure to report in full the amount of seed sold or to submit the required seed fees in full by the due date, a person who holds a valid seed labeler permit must pay a penalty of 10% of the amount due or \$50, whichever is greater, rather than the greater of 10% of the amount due or \$10 as in current law. Failure to pay either the fee or the penalty within 30 days after the due date is cause for suspension or revocation by the Director of the permit or refusal, without a hearing, to issue a subsequent seed labeler permit for which the person applies. (Sec. 907.14(C).) The bill specifies that the sales reporting requirements and the payment of seed fees do not apply to governmental entities that donate seed for conservation purposes (sec. 907.14(D)).

Duties of the Director of Agriculture

Current law requires the Director to perform specified functions under the Agricultural Seed Law. The bill modifies two of those functions and expands the Director's rulemaking authority. Under existing law, the Director must sample, inspect, analyze, and test agricultural and vegetable seed sold for sowing purposes, at such times and places and to such extent as he regards necessary to determine whether the seed complies with the Agricultural Seed Law and must notify promptly the person who sold the seed of any violation. The bill adds flower seed to the seed that the Director must sample, inspect, analyze, and test. (Sec. 907.10(A).)

Existing law requires the Director to establish and maintain seed testing facilities, employ qualified persons, and incur expenses that are necessary to carry out the purposes of the Agricultural Seed Law. The bill adds that instead of establishing and maintaining seed testing facilities, the Director may enter into agreements under which other persons are responsible for performing seed testing. (Sec. 907.10(C).)

Under current law, the Director must adopt rules in accordance with the Administrative Procedure Act on specified topics for the purposes of the Agricultural Seed Law. They include rules governing the methods of sampling, inspecting, analyzing, testing, and examining agricultural and vegetable seed and the tolerances to be followed. The bill adds flower seed to those rules. (Sec. 907.10(B)(1).) Existing law also requires the Director to establish standards for vegetable seeds. The bill instead requires the Director to adopt rules that establish

standards for items, including, but not limited to, germination and purity for vegetable and flower seed. (Sec. 907.10(B)(3).)

The bill also requires the Director to adopt rules that do all of the following:

(1) Establish the species of native grass that are to be included in the definition of "native grass" for purposes of the Agricultural Seed Law;

(2) Identify native grass that characteristically exhibits high inert matter;

(3) Establish the tolerance for agricultural, vegetable, and flower seed that is sold in Ohio;

(4) Establish the information that an applicant must provide on an application for a seed labeler permit that is filed under the bill; and

(5) Establish any other provisions that are necessary to clarify or administer the statutory seed labeling requirements. (Sec. 907.10(B)(5) to (9).)

Under law unchanged by the bill, the Director or his authorized agent may enter any public or private place of business during regular business hours in order to gain access to any seed or records subject to the Agricultural Seed Law or the rules adopted under it (sec. 907.11(A), not in the bill). Current law defines "place of business" as any location, including any vehicle, where seed is sold, processed, or stored. The bill adds any location where seed is conditioned. (Sec. 907.01(Q).)

Enforcement

Additional prohibitions

In addition to the revised prohibitions discussed above, the bill establishes additional new prohibitions and modifies the definition of a term used in a prohibition unchanged by the bill. Under existing law, anyone who violates any of the prohibitions in the Agricultural Seed Law is guilty of a misdemeanor of the fourth degree on a first offense and a misdemeanor of the third degree on each subsequent offense (sec. 907.99, not in the bill).

The bill prohibits a person from doing any of the following:

(1) Selling seed for use as bird feed if it contains viable prohibited noxious-weed seed or viable restricted noxious-weed seed;

(2) Selling prohibited noxious-weed seed or restricted noxious-weed seed for the purpose of sowing, except sowing for research purposes; or

(3) Selling seed that contains prohibited noxious-weed seed or restricted noxious-weed seed that is designated under federal seed regulations as having no tolerance or that is out of compliance with its tolerance (sec. 907.08(I), (J), and (K)).

Under current law, no person can dispose of screenings from the premises where seed is processed in any manner contrary to rules adopted by the Director (sec. 907.08(G)). Current law defines "screenings" as chaff, sterile florets, immature seed, inert matter, weed seed, or any other matter removed from seed in any kind of processing and that contains less than 25% by weight of live agricultural or vegetable seed. The bill adds flower seed to that percentage. (Sec. 907.01(V).)

Seizure of seed

Under existing law, any lot of agricultural or vegetable seed not in compliance with the Agricultural Seed Law is subject to seizure on complaint of the Director to a court of competent jurisdiction in the locality in which the seed is located. If the court orders the condemnation of the seed, the seed must be denatured, destroyed, or otherwise disposed of in compliance with Ohio laws, provided that the court cannot order such disposition without giving the claimant an opportunity to apply to the court for the release of the seed or for permission to process or relabel it in order to be in compliance with the Agricultural Seed Law. The bill adds that any lot of flower seed not in compliance with that Law is subject to seizure under those provisions. (Sec. 907.12.)

Exceptions from labeling and sale of seed requirements and prohibitions

Under existing law, agricultural or vegetable seed that is not intended for sowing purposes and agricultural or vegetable seed that is in storage in, being transported to, or consigned to a seed processing establishment, provided that the label accompanying a shipment of the seed complies with certain requirements, are exempt from the requirements governing seed labels and the sale of seed and from the prohibitions established under the Agricultural Seed Law. The bill adds flower seed to those exemptions and also exempts agricultural, vegetable, or flower seed that is in interstate transport and that is governed by federal seed regulations. In addition, the bill clarifies that the exemptions apply to unprocessed agricultural, vegetable, or flower seed in storage or being transported to or consigned to a seed processing establishment, provided that the label accompanying a shipment of the seed complies with certain requirements. (Sec. 907.09(A).)

Seed Fund

Current law requires all money received from permit fees, seed inspection fees, packet seed inspection stamps, purity analysis and germination test fees, sales of seized or condemned seed, and fines recovered under the Agricultural Seed Law to be paid to the Director of Agriculture who must deposit it into the Treasury of the State to the credit of the General Revenue Fund. The bill instead requires that all money collected by the Director under the Agricultural Seed Law be deposited into the Treasury of the State to the credit of the Seed Fund, which the bill creates. Money credited to the Fund must be used to administer and enforce that Law and rules adopted under it. (Sec. 907.16.)

Legume inoculant registration

Under existing law, any person who submits an application for the registration of a brand of legume inoculant must pay annually, prior to August 1, a registration and inspection fee based on his dollar sales volume of that brand in Ohio within the 12-month period ending the last day of June immediately preceding the registration renewal date in accordance with the following schedule:

- (1) One dollar up to \$10,000 volume, \$25;
- (2) \$10,001 up to \$20,000 volume, \$50;
- (3) \$20,001 and over volume, \$100; and
- (4) Brands not previously registered for sale in Ohio, \$25.

The bill changes the deadline for payment of the registration and inspection fee from August 1 to January 1. It also eliminates the existing fee schedule and establishes one fee of \$50 per brand regardless of the sales volume of the brand. (Sec. 907.31.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-25-03	p. 278
Reported, H. Agriculture & Natural Resources	05-14-03	pp. 477-478
Passed House (97-0)	05-21-03	p. 506
Reported, S. Agriculture	---	---

h0143-rs-125.doc/kl

